



**THE ATTORNEY GENERAL
OF TEXAS**

LA-79

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

March 19, 1974

The Honorable Martin D. Eichelberger
Criminal District Attorney
Waco, Texas 76701

Letter Advisory No. 79

Re: Nepotism - assignment of
nurse to school district
of which her husband is
trustee.

Dear Mr. Eichelberger:

You have asked our opinion regarding the applicability of the nepotism statutes to the employment of a school nurse under a county cooperative program when the nurse's husband is a trustee of one of the cooperating school districts. You asked whether the statutes would apply if the nurse is assigned (1) to the district of which the husband is a trustee; or (2) to another cooperating district.

The county cooperative program to which you refer is authorized by Sec. 16.15(c) of the Texas Education Code which provides:

"(c) Districts not eligible for a full special service teacher unit may enter by vote of their respective boards of trustees, into one cooperative agreement to provide special service teachers, as prescribed in subsection (b) of this section, to be recommended and supervised by the county school superintendent, and employed by the county school board. The state commissioner of education shall, upon the county superintendent's certification of such agreement, allot to each district party thereto a fractional part of a special service teacher unit, said fraction to be not greater than the number of approved classroom teacher units for that district divided by 20."

A school nurse is a special service teacher, Sec. 16.07(1)(C), Texas Education Code.

The nepotism statutes (formerly Articles 432, et seq. of Vernon's Texas Penal Code) have been transferred to Title 100 of Vernon's Texas Civil Statutes (Acts 1973, 63rd Leg., p. 995, ch. 399). They provide, in part, as follows:

"Art. 5996a. 'Nepotism'

"No . . . member of any . . . school district . . . board . . . 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 of affinity or within the third degree of consanguinity to the person so appointing or so voting, or to any other member of any such board . . . 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, . . .

"Art. 5996b. Officers included

"The inhibitions set forth in this law shall apply to . . . members of school boards of incorporated cities and towns, public school trustees "

In the case to which you refer, the nurse is to be employed by the county school board on the recommendation of the county school superintendent. The funds for the position come from the State through the Foundation School Program.

On these facts, there would seem to be no violation of the nepotism statutes. In a similar case involving the position of a bus driver employed by the county school board, paid entirely from the county transportation fund, it was determined that the local board of trustees were not parties to the employment contract, and therefore

the county board could employ a local school board trustee in the position. Attorney General Opinion O-3718 (1941).

Other opinions have held that the nepotism statutes are not violated when a relative of a member of a governing body is hired for a position authorized by that body, where the governing body does not exercise control over the person to be selected. Attorney General Opinions No. O-5274 (1943); No. O-4895 (1942); No. O-875 (1939); No. O-480 (1939).

However, you state that before an employee of the county cooperative program is assigned to a local district, "it is customary that the Board of Trustees of that district consent to or sanction the assignment"

The nepotism statutes provide that a school trustee cannot "appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty of any person related" to him or another board member within the stated degrees of relationship when the compensation of such appointee is to be paid from public funds. Art. 5996a, supra. If the funds are public, the prohibition applies regardless of their source. See Attorney General Opinion No. O-5516 (1943). The statute applies even though the related board member does not participate in the decision. Attorney General Opinion No. O-2831 (1940). However, in such a case the non-participating member would not be liable to prosecution under the statute. Attorney General Opinion No. O-793 (1939).

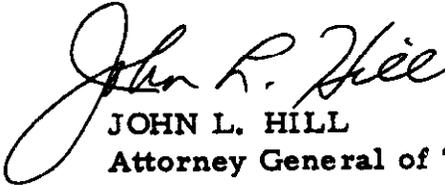
This case is novel, in that the prohibition of the nepotism statute does not reach the basic employment relationship, but may be applicable to the assignment of the nurse to work in a particular district. We have found no authority which deals with such a possible limited application of the statute.

The statute does prohibit a trustee from confirming "the appointment to any . . . employment or duty" This comprehensive language appears broad enough to include the confirmation of an assignment of a person to work in a particular school district. However, in a case of possible limited applicability of the statute, we believe that the prohibition from employment would only be to the extent that the related official has the power to affect the employment. That

is, if the husband - school board trustee has nothing at all to do with the assignment of his wife to other districts within the county, her employment is not prohibited in those districts.

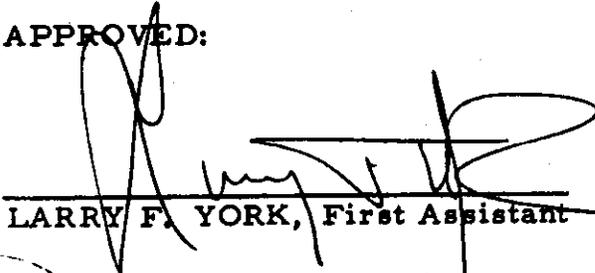
Your question cannot be answered unequivocally on the facts presented. A determination must be made as to whether the husband has the authority to confirm the assignment of his wife to duty within his district. You speak of this in terms of its being "customary". The statute concerning the employment and allotment of the services of school nurses does not require such confirmation. Sec. 16.15(c), Texas Education Code, supra. This determination as to whether, and to what extent, the county school board and the county superintendent have delegated their authority to the boards of school districts probably will involve resolution of fact questions.

Very truly yours,



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APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee