

County of Jim Wells

ID# 14479
MJ



JESUSA SANCHEZ-VERA
COUNTY ATTORNEY

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December 10, 1991

RQ-282

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DEC 16 91

The Honorable Dan Morales,
The Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711

RE: REQUEST FOR ATTORNEY GENERAL OPINION

Dear Sir:

This is to serve as a request for an Attorney General Opinion regarding the Texas nepotism statutes.

ISSUE: Whether the Executive Director of a public housing authority is subject to Article 5996a, V.T.C.S.

Under V.T.C.A., Local Government Code §392.006, a housing authority is a unit of government for all purposes. §392.031 allows for the appointment of the commissioners by the mayor of the municipality. The commissioners of a municipal housing authority are authorized under §392.038 to employ a secretary, who shall serve as Executive Director. The qualifications, duties, and compensation of the Executive Director is to be determined by the commissioners.

Attorney General Opinion No. JM-91 addresses the issue of the nepotism statute and its applicability. This opinion restates the standard as defined by case law that determines status as an officer, as distinguished from an employee, as "whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others. Green v. Stewart, 516 S.W. 2d 133, 135 (Tex. 1974); Aldine Independent School District v. Standley, 280 S.W 2d 578, 583 (Tex. 1955); Pena v. Rio Grande City Consolidated Independent School District, 616 S.W. 2d 658, 660 (Tex. App. - Eastland 1981, no writ)."

As opposed to superintendents of mental health and mental retardation facilities, the powers and duties of Executive Directors of municipal housing authorities are functions mainly delegated to them by the commissioners. An Executive Director is

not largely independent of the control of others because no statute empowers her with specific duties and §392.038 authorizes the commissioners to determine her duties.

CONCLUSION: An Executive Director of a municipal housing authority is not subject to the prohibitions imposed by the nepotism statutes.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jesusa Sanchez-Vera". The signature is written in dark ink and is positioned above the typed name.

Jesusa Sanchez-Vera
Jim Wells County Attorney