



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Dave McNeill, Jr.
County Attorney
Shelby County
Center, Texas

and withdraws
6-2225 and 0-629
and Reverts 0-119
0-784
0-1095

Dear Mr. McNeill:

Opinion No. 0-7424

Re: Construction of Article 432
P. C. -- the Nepotism Statute.

Your letter requesting an opinion upon the above-
titled subject is as follows:

"Can an officer of this county such as the district clerk or the county clerk appoint one as his assistant, such prospective appointee being related to the district clerk or county clerk in the following way: the appointee's deceased wife, and by whom he had a child now living, was the half-sister of the clerk's present wife's father? In other words, the prospective appointee's deceased wife was the aunt of the clerk's present wife, or the half aunt since she was a half-sister to the clerk's wife's father."

Article 432 of the Penal Code defining "Nepotism" is 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 with-

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in 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."

From your statement we take it to be that the proposed employee is not related to the employing officer by blood in any way whatsoever, and especially that he is not related to the employing officer within the third degree blood relation. It remains only to be seen whether or not he is related to the employing officer by affinity within the second degree. Under the common law, which this State adopted as the rule of decision April 1, 1840, the blood relatives of the wife are related to the husband by affinity. Those related to the wife by affinity only are not at all related to the husband; but as above stated, the husband's kin by affinity through his marriage includes only those persons who are related by consanguinity - blood - to the wife.

Under the plain letter of the Code, to be ineligible for appointment by the county officer, the employee in your case must be related to the husband-employer within the second degree of affinity. Under your statement he is not thus related, and is therefore eligible to the appointment.

We find there is one degree by consanguinity or blood between the wife of the officer and her father. There is also a blood relation of one degree between her father and her aunt, who is a half-sister of her father, thus reaching the two degrees blood relation necessary to exclude the employee, and the two degrees do not include the husband.

Our opinion No. 0-2325, of date July 3, 1940, is overruled, and our opinions Nos. 0-119, 0-784 and 0-1095 therein overruled are restored in all respects wherein they are in accord with this opinion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Oliver Spear
Oliver Spear
ASSISTANT

06-MR