



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

August 26, 1992

**Mr. Riley J. Simpson  
President  
Board of Trustees  
Central Texas College  
P. O. Box 1800  
Killeen, Texas 76540-9990**

**Letter Opinion No. 92-43**

**Re: Whether the hiring of an employee by  
Central Texas College while the employee's  
uncle serves on the college board of trustees  
violates V.T.C.S. article 5996a; whether re-  
election of board member cures original  
nepotism violation (ID# 15752)**

**Dear Mr. Simpson:**

You have asked this office for an opinion relating to the nepotism statute, V.T.C.S. article 5996a. You inform us that eight years ago Central Texas College hired an individual after that individual's relative had been elected to the college board of trustees, and ask whether the hiring violated the nepotism law. Section 1(a) of article 5996a provides the following:

No officer of this State nor any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, nor any officer or member of any State district, county, city, school district, or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, nor any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity, as determined under Article 5996h, Revised Statutes, to the person so appointing or so voting, or to any other member of any such board, the Legislature, 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.

*See also V.T.C.S. art. 5996b.*

Your first question is whether the college's hiring of an individual after her uncle is elected a member of the college's board of trustees is a violation of the nepotism law. The situation described clearly constitutes a nepotism violation. The board of trustees of Central Texas College has the same duties and powers as a board of trustees of an independent school district. Education Code § 130.084. Section 23.26 of the code grants such a board the exclusive power to manage and govern district affairs. This power includes the power to hire employees. The board member and the employee in this case, uncle and niece, are within the prohibited degree of relationship. See V.T.C.S. art. 5996h; *Bean v. State*, 691 S.W.2d 773 (Tex. App.—El Paso 1985, pet. ref'd). On the facts submitted, the employment of the individual during her relative's tenure was a violation of article 5996a.

It has nevertheless been suggested to us that a violation has not occurred in the present case because the board of trustees has delegated its authority to manage and operate a personnel system. Case law and prior opinions of this office make it clear that "[d]elegation of hiring decisions does not relieve the members of the governing body of the burdens of the nepotism law." Attorney General Opinion DM-2 at 1 (1991). "The applicability of the nepotism law depends on whether the officer may exercise control over hiring decisions." *Id.* (emphasis in original); see also JM-1188 (1990); *Pena v. Rio Grande City Consol. Indep. School Dist.*, 616 S.W.2d 658 (Tex. Civ. App.—Eastland 1981, no writ.). Clearly, the Board of Trustees of Central Texas College retains statutory authority under Education Code sections 23.26 and 130.084 to hire employees of the college. Therefore, the college may not hire any employee related within the prohibited degree to a member of the board of trustees, even if the board has a policy of non-involvement with hiring decisions.

Your second question is whether the fact that the elected official has "stood election since the hiring and been re-elected" cures the original violation. The re-election of the board member does not remedy the nepotism violation. Although you do not offer an argument for the proposition that such a re-election would cure the violation, we infer that your question relates to the nepotism defense of prior continuous employment found in section 1(b) of article 5996a. This subsection provides that the nepotism law does not

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 the following

period prior to the election . . . of the officer or member related to such employee in the prohibited degree:

....

(2) at least six months, if the officer or member is elected at an election other than the general election for state and county officers; or

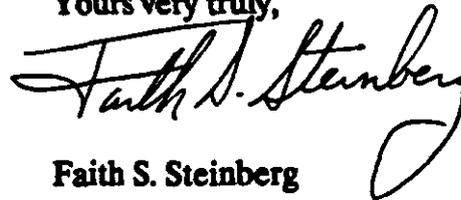
(3) at least one year, if the officer or member is elected at the general election for state and county officers.

V.T.C.S. art. 5996a, § 1(b). As explained in Attorney General Opinion JM-636 (1987), the prior continuous service exemption is available only if the employee has completed the applicable period of continuous service during a time when the relative was not an employer with power to hire or fire the employee. The employee's prior continuous service in violation of the nepotism statute does not constitute prior continuous service for purposes of V.T.C.S. article 5996a, section 1(b).

### S U M M A R Y

The hiring of an employee by Central Texas College while the employee's uncle serves on the the college's board of trustees violates V.T.C.S. article 5996a, the Texas nepotism statute. The re-election of the uncle to the board of trustees does not cure the original violation.

Yours very truly,



Faith S. Steinberg  
Assistant Attorney General  
Opinion Committee