



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL**  
ATTORNEY GENERAL

September 19, 1975

The Honorable Robert W. Gage  
Freestone County Attorney  
Freestone County Courthouse  
Fairfield, Texas 75840

Letter Advisory No. 115

Re: Whether a county judge  
may hire a secretary  
who is a daughter of a  
county commissioner.

Dear Mr. Gage:

You have asked if it would violate article 5996a, V. T. C. S., for a county judge to employ as his secretary, with county funds, the daughter of a county commissioner. That statute reads in part:

No . . . officer of any . . . county . . .  
nor any officer or member of any . . . county  
. . . board, or judge of any court, . . . shall  
appoint, or vote for, or confirm the appoint-  
ment to any office, position, clerkship, employ-  
ment or duty, of any person related within the  
second degree by affinity or within the third  
degree by consanguinity to the person so appointing  
or so voting, or to any other member of any such  
board . . . or court of which such person so  
appointing or voting may be a member, when the  
salary, fees, or compensation of such appointee  
is to be paid for, directly or indirectly, out of or  
from public funds or fees of office of any kind or  
character whatsoever; . . . (Emphasis added).

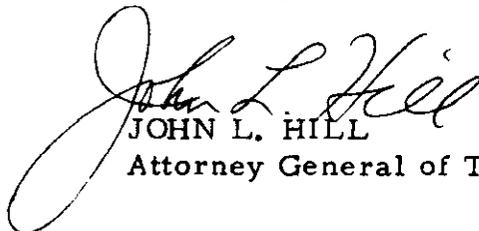
The county judge is a member of the commissioners court. Tex. Const. art. 5, §18. The commissioner's daughter is related to her father in the first degree of consanguinity. Attorney General Letter Advisory No. 67 (1973). But you advise that it is the county judge alone who has the power to hire and fire the secretary, not the commissioners court. In doing so, he will not be acting as a member of that body.

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In Attorney General Opinion O-4585 (1942), the predecessor of this statute was said not to prevent a county judge from employing a stenographer who was a relative of one of the county commissioners. And see Attorney General Letter Advisory No. 79 (1973), where it was noted that nepotism statutes have been considered not violated when a relative of a member of a governing body is hired for a position authorized by that body, where the governing body does not exercise control over the person to be selected.

We therefore answer your question in the negative but caution that article 5996, V. T. C. S., condemns the practice of "trading." Also see article 39.01, Texas Penal Code.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee