



Office of the Attorney General
State of Texas

PAN MORALES
ATTORNEY GENERAL

March 21, 1995

Honorable Tim Curry
Tarrant County Criminal District Attorney
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

Letter Opinion No. 95-020

Re: Whether state nepotism laws prohibit
an elected district official from hiring the son
of his former spouse's sister (ID# 30360)

Dear Mr. Curry:

You have requested an opinion from this office concerning the prohibition against nepotism as set forth in chapter 573 of the Government Code. You specifically ask whether an elected district official is prohibited by law from hiring the son of his ex-spouse's sister where there is a surviving child of the former marital relationship.

In Texas, there are no constitutional provisions concerning nepotism; rather, the prohibition against the practice is governed by chapter 573 of the Government Code. Except in limited circumstances, the prohibition applies to relationships within the third degree by consanguinity or within the second degree by affinity. Gov't Code § 573.002. Section 573.041 is the operative provision and provides the following:

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 third degree by consanguinity or the second degree by affinity]; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within [the third degree by consanguinity and the second degree by affinity].

Consanguinity is defined as relationship by a common ancestor. BLACK'S LAW DICTIONARY 275 (5th ed. 1979). Affinity is defined as that relationship which is only created by marriage. *Id.* at 54. We note that because relationships of affinity arise out of marriage, they may be terminated by death or divorce. However, it is clear that the legal relationship of affinity will continue for purposes of the prohibition against nepotism, *if* there is a surviving child of the marriage. Gov't Code § 573.024(b).

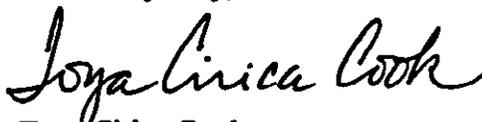
The method for determining the degree of relationship is the same for both consanguinity and affinity. In ascertaining the degree of affinity, the husband or wife occupies the place of the other. Thus the relatives of the wife stand in the same degree of affinity to the husband as they are related to the wife by consanguinity and vice-versa.

In the situation which you have described, the public official and the prospective employee are not related by consanguinity because they lack a common ancestor and neither is descended from the other. *See id.* § 573.022. However, the relationship by affinity has not been terminated by the act of divorce, since there is a surviving child of the marriage. Thus, the public official is related by affinity to the prospective employee in the same degree as the official's former spouse is related to the official by consanguinity. In this instance, such relationship is in the third degree because the individual at issue is the former spouse's nephew. *See id.* Gov't Code §§ 573.023, .025. Therefore, we conclude that because the existing relationship is in the third degree by affinity, it is beyond the scope of the nepotism laws of this state. *See id.* 573.002.

S U M M A R Y

Title 5, chapter 573 of the Government Code, the prohibition against nepotism, does not prohibit an elected official from hiring the son of his former spouse's sister.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Opinion Committee