

**WICHITA COUNTY AUDITOR****Cheryll A. Jones
COUNTY AUDITOR**

August 01, 2024

Honorable Ken Paxton
Attorney General for the State of Texas
PO Box 12548
Austin, TX 78711-2548

Dear Sir,

I am the County Auditor for Wichita County, Texas. As one of the few that can request an opinion, I am writing on behalf of the citizens of Wichita County as it applies to the Elections Administrator being the spouse of a County Commissioner.

BACKGROUND

The Wichita County Commissioners' Court voted to create the position of Elections Administrator on June 5, 2023 to be effective September 1, 2023.

The Wichita County Commissioners' Court voted on July 31, 2023 to hire Robin Fincannon as the Elections Administrator effective August 1, 2023 and the motion carried unanimously.

Wichita County Commissioner for precinct 2 is Mickey Fincannon, spouse of Robin Fincannon.

QUESTIONS

1. Whether there is an issue of nepotism for the Commissioners' Court to affirm the hiring and or termination of the Elections Administrator, a personal related by affinity to a current County Commissioner?
2. Whether there is an issue of nepotism or conflict of interest for the Commissioner Fincannon to vote on any matters regarding the Elections Administrator's office including salary, office expenses and office budget while related by affinity to the Election Administrator?
3. Does the Elections Administrator, as the County's election official, take the place of the County Clerk in Election Code 83.002 as the early voting clerk?
4. If the Elections Administrator is in fact the early voting clerk, will they be ineligible to serve if related by affinity to any person running for office?

5. If the Elections Administrator is an eligible clerk and their spouse runs for office, will the contribution of marital assets to their campaign constitute a political contribution for the Elections Administrator since Texas is a community property state and all assets are marital assets?
6. If the Elections Administrator is related to a person running for office, will attending campaign functions be in violation of Election Code 31.035(b)?

STATUTES RELATED TO QUESTIONS:

1. **Government Code Section 573.041. PROHIBITION APPLICABLE TO PUBLIC OFFICIAL.** 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; 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.
2. **Local Government Code Section 111.008. ADOPTION OF BUDGET**
 - (a) at the conclusion of the public hearing, the commissioners court shall take action on the proposed budget. A vote to adopt the budget must be a record vote.
3. **Election Code Section 31.039. SALARY; STAFF; OPERATING EXPENSES.**
 - (a) The Commissioners Court shall set the number of deputies and other persons that the county elections administrator may employ.
4. **Election Code Section 83.001. EARLY VOTING CLERK GENERALLY**
 - (a) The early voting clerk shall conduct the early voting in each election.
 - (b) The clerk is an officer of the election in which the clerk serves.
 - (c) The clerk has the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting, except as otherwise provided by this title.
5. **Election Code Section 83.003. COUNTY CLERK AS EARLY VOTING CLERK.** The county clerk is the early voting clerk for the county in:
 - (1) the general election for state and county officers and any other countywide election held at county expense;
 - (2) a primary election; and
 - (3) a special election ordered by the governor.
6. **Election Code Section 31.043. DUTIES OF ADMINISTRATOR GENERALLY.** The county elections administrator shall perform:
 - (1) the duties and functions of the voter registrar;
 - (2) the duties and functions placed on the county clerk by this code;
 - (3) the duties and function relating to elections that are placed on the county clerk by statutes outside this code, subject to 31.044; and
 - (4) the duties and functions placed on the administrator under sections 31.044 and 31.045.

7. **Election Code Section 32.054. INELIGIBILITY OF EMPLOYEE OR RELATIVE OF CANDIDATE.**
 - (a) A person is ineligible to serve as an election judge or clerk in an election if the person is employed by or related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an opposed candidate for public office or a party office in any precinct in which the office appears on the ballot. For purposes of this subsection, a candidate whose name appears on the ballot is not considered to be opposed by a write-in candidate other than a declared write-in candidate under Chapter 146.
 - (c) In this section, "candidate" means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining nomination or election.

8. **Election Code Section 31.035. RESTRICTIONS ON POLITICAL ACTIVITIES.**
 - (b) A county elections administrator commits an offense if the administrator makes a political contribution or political expenditure, as defined by the law regulating political funds and campaigns, or publicly supports or opposes a candidate for public office or a measure to be voted on at an election.

Thank you for the time and assistance in this matter. I would be glad to provide any additional information that you may require to address this important matter to the Wichita County citizens.

Sincerely,

Cheryll A. Jones
Wichita County Auditor