



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

November 2, 1973.

The Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
201 E. 11th Street
Austin, Texas 78701

Letter Advisory No. 69

Re: Nepotism - whether employee
of school district, related to
trustee, may be assigned new
position.

Dear Dr. Edgar:

The question you have submitted involved the nepotism laws of this State, Article 432, et seq., Vernon's Texas Penal Code, and whether or not a school district employee with more than two years employment, but within a prohibited degree of relationship to a school board trustee, may be assigned to a new and perhaps less remunerative position upon termination of this former position.

Article 432 provides:

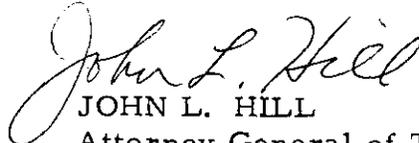
"No officer of this State nor any officer of any . . . school district . . . shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related . . . to the person so appointing or so voting, or to any other member of such board . . . ; provided, that nothing herein contained . . . shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing" (Emphasis added)

It is our opinion that the Legislature intended by the underscored language of the Article, supra, only that a person would not lose his job if a relative were elected to an office within the Article's purview. See Attorney General Opinion M-671 (1970). It is our further opinion that the plain and unambiguous language of the exception makes it apply only to the "office, position, clerkship,

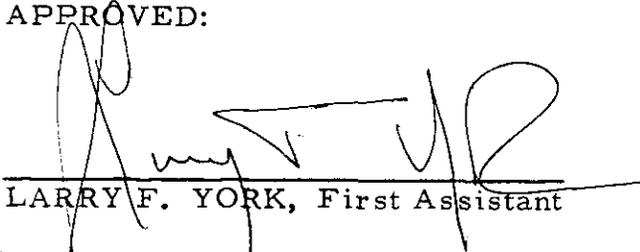
The Honorable J. W. Edgar, page 2 (LA No. 69)

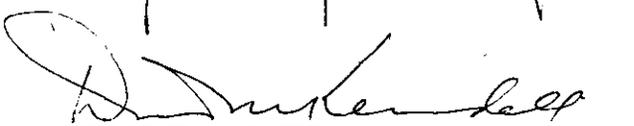
employment or duty" in which the person shall have been continuously employed, and that, where a forbidden relationship exists, a person may not be appointed to a different position, regardless of whether it is a promotion or in fact might even be less remunerative.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee