



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

November 17, 1992

**DAN MORALES**  
ATTORNEY GENERAL

Honorable Carl A. Parker  
Chairman  
Education Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 92-75

Re: Whether a person employed as a "regular substitute" may continue employment and be promoted to status of a full-time employee following the election of a family member to the school board (ID# 17635)

Dear Senator Parker:

You ask us to consider whether a school board has authority to deny future employment to a board member's sister-in-law. You advise us that an individual has been employed as a "regular substitute" cafeteria worker for a school district. She has worked in this capacity for five years. Two years ago, her sister-in-law was elected to the school board and continues to serve. Recently, the board informed the substitute that she cannot be considered for a full-time position nor can she continue substitute employment because her continued employment would violate V.T.C.S. article 5996a, the Texas nepotism law.

The prohibition against nepotism is set out in V.T.C.S. article 5996a, which expressly provides that individuals related within the second degree by affinity or within the third degree by consanguinity are in violation of the act with certain exceptions.<sup>1</sup> You ask whether the employee's service as a "regular substitute" satisfies the continuous employment exception of V.T.C.S. article 5996a, section (1)(b), which provides the following:

Nothing herein contained, nor in any other nepotism law contained in any charter or ordinance of any municipal corporation of this State, shall prevent the appointment, voting

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<sup>1</sup>The individuals at issue are related in the second degree by affinity.

for, or confirmation of any person who shall have been *continuously employed* in any such office, position, clerkship, employment or duty for the following period prior to the election or appointment, as applicable, of the officer or member related to such employee in the prohibited degree:

- (1) at least 30 days, if the officer or member is appointed;
- (2) at least six months, if the officer or member is elected at an election other than the general election for state and county officers; or
- (3) at least one year, if the officer or member is elected at the general election for state and county officers. [Emphasis added].

You have suggested that the individual's status as a "regular substitute" for the past five years satisfies the continuous employment requirement of the statute. See V.T.C.S. art. 5996a, § (1)(b)(2). However, the information that you have provided us suggests that she is not a part-time employee working on a continuing contractual basis, but rather an individual who has been placed on a list of substitutes and is regularly called upon to work. Her status as a substitute for the past five years does not provide her with the same guarantees and obligations as an individual working pursuant to a continuing contract. Although she was a "regular substitute" employee for three years prior to her sister-in-law's election to the school board, her period of employment has not been continuous within the meaning of the statute. See *Bean v. State*, 691 S.W.2d 773 (Tex. App.--El Paso 1985, writ ref'd) (repeated court appointments do not constitute continuous employment); Attorney General Opinion JM-861 (1988) (service as a substitute teacher does not constitute continuous employment). Compare Attorney General Opinion JM-45 (1983) (an employee working on a periodic basis subject to a continuing contract is excluded from prohibition against nepotism).

In *Bean*, a court appointed attorney attempted to assert the defense of continuous employment based upon the fact that he had repeated appointments to represent different indigent clients in different cases over a six year period. The court held that because the attorney was not a full or part-time public defender he was not continuously employed for purposes of the statute. 691 S.W.2d at 775. Similarly, in Attorney General Opinion JM-861, a teacher was employed full-time until her resignation. Upon resigning, her name was placed on the substitute list.

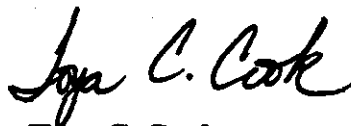
She served intermittently for approximately four years as a substitute teacher before returning to full-time employment. During her tenure as a substitute teacher her spouse was elected to the school board. This office opined that her service as a substitute failed to meet the continuous employment requirement of the statute because she was not employed pursuant to a continuing contract. Attorney General Opinion JM-861 at 2.

We are of the opinion that the exception provided by continuous employment does not apply to the present situation. The individual was not employed as a full or part-time employee. She was not a party to a continuing contract for employment with the school district and is therefore ineligible for continued employment opportunities.

### S U M M A R Y

Absent a contract for continuing employment, an individual's status as "regular substitute" does not constitute continuous employment as required by V.T.C.S. article 5996a, the Texas nepotism law.

Yours very truly,



Toya C. Cook  
Assistant Attorney General  
Opinion Committee