



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. Y. Cunningham
County Auditor
Corsicana, Texas

Dear Sir:

Opinion No. O-1822

Re: Where the brother of a county commissioner has been permitted to occupy a concession stand in the courthouse and pays no rent nor receives any remuneration therefor, has the law of nepotism been violated?

Your letter of January 3, 1940, addressed to Gerald C. Mann, Attorney General of Texas, has been referred to the writer for consideration and reply.

A part of your letter reads as follows:

"On January 2, 1940, at a regular meeting of the Navarro County Commissioners' Court, Mr. Walter Hayes was given the privilege of a concession stand in the lobby of the courthouse.

"The holder of the above privilege does not pay any rent, neither does he receive any remuneration from the county. His only source of income being from the sale of his wares, viz: candies, tobacco, cold drinks, etc.

"Mr. G. T. Hayes, Commissioner of Precinct 1, is a brother of Mr. Walter Hayes.

"Does this relationship offer any barrier to the appointment or make the Commissioners' Court, or any of its members guilty of nepotism?"

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Your attention is directed to article 432, Penal Code of Texas, as follows:

"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."

The purpose of the nepotism statute is to prohibit a public official from appointing, voting for, or confirming the appointment to any office, position, clerkship, employment, or duty, of any person related to him, or to any other member of the court, Legislature, board, etc., of which the official may be a member, within the prohibited degree, when the compensation of such appointee is to be paid, either directly or indirectly, out of public funds. In the instant case, it is apparent from the facts stated that Mr. Walter Hayes has not been appointed to any office, position, clerkship, nor employed to perform any duty, and therefore, your question is answered in the negative.

Trusting this answers your inquiry, we are

Yours very truly

APPROVED JAN 22, 1940

ATTORNEY GENERAL OF TEXAS

General Mann
ATTORNEY GENERAL OF TEXAS

BY

Pat Coon

Pat Coon
Assistant

PC:GO

