



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

**DAN MORALES**  
ATTORNEY GENERAL

February 26, 1996

Mr. Mike Moses  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Letter Opinion No. 96-015

Re: Whether chapter 573 of the Government Code prohibits a school district from hiring a former employee who is related to a school board member within a prohibited degree if the former employee had been continuously employed by the school district at the time of the school board member's election (ID# 36858)

Dear Commissioner Moses:

You ask whether chapter 573 of the Government Code prohibits a school district from hiring a former employee who is related to a school board member within a prohibited degree if the former employee had been continuously employed by the school district at the time of the school board member's election. You ask us to consider the following facts:

A person elected to the office of school board trustee is related to a school district employee in a degree of relation prohibited under Chapter 573, Government Code. At the time the trustee assumes office, the employee has been employed by the school district for the period of time required for the continuous employment exception under Section 573.062, Government Code. Subsequently, the employee resigns to pursue other employment. Now, the former employee is interested in returning to employment in the school district. The former employee's relative is serving as trustee and has done so during the entire period of the former employee's absence from district employment.

Section 573.062 of the Government Code, which sets forth an exception to the nepotism prohibitions for employees who have been continuously employed, provides in pertinent part as follows:

(a) A nepotism prohibition prescribed by Section 573.041 . . . does not apply to 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 or appointment 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 [a certain set period depending upon whether the official is appointed or elected].

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, 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.

We do not believe that the foregoing exception applies to the situation you describe.<sup>1</sup> Subsection (a) of section 573.062 is intended to permit a person who has been continuously employed to continue in that employment after the election or appointment of a relative. In the case you describe, the employee resigned after the relative was elected.

Subsection (b) of section 573.062 provides that when an employee "continues in a position," the relative may not participate in the employee's "appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal." We do not believe that subsection (b) would permit the school board in the case you describe to re-employ the former employee provided that the relative does not participate. Subsection (b) only applies to "an individual [who] continues in a position," Gov't Code § 573.062, that is, a person who has been continuously employed both prior to and after the appointment or election of his or her relative up until the time of the "appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal." *Id.* Because the employee you describe did not continue after the election in the position the employee held before the election, section (b) is inapplicable. The individual you describe is not exempted from the nepotism prohibitions by virtue of section 573.062.

You also ask if the answer to your query is "contingent on whether, during the period of the former employee's absence from district employment, the related board

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<sup>1</sup>We have not been able to locate any prior attorney general opinions dealing with a postelection break in service. See Attorney General Opinion MW-23 (1979) at 2 (distinguishing between pre-election and postelection breaks in service).

member has been serving the same term or has been reelected." We do not believe this is a relevant consideration given the facts you describe.

**S U M M A R Y**

A former employee of a school district, who is related to a school board member within a prohibited degree and had been continuously employed by the school district at the time of the school board member's election, is not exempt from nepotism prohibitions by virtue of section 573.062 of the Government Code.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee