



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

October 29, 1973

The Honorable Oscar B. McInnis  
Criminal District Attorney  
Hidalgo County  
Edinburg, Texas 78539

Letter Advisory No. 66

Re: Nepotism - employment  
by school district of divorced  
wife of uncle of school board  
member.

Dear Mr. McInnis:

The question you have submitted to us is whether a woman, employed by a school district for 15 months, may be reemployed after her divorced husband's nephew was elected to the school board if she has living children by her divorced husband.

Our answer is that she may not.

Article 432, Vernon's Texas Penal Code, prohibits the employment of a person within the second degree by affinity unless the person to be employed shall have been employed continuously for a period of two years prior to the election or appointment of the officer or board member.

Relationship by affinity is computed in the same manner as are degrees of consanguinity. Attorney General Opinion O-2383 (1940) and authorities cited.

Following the method of computing degrees of consanguinity established in Tyler Tap Railroad Company and Douglass v. Overton, 1 Texas Court of Appeals, 268, § 533 (1878) - the recognized statement in Texas - we conclude that a woman is related to her husband's nephew in the second degree by affinity.

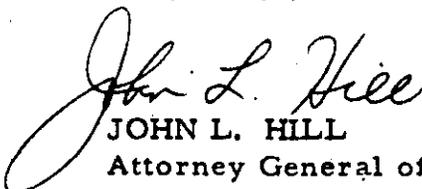
It is equally well established that, although the death of a spouse normally terminates the relationship insofar as the nepotism laws are concerned, nevertheless, if there are surviving children of the union, the relationship by affinity to the spouse's relatives continues. Stringfellow v. State, 61 S. W. 719 (Tex. Crim. 1901); Lewis v. O'Hair, 130 S. W. 2d 379 (Tex. Civ. App., Austin, 1939, no writ); Attorney General Opinions O-1257 (1939), O-2383 (1940); O-3472 (1941).

The Honorable Oscar B. McInnis, page 2 (L. A. No. 66)

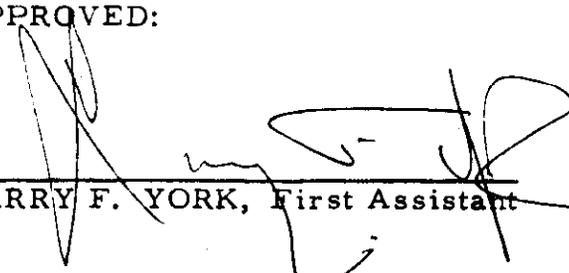
Likewise, it has been held that, where the marriage terminates by divorce, leaving surviving issue, the same rule applies and the relationship continues. Attorney General Opinion O-2648 (1940).

We are of the opinion, therefore, that where a divorced woman has not been employed at least two years in the questioned position, she may not be reappointed by the school board to which her ex-husband's nephew has been elected, where she and her ex-husband have living children.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee