



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Mike Anglin
Criminal District Attorney
124th Judicial District
Longview, Texas

Dear Sir:

Opinion No. 0-6406

Re: Whether under the given facts it is a violation of the Nepotism Law for the Commissioners' Court to pay the salary of a person appointed as Rabies Control Officer for the County?

The material parts of your letter of January 26, 1945, requesting an opinion of this Department, read:

"1. Fred Pfler qualified as a County Commissioner of Precinct #1, Gregg County, Texas, on January 1st, 1945.

"2. Thomas Davis, whose wife is an aunt of Fred Pfler, was appointed Rabies Control Officer in June of 1944, prior to the election of Fred Pfler as County Commissioner.

"3. Gregg County was in June, 1944, and is yet under quarantine for Rabies Control.

"4. The Commissioners' Court of Gregg County passed the following minutes upon Mr. Davis' appointment:

"A motion was made by A. F. Sheppard and seconded by W. W. Melton to appoint Thomas Davis as Rabies Control Officer and

Honorable Mike Anglin, Page 2

Dog Catcher. Mr. Davis shall be carried on the Health Unit Payroll at a salary of \$150.00 per month, effective as of June 1, 1944. It is also agreed that Mr. Davis shall receive oil and gas for his said duties at the County Barn. Mr. Davis is appointed in compliance of the State Department, who has placed Gregg County under quarantines. The motion being put to a vote, Commissioners Melton, Shepperd and Smith voted "AYE".

"5. Thereafter, the livestock Sanitary Commission of Texas commissioned Mr. Davis as an authorized State Inspector of the Livestock Sanitary Commission of Texas, the commission being dated June 6, 1944.

"6. Gregg County has a County Hospital under authority of Article 4478, V. A. C. S., a County Health Unit, and a County Hospital Board, as required by Article 4479, V. A. C. S.

"7. Article 4484, provides in particular:

"The Board shall certify all bills and accounts, including all salaries and wages and transmit them to the Commissioners Court (County Court), who shall provide for their payment in the same manner as other charges against the County are paid."

Q U E S T I O N:

"1. Since the present Commissioners Court approves the payment of all salaries in the County Clinic, is it a violation of the Nepotism law for the present Commissioners' Court, consisting of Fred Pflizer and three others, to pay Thomas Davis his salary, under the above appointment?

"2. Would the fact that Thomas Davis received his appointment and assumed his duties prior to the

Honorable Mike Anglin, Page 3

election of Fred Plier, who consequently did not vote to confirm his appointment, remove it from the Nepotism Statute?"

Article 432 of the Penal Code of Texas, in part, provides:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, . . . 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 435 of said Code provides:

"No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible."

As shown by the foregoing, the appointment of Mr. Davis is made by the Commissioners' Court, which fact, together with the provision in the order that he "shall be carried on the health unit payroll at a salary of \$150.00 per month, effective as of June 1, 1944," comprises all the facts before us with reference to his appointment, or employment.

It is apparent from the foregoing that Mr. Davis is an employee of the County, on the County payroll, receiving his designated monthly salary from public funds and

Honorable Mike Anglin, Page 4

serves in his present position within the prohibited degree of relationship by affinity to the newly qualified county Commissioner.

In our Opinion No. O-1408, approved September 27, 1939, this Department held that where a County hires a truck driver by the month who later became a son-in-law of a County Commissioner, such relationship came under the purview of Article 432, Penal Code, and the auditor should not approve payment for his services. This ruling appears applicable to your situation, and we enclose a copy of said opinion.

Answering your questions, it is the opinion of this Department that under the facts submitted, the payment of salary of the appointee of the Commissioners' Court is in violation of the Nepotism Law. The fact that such person received his appointment and assumed his duties prior to the election of a County Commissioner who stands within the prohibited degree of relationship to him, would not remove his position from the Nepotism statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *W. J. R. King*
Wm. J. R. King
Assistant

WJRK:RLT

Enclosure

Carbelle

