



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1993

Honorable Marcus D. Taylor
Criminal District Attorney of Wood County
P.O. Box 689
Quitman, Texas 75783

Letter Opinion No. 93-114

Re: Whether the nepotism statutes require the termination of a deputy sheriff who has been employed by the elected sheriff for at least five years prior to the sheriff's marriage to the deputy's sister (ID# 21704)

Dear Mr. Taylor:

You ask a question arising under the nepotism statutes, formerly codified as article 5996a - 5996i, V.T.C.S. These provisions have been repealed and codified without substantive change as chapter 573 of the Government Code. Acts 1993, 73d Leg., ch. 268.

You state that the sheriff of Wood County married the sister of his deputy on July 1, 1993. The marriage created a relationship in the second degree by affinity between the sheriff and his deputy, *see* Gov't Code §§ 573.023 - 573.025, which is a degree of relationship subject to the nepotism statute. Section 573.041 of the Government Code provides in part:

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within . . . [the second degree by affinity].

A deputy sheriff serves at the pleasure of the sheriff. Local Gov't Code § 85.003(c). If he is paid on a monthly basis, it is presumed for purposes of the nepotism law that the sheriff makes a new decision each month to retain the deputy. *See* Attorney General Opinion MW-286 (1980); Letter Advisory No. 70 (1973). You ask whether section 573.041 requires dismissal of the deputy sheriff.

A similar nepotism question was addressed in Attorney General Opinion DM-132 (1992), which considered whether a school board employee might retain his position after marrying a relative of a board member and establishing a relationship with the scope of the nepotism law. Attorney General Opinion DM-132 stated as follows:

The nepotism law applies to relationships that arise during the course of an individual's employment. Attorney General Opinions V-785 (1949); O-1408 (1939); Letter Opinion No. 89-53 (1989). The nepotism law does allow a governmental body to retain an employee related to a board member if the employee has sufficient prior continuous service. . . . Significantly, under the nepotism statute, prior continuous service is the time served before the board member's election, not the time served before the marriage.

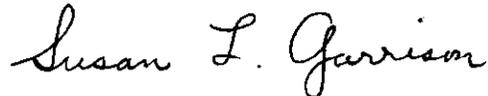
Attorney General Opinion DM-132 at 4. The prohibitions in section 573.041 do not apply to an individual related to an elected county officer if the individual was continuously employed for one year before the election of the related county officer. Gov't Code § 573.062(a).

The sheriff first took office on January 1, 1985; his subsequent terms began on January 1, 1989, and January 1, 1993. He appointed the deputy sheriff on April 12, 1988, and the deputy has continued in that position ever since. Accordingly, the deputy had served more than four years prior to the sheriff's election to the term of office beginning January 1, 1993. On these facts, the nepotism provisions do not require the termination of the deputy sheriff following the sheriff's marriage to the deputy's sister. While the deputy sheriff continues in his position, the sheriff "may not participate in any deliberation or voting on the appointment, reappointment . . . change in status, compensation or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees." *Id.* § 573.062(b). See generally *Cain v. State*, 855 S.W.2d 714 (Tex. Crim. App. 1993) (en banc) (upholding conviction of sheriff under nepotism law for giving raises to his son and daughter).

S U M M A R Y

The nepotism provisions, now codified as chapter 573 of the Government Code, do not require the termination of a deputy sheriff upon his sister's marriage to the sheriff when the deputy has served in his position for over one year continuously immediately before the sheriff's election to his present term. While the deputy sheriff continues in his position, the sheriff "may not participate in any deliberation or voting on the appointment, reappointment . . . change in status, compensation or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees."

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee