



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 21, 1995

Honorable John W. Berry  
Karnes County Attorney  
101 North Panna Maria, Suite 10  
Karnes City, Texas 78118

Letter Opinion No. 95-015

Re: Effect of nepotism statute, Gov't Code ch. 573, when mayor's wife who furnished contractual services becomes part-time employee and then is offered full-time employment (ID# 26437)

Dear Mr. Berry:

You inquire about the application of the nepotism statute, Gov't Code ch. 573, to the employment of the mayor's wife by the City of Karnes City. We understand that the city was a type C general-law municipality at the time the relevant employment decisions were made. See Local Gov't Code ch. 8 (incorporation of type C general-law municipality). The governing body of a type C general-law municipality consists of a mayor and two commissioners. *Id.* § 24.022.

You inform us that the present Mayor of Karnes City was elected in May, 1989. At that time, the mayor's wife was performing janitorial services for the city at ten dollars per cleaning pursuant to an oral agreement entered into in March of 1987. The agreement continued in effect until January of 1991, when the city employed the mayor's wife in a part-time position. The city now needs a full-time employee in the position she holds, and she is being considered for full-time employment at no increase in her hourly wage. You first ask whether the city's employment of the mayor's wife as a part-time employee in 1991 violated the nepotism statute.

Section 573.041 of the Government Code provides that 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" to be compensated from public funds if the individual is related to the public official or to another member of the appointing board "within the third degree by consanguinity or within the second degree by affinity." See Gov't Code § 573.002. A husband and wife are related to each other in the first degree by affinity, *id.* § 573.025(a), a degree within section 573.002 of the code. Thus, the mayor's wife is within the degree of relationship affected by section 573.041 of the Government Code.

The prohibition in section 573.041 of the Government Code or a nepotism prohibition found in a municipal charter or ordinance

does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

(1) the individual is employed in the position immediately before the election . . . of the public official to whom the individual is related in a prohibited degree; and

(2) that prior employment of the individual is continuous for at least:

....

(B) six months, if the public official is elected at an election other than the general election for state and county officers . . . .

*Id.* § 573.062(a). If an individual continues in a position according to this provision, the public official to whom the individual is related "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." *Id.* § 573.062(b).

The mayor's wife was continuously employed by the city on a part-time basis for more than six months before her husband was elected mayor. The nepotism statute applies to the hiring of an individual, regardless of whether the individual is hired as a regular employee or an independent contractor. Attorney General Opinions DM-76 (1992); JM-45 (1983). An individual who is continuously under contract with the city for at least six months is considered to be employed during that time even though services are performed on a periodic basis. Attorney General Opinion JM-861 (1988) at 2; Attorney General Opinion JM-45 (1983). *See also* Attorney General Opinion DM-76 (1992) (overruling statements in Attorney General Opinion JM-492 (1986) to the effect that the nepotism statute did not apply to individual hired as an independent contractor). The mayor's wife was under contract with the city continuously from March 1987 to the time of her husband's election in May of 1989, and afterwards. Section 573.062(a) of the Government Code allows her to continue in that employment relationship with the city after her husband's election.

Section 573.062(b) of the Government Code permits the city commission to approve a change in the employment status and compensation of the mayor's wife, but the

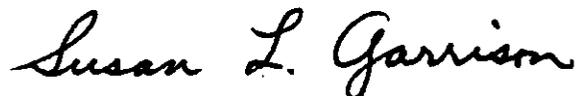
mayor "may not participate in any deliberation or voting on the appointment . . . change in status . . . [or] compensation" if the action applies only to his wife. Attorney General Opinions DM-132 (1992); JM-1188 (1990). The city's employment of the mayor's wife as a part-time employee in 1991 did not violate the nepotism statute, unless the mayor participated in this action in violation of section 573.062(b). See Gov't Code ch. 573, subch. E (penalties for violations of nepotism statute). Whether the mayor participated in the action is a fact question, which cannot be determined in the opinion process.

Assuming, without deciding, that the city's employment of the mayor's wife did not violate the nepotism statute, you next ask whether the employment of this person as a full-time employee would violate that statute. Our answer to your first question provides the answer to this question as well. The city commission may promote the mayor's wife, change her employment status, or take the other actions referred to in section 573.062(b), as long as the mayor does not participate in the deliberations or voting on this action. Attorney General Opinion DM-132 (1992) at 2-3.

#### S U M M A R Y

An individual who provided janitorial services to a city under agreement was continuously employed by the city for purposes of the nepotism law. Since her contract work for the city predated her husband's election as mayor by more than six months, section 573.062(a) of the Government Code permitted her to continue to perform services for the city after her husband's election. Pursuant to section 573.062(b) of the Government Code, the nepotism law did not prevent the city commission from approving a change in her status and compensation to that of a part-time employee, if the mayor did not participate in the deliberations or voting on such action. The nepotism law does not prevent the city commission from approving a change in her status and compensation from part-time to full-time employee, if the mayor does not participate in the deliberations or voting on this action.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee