



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN

ATTORNEY GENERAL

Honorable John C. Marburger
County Attorney
Fayette County
La Grange, Texas

Dear Sir:

Opinion No. O-5452

Re: Is it a violation of Article 432,
Penal Code, for a county commissioner
to employ a person whose father is a
first cousin of the mother of the
county judge?

This will acknowledge receipt of your letter of recent date
requesting our opinion the above stated question.

Article 432 of the 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 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."

Article 433 of the Penal Code sets forth names of those to whom the inhibitions of this law apply and included therein are members of the commissioners' court.

By the provisions of the nepotism law, members of the commissioners' court are prohibited from appointing to any employment any person who is related to any member on such

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court within the degrees so specified therein when the compensation for such employment is to be paid from public funds. A county judge is a member of the commissioners' court. Article V, Section 18, Constitution of Texas. According to the circumstances embraced in your question, the person desired to be employed by the county commissioner and who we presume is to be paid from public funds, is related to the county judge within the third degree by consanguinity, and thus is within the inhibitions of Article 432, supra.

We, therefore, answer your question in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ Fred C. Chandler

By

Fred C. Chandler
Assistant

APPROVED JULY 26, 1943
s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

s/ Robert O. Koch
By Robert O. Koch

ROK:db/cg