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January 12, 1939

Hon. John A. Hamilton  
District Attorney  
110th Judicial District of Texas  
Matador, Texas

Dear Mr. Hamilton:

Opinion No. 0-31  
Re: Nepotism

Your request for an opinion on the ques-  
tion:

"Would the appointment of the wife of the County and District Clerk of Motley County, a county of a fee basis, having a population of less than twenty thousand, as a deputy without pay, by said officer, be a violation of the Nepotism statute, as set out in Article 432 of the Penal Code of Texas?"

has been received by this office.

You state further in your letter that the officer is desirous of appointing his wife as a deputy without any remuneration whatever, either directly or indirectly. You further state that you have been unable to find any cases where the courts have passed upon the above question.

This department is not in possession of any case wherein the courts have passed upon the above question. However, this department has ruled upon and has written many opinions, construing Article 432 of the Penal Code.

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Article 432, Penal Code of Texas, provides as follows:

"'Nepotism'

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. Acts 1909, p. 85, Acts 1915, p. 149."

This department cites the following opinions which have heretofore been rendered by this department and which are deemed pertinent to your inquiry, to-wit:

(1) "A County Clerk cannot appoint his wife as a deputy." Opinion rendered July 21, 1927, by Honorable H. Grady Chandler, Assistant Attorney General, to Mr. Leo Malloy, County Clerk, Paint Rock, Texas.

(2) " Sheriff may not appoint son as a deputy sheriff though son makes no

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charge for his services and is compensated in no manner, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever." Opinion rendered April 26, 1932, by Honorable Scott Gaines, Assistant Attorney General, to Mr. Wardlow Lane, County Attorney, Center, Texas.

(3) "It is not a violation of the Nepotism statute under Articles 432 and 433, Penal Code of Texas, for the wife of the sheriff and tax collector to do clerical work in his office without compensation and without being appointed a deputy. However, she may not sign the tax and other receipts in the name of her husband." Opinion rendered March 2, 1932 by Hon. Bruce W. Bryant, First Assistant Attorney General of Texas, to Hon. Joe P. Flack, County Attorney, Minard, Texas.

*The matter was  
referred to  
the Board*

The three above opinions have been carefully reviewed by this department and are approved by this department.

Therefore, you are respectfully advised that the appointment by the County and District Clerk of Motley County of his wife as a deputy County and District Clerk of said county, strictly without remuneration, either directly or indirectly, would be a violation of the Nepotism statute, as set out in Article 432 of the Penal Code.

You are further advised, however, that it is the opinion of this department that it would not be a violation of the Nepotism statute under Article 432 and 433, Penal Code of Texas, for the wife of the County and District Clerk of Motley County to do clerical work in his office without compensation or remuneration, either

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directly or indirectly, and without being appointed his deputy, but she would have no authority to sign his name officially to any instrument.

Trusting that the above answers your inquiry,  
I remain

Yours respectfully

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Janning*

Assistant

WJF:AW

APPROVED:

*George B. Mann*  
ATTORNEY GENERAL OF TEXAS