



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. E. McClain
Criminal District Attorney
Georgetown, Texas

Dear Sir:

Opinion No. 0-4725
Re: Nepotism - Uncle of County
Judge's wife may not be ap-
pointed Justice of the Peace.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I have a question that I would like to submit to your department for review. We have here in Williamson County a vacancy in the Justice of the Peace office. The man who was elected in July, 1942, primary is named John Shaw; John Shaw has a sister Mrs. Huffstutler, and the daughter of Mrs. Huffstutler married our County Judge, Sam V. Stone.

"Question: Can the County Court, with Sam V. Stone as County Judge appoint John Shaw as Justice of the Peace, under the facts as above given? In other words, under the facts does the appointment violate Art. 432 of the Penal Code."

Article 432, Vernon's Annotated Texas Penal Code, reads 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 County Judge is a member of the Commissioners' Court. Article V, Section 28, of our State Constitution, and Article 2355, Vernon's Annotated Texas Civil Statutes, provide, among other things, that the Commissioners' Court shall fill vacancies in office of Justices of the Peace.

Under the facts stated in your letter Mr. Shaw is the blood uncle of the County Judge's wife. The County Judge and Mr. Shaw are related in the second degree by affinity.

It is our opinion that the appointment would be in violation of Article 432, V.A.P.C., supra, and therefore cannot be legally made.

Pursuant to your request we are enclosing herewith copies of opinions Nos. 0-3472, 0-2225, and 0-1257 of this department.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning
Wm. J. Fanning
Assistant

APPROVED AUG 28, 1942

Bernard C. Mann
ATTORNEY GENERAL OF TEXAS

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ENCLOSURES

