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RQ-1075

RECEIVED

JAN 26 1998

December 18, 1997

Opinion Committee

Attorney General Dan Morales
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-40043-98
ID # 40043

Dear Attorney General Morales:

This request is made for the purpose of determining whether the Brooks County Independent School Board of Trustees (hereinafter "Board") can hire a teacher who is married to a member of the Board (hereinafter "teacher") in accordance with § 573.001 et seq. of the Texas Government Code.

Facts:

Brooks County Independent School District (hereinafter "District") is a county-wide school district in the state of Texas governed by the Board, which is comprised of seven elected members. On June 10, 1996, the Board passed a motion to close the Encino Campus effective the 1996-1997 school year because of financial problems. The Encino Save Our School, Inc., (hereinafter "ESOS") filed suit asserting that the closing of the Encino Campus resulted in reversion of title from the District to the heirs of the original grantor. Just before the commencement of the 1996-1997 school year, the District and the ESOS entered into a temporary agreement pending the litigation that allowed ESOS to operate a private school on the Encino Campus for the 1996-1997 school year. ESOS operated a private school for the 1996-1997 school year pursuant to the temporary agreement with the District. The teachers, administrators and staff of the private school were employees of the ESOS, and ESOS assumed all financial obligations of operating the private school for the 1996-1997 school year. During the 1996-1997 school year, the District educated any students residing in the area who did not wish to enroll in the private school at another facility within the District. The employees of ESOS were primarily former employees of the District.

The teacher, prior to the 1995-1996 school year, had been a District employee for twenty-five (25) years. Her first job as a teacher was with the District, beginning in 1971. It was in her 26th year that the District closed the Encino Campus as a public elementary school. The teacher taught second

grade at Encino and had been an Encino Campus teacher for two years prior to the closure. After the District closed the Encino Campus on June 10, 1996, the teacher, together with four other Encino teachers, chose to stay with the Encino Community and be hired by ESOS for the benefit of the children. Even after the closure, the District considered the Encino Campus the property of the District.

The teacher resigned her position with the District on July 26, 1996. The Board accepted the teacher's resignation in a special meeting held July 31, 1996. The teacher's resignation took effect on August 1, 1996. The teacher's position with the ESOS entailed similar duties as those she performed at the District. During the 1997 Spring semester, the teacher's husband was elected to the Board. ESOS and the District have settled the lawsuit. Pursuant to settlement terms, the District will assume control of the Encino Campus and operate a public school.

The prohibition against nepotism is governed by Chapter 573 of the Government Code. The operative provision is § 573.041, which provides the following:

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation 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 a degree described by § 573.002; 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 a degree described in § 573.002. TEX. EDUC. CODE ANN. § 573.041.

Section 573.062, however, provides an exception to the nepotism prohibitions for employees who have been *continuously* employed. Section 572.062 provides in pertinent part as follows:

(a) A nepotism prohibition prescribed by § 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) 30 days, if the public official is appointed;

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

(c) one year, if the public official is elected at the general election for state and county officers.

(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, re-employment, 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. TEX. EDUC. CODE ANN. § 573.062 (emphasis added).

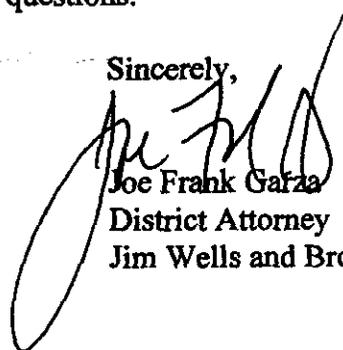
“Subsection (a) of § 573.062 is intended to permit a person who has been continuously employed to continue in that employment after the election or appointment of a relative.” TEX. ATTY. GEN. OP. LO 96-015. Subsection (b) of § 573.062 only applies to “...a person who has been continuously employed both *prior to* and *after* the appointment or election of his or her relative....” *Id.* In short, § 573.062 provides a two-prong standard for exclusion under the nepotism prohibitions: (1) the individual must be employed immediately prior to the election or appointment of the public official at issue, and (2) the employment must be *continuous* for the specified amount of time. TEX. ATTY. GEN. OP. LO 96-015.

Question:

If a teacher was previously employed by the District (until August 1, 1996) and her husband was elected to the Board (in May of 1997), can the District (with the abstention of the public official to whom the teacher is married) rehire the teacher in accordance with § 573.062 of the Texas Government Code?

I appreciate your assistance in this matter and look forward to receiving your response. Please do not hesitate to contact me if you have any questions.

Sincerely,



Joe Frank Garza

District Attorney

Jim Wells and Brooks Counties