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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable T. H. Webb
Assistant State Highway Engineer
Texas Highway Department
Austin, Texas

Dear Sir:

Opinion No. 0-2557

Re: Will the retention of S. Robert Greer in the employ of the State Highway Department violate any of the provisions of the Nepotism Law?

We acknowledge the receipt of your letter of July 18, 1940, in which you request the opinion of this department as to whether it will be a violation of any of the provisions of the Nepotism Law for the State Highway Department to retain in its employ Mr. S. Robert Greer, as a junior resident engineer, after his brother Mr. D. C. Greer has been appointed State Highway Engineer, by the State Highway Commission, on July 1, 1940.

Article 432, Penal Code, provides 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

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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."

As stated in a previous opinion, No. 0-667, given by this department, "A careful reading of said Article 432 shows that same relates only to the situation existing at the time of the appointment or employment."

Obviously, Mr. D. C. Greer was not State Highway Engineer at the time Mr. S. Robert Greer was appointed to his position, in 1935.

Not only is this true, but in your letter of July 30, 1940, in which you set forth additional information on this case, you write as follows:

"For your information there is attached photostatic copy of Form No. 102 used by the Highway Department for requesting approval of new employees or change of status of present employees. This form actually covers the last change in status of S. Robert Greer. You will note that the form is executed by the Assistant District Engineer of District 18 at Dallas and has been approved by Mr. E. J. Amey for the Personnel Division and by Mr. T. H. Webb, Assistant State Highway Engineer. This form does not go to the Highway Engineer for any purpose. Pay rolls covering payment of salaries of all field employees are prepared by the district office and forwarded to the auditing division of the Highway Department at Austin, where they are checked and approved by the chief auditor, from whom they go to the Assistant Highway Engineer for his approval, thence to the Highway Commission where they must be approved and signed by the Chairman and one other member of the Highway Commission. Pay rolls are not submitted to or approved by the Highway Engineer."

According to your letter, then, not only was Mr. Robert S. Greer employed five years before Mr. D. C. Greer was appointed State Highway Engineer, but even now

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in his capacity as State Highway Engineer Mr. D. C. Greer has nothing whatever to do with appointing or retaining, signing the pay roll, recommending promotions, or otherwise exercising any powers whatsoever over the employment of his brother by the State Highway Commission.

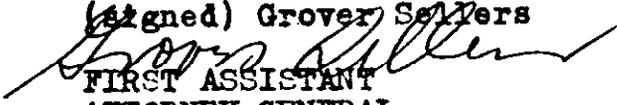
In view of the facts as set forth in your two letters, and in line with this department's consistent interpretation of the Nepotism Law, you are respectfully advised that it is the opinion of this department that Mr. S. Robert Greer may be retained in his capacity as a junior resident engineer without any violation of any part of the Nepotism Law.

Very truly yours

APPROVED AUGUST 1, 1940

ATTORNEY GENERAL OF TEXAS

(signed) Grover Sellers


FIRST ASSISTANT
ATTORNEY GENERAL

By

(signed)
Walter R. Koch
Assistant

WRK:jm

APPROVED
OPINION
COMMITTEE
BY B. W. B.
CHAIRMAN