



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

July 27, 1977

Honorable Jack K. Williams  
President  
Texas A & M University  
College Station, Texas 77843

Letter Advisory No. 148

Re: Employment of regent's  
niece as graduate assistant.

Dear President Williams:

The niece of a member of your board of regents has applied to the university for a position as a graduate assistant. You explain that she is fully qualified and that the university would be pleased to employ her if doing so would not violate the nepotism statutes of the state.

Generally, article 5996a, V.T.C.S., makes it illegal for officers of the state to appoint, vote for the appointment, or confirm the appointment of any person closely related to them (or to other members of the appointing, voting or confirming body) to any office, position or employment if the compensation therefor is to be paid with public funds. Members of the boards of managers of the various educational institutions of the state are expressly put within the ban. V.T.C.S. art. 5996b.

You advise that the board of regents (previously, the board of directors) takes no active role in the appointment of graduate assistants and does not vote for or confirm the particular action of employing them. Typically, we understand, a department head is authorized to utilize a portion of the department budget for the salaries of such assistants; the department head is given control and discretion over the matter, and appointments made by the department head do not reach the board for confirmation.

There is a body of Attorney General Opinions which has refused to apply the nepotism statutes where the related officer or the board of which he is a member is otherwise legally barred from influencing the choice to be made. Examples are Attorney General Opinion H-697 (1975) involving the employment of a county commissioner's relatives by a county department operating under a civil service statute,

and Attorney General Opinion O-5274 (1943) which concerned the appointment of a city commissioner's relative by a city manager given sole appointive power by the City Charter. Recent opinions expressly or impliedly based upon the same consideration are Attorney General Letter Advisory Nos. 116 (1975) and 115 (1975).

A different body of Attorney General Opinions has applied the nepotism statutes to members of boards which voluntarily refrain in practice from fully exercising their legally unrestrained appointive power. Included in this group are Attorney General Opinions R-500 (1947) and O-4686 (1942). The first concerned the employment of persons by prison farm managers to whom such power had been delegated; the second discussed the employment by a sheriff, as agent for the commissioners court, of a commissioner's relative for a courthouse custodial job. See Attorney General Opinions C-169 (1963); V-861 (1949); and O-2010 (1940). There are no Texas court cases in point.

We have been furnished a copy of the university's current administrative rules and regulations regarding the subject of nepotism. In part they read:

The Board of Directors of the Texas A & M University System possesses the appointive power, but since executive and administrative officers have been given considerable latitude in making appointments and submitting them to the Board for confirmation, it is necessary that the requirements of the Nepotism Law be applied to all System personnel exercising appointive power either in whole or part.

With regard to Texas A & M, section 86.11 of the Texas Education Code (Title 3) states:

The board shall appoint the president, the professors, and other officers it deems proper to keep the university in successful operation. It may abolish any office. . . .

Section 85.22 of the Code specifies that all university expenditures may be made by the board and shall be paid on warrants from the comptroller based on vouchers approved by the president of the board or by some officer or officers designated by him.

It thus appears that no other statute prevents the A & M System board of regents from controlling the hiring and firing of graduate assistants, or from approving warrants for the compensation of relatives of board members, and that board promulgated rules and regulations affirm the board's power to appoint or confirm all university personnel.

In 1944 this office wrote two relevant opinions to the president of the board of directors of A & M College. Attorney General Opinion O-6037 (1944) advised that it would be contrary to former article 2613, V.T.C.S., for the board of directors to delegate to the president of the college the power to appoint officers and professors upon the advice and recommendation of the department head concerned, unless such appointments were made subject to confirmation by the board. See Attorney General Opinion V-632 (1948). Section 86.11 of the Education Code (set out above) is merely a codification of former article 2613 without substantive change, and the O-6037 advice is still pertinent. Acts 1971, 62nd Leg., ch. 1024 at 3072. See Attorney General Opinion H-469 (1974).

In Attorney General Opinion O-5810 (1944) this office reviewed the then-current rules and regulations of A & M College regarding nepotism. Subsection (a) of section 2 thereof read:

No relative of a member of the Board of Directors, President, Vice-President, Presidential assistants, Deans, Directors, Business Manager, or Heads of Departments of the College will be considered for appointment, except that such relatives will be considered for reappointment when the original appointment was antecedent to passage of the pertinent statute in question, or to assuming a position listed above, or to membership on the Board of Directors.

The Attorney General observed in Opinion O-5810:

Subsection (a) of Section 2 is a declaration of policy and is not legally objectionable except in so far as it authorizes reappointments of persons related in the prohibited degree to members of the

Board of Directors. We suggest that the exception in this paragraph be amended by inserting after the words 'relatives' the following: 'other than those who are related to any members of the Board of Directors within either of the [prohibited] degrees. . . .'

Id. at 3. (Emphasis added). See also Attorney General Opinion O-5783 (1944).

Attorney General Opinion R-500 (1947) concerned people hired by prison farm managers under the general supervision of the prison system's General Manager, who was himself employed by the Prison Board. The opinion stated:

An employment of one by the [General] Manager is, in legal effect, an employment by the Board, so that the [nepotism] statute above quoted would forbid the employment, even through the Manager, of any person related to any Member of the Board within the prohibited degree, for the Board confirms or approves such appointment.

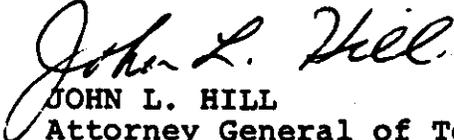
Id. at 3.

The relationship of uncle and niece is one within the prohibited degree. Letter Advisory No. 67 (1973). Graduate assistants are compensated with public funds and they occupy positions over which the board of regents has the legal power to control hiring and firing, whether it overtly exercises such control or not. In our opinion the employment of the regent's niece would violate the nepotism statute. V.T.C.S. art. 5996a. Cf. Attorney General Opinions H-871 (1976); O-845 (1939).

#### S U M M A R Y

Texas A & M University may not employ the niece of a member of the Texas A & M System Board of Regents as a graduate assistant.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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