

# BURNET COUNTY ATTORNEY'S OFFICE

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Eddie Arredondo  
Burnet County Attorney

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June 2, 2023

The Honorable John Scott  
Interim Texas Attorney General  
Office of the Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711  
Email: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

Dear Attorney General Scott:

The Burnet County Attorney's Office seeks an Attorney General's Opinion regarding the following questions:

1. May a county commissioners court of a county consisting of less than 50,000 people, cede, either officially or unofficially, its implied authority to hire a non-elected department head to the County Judge?
2. May a county judge of a county with a population of less than 50,000 appoint the spouse of a county commissioner as the compensated head of the Human Resources Department of the county where said individual reports directly to the County Judge while the commissioners court provides the approval of payroll and annual budgets for the department?
3. Should your opinions to the above stated questions cited be "no," then who can or should be prosecuted for violations of Texas Government Code §573.084?

Texas Government Code Chapter 573 outlines prohibitions against nepotism. Specifically:

*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 a degree described by Section 573.002 (Degrees of Relationship); 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 by Section 573.002 (Degrees of Relationship).*

The chapter further states that an individual who violates these provisions shall be removed from their position in accordance with the removal provision of the constitution of the State of Texas if applicable or by a quo warranto proceeding filed by the Texas Attorney General's office. Texas Government Code

§573.081(b) indicates that a removal shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee becomes final. Texas Government Code §573.084 explains that nepotism is an offense of official misconduct punishable by a fine not less than \$100 or more than \$1,000.

Burnet County is a rural county with a population of less than 50,000. In July 2018, Burnet County Judge James Oakley appointed Sara Ann Luther, spouse of Burnet County Commissioner Precinct #1 Jim Luther, as the compensated director of Human Resources for the County. As of the date of this request, Sara Ann Luther continues to serve Burnet County in this position. The Human Resources director reports directly to the Burnet County Judge. All payroll for county employees, including the Human Resources director, is approved by the Commissioner's Court each payroll period. Additionally, the Human Resources Department budget is determined by the Burnet County Commissioners Court.

Texas Constitution Article V, Sections 15 and 18 indicate that a county judge is the presiding officer of the commissioners court and the judge of the county court. A county judge has broad judicial responsibilities and represents the county in various administrative functions. No specific provision in the Texas Constitution authorizes a county judge to appoint and oversee the activities of a human resources director.

The commissioners court is the governing body of the county. The Texas Constitution specifies that a commissioners court consist of a county judge and four county commissioners, and exercises powers over county business as provided by law (Tex. Const. Art. V, Sec. 18). Those powers involve administrative responsibilities including a growing number of permissive authorities recognized as implied powers necessary to exercise the powers expressly conferred by the constitution and statutes. No provision in the Texas Constitution specifies that a commissioners court has the authority to appoint a human resources director nor to oversee their activities, although in a prior Attorney General Opinion, that power is identified as an implied power of the Commissioners Court.

Texas Attorney General Opinion H-1302 (1978) indicates that a commissioners court may hire or appoint necessary personnel to administer business so long as such employees are subject to the supervision of commissioners to the extent the commissioners court's authority is not delegated. Texas Attorney General Opinion JC-0264 (2000) recognizes that the appointment of a human resource position is an implied power associated with conducting county business.

It is my belief that Burnet County Judge James Oakley's authority to hire the Human Resources Director stems from the Burnet County Commissioners Court's implied power to hire employees related to conducting county business. Research of Burnet County Commissioners Court minutes does not reveal a specific date nor specific agenda item where the Burnet County Commissioners Court took official action to delegate its authority to hire a Human Resources Director to the Burnet County Judge. Further research may reveal an official action. At the very least, I believe the ceding of this authority occurred unofficially.

The question arises as to whether or not a commissioners court can delegate this implied power to one of its members, the county judge, and not violate the commissioners court's sovereign authority. If possible, then is the action by the county judge to hire the spouse of one of the commissioners and oversee her activities a nepotism violation? Should your opinion indicate that it is not a nepotism violation, then would the continued approval of payroll and annual budgets for the department by the commissioners court be a nepotism violation? Finally, if there are nepotism violations, who may be criminally pursued for such action under Texas Government Code §573.084?

Respectfully Submitted,



Eduardo Arredondo  
Burnet County Attorney