THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 3, 1974

The Honorable Oscar B. McInnis
Criminal District Attorney
County of Hidalgo
Edinburg, Texas

Letter Advisory No. 80

Re: Nepotism-employee of ISD whose second cousin is trustee.

Dear Mr. McInnis:

You have requested our opinion as to whether the nepotism statute, Article 5996a, V. T. C. S., applies to the following factual situation:

> "An individual in our county is employed by the La Joya Independent School District as a Migrant Director and is being paid through Federal funds allotted for that purpose. He has been so employed since August 20, 1972. He is selected by the School Superintendent and approved by the Board of Trustees. He is paid a salary comparable to that paid regular school teachers with his experience and degree.
>
> "On the date of his original appointment, he was selected to serve for one year and in February, 1973 he was re-appointed for an additional year to the same position. His term now expires in August, 1974. On both of these occasions, when he was appointed and approved by the School Board, he had no relative on the Board.
>
> " In April, 1973, his second cousin was elected as a trustee to the La Joya School Board. They are second cousins by reason of the fact that the Migrant Director's grandfather is the great grandfather of the School Board

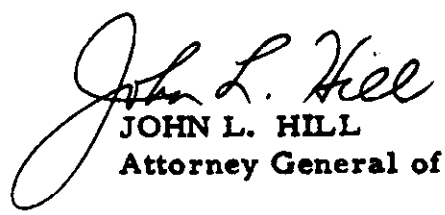
> member. The Migrant Director is the first cousin of the School Board member's mother; the father of the Migrant Director and the father of the School Board member's mother being brothers.
>
> "The question is may the Migrant Director be re-appointed to the same position in August, 1974 if his second cousin remains on the Board as a trustee without violating the nepotism statute. Their relationship is by consanguinity and he had not held the position for two years at the time his second cousin was elected to the Board. By computing the relationship as directed in your Letter Advisory No. 67, written on October 29, 1973, it appears that the two parties are related within the third degree by consanguinity."

The nepotism statutes provide that a school trustee cannot "appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty of any person related" to him or another board member within the prohibited degree of relationship when the compensation of such appointee is to be paid from public funds. Art. 5996a, V. T. C. S. If the funds are public, the prohibition applies regardless of their source. Attorney General Opinion No. O-5516 (1943); Attorney General Letter Advisory No. 79 (1974). The statute applies even though the related board member does not participate in the decision. Attorney General Opinion No. O-2831 (1940).

Similarly, the statutory exception for persons employed for a prior period of two years is inapplicable here because the two years of continuous employment must be fulfilled "prior to the election or appointment of the officer or member appointing, voting for, or confirming the appointment. . ." of the person related within a prohibited degree. Article 5996a, V. T. C. S. In this case, although the Migrant Director was <u>appointed</u> twice prior to the election of his second cousin as trustee, he had only served eight continuous months in that position. (August 1972 through April 1973).

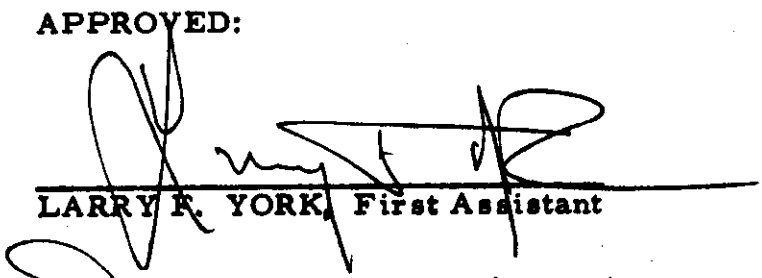
Since a second cousin is a relative within the third degree by consanguinity, Attorney General Letter Advisory No. 67 (1973), it is our opinion that the Board of Trustees of the La Joya School District may not reappoint the relation to the position of Migrant Director when his present appointment expires. See Attorney General Letter Advisory No. 70 (1973).

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant

DAVID M. KENDALL, Chairman
Opinion Committee