



The Attorney General of Texas

August 31, 1978

JOHN L. HILL
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

701 Commerce, Suite 200
Dallas, TX. 75202
214/742-8844

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

723 Main, Suite 610
Houston, TX. 77002
713/228-0701

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4313 N. Tenth, Suite F
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Honorable Mike Westergren
Nueces County Attorney
Nueces County Courthouse
Corpus Christi, Texas 78401

Letter Advisory No. 152

Re: Application of nepotism statute to police departments which are under the civil service law.

Dear Mr. Westergren:

You ask two questions concerning the application of the nepotism statute, article 5996a, V.T.C.S., to police departments under the civil service law, article 1269m, V.T.C.S. They are:

1) Does the appointment as police officer of a brother of the Chief of Police's wife under Civil Service Article 1269m, constitute a violation of article 5996a, (Nepotism), V.A.C.S.?

2) Only if answer to no. 1 is in the negative, would the act of promotion of a brother of the Chief of Police's wife constitute a violation of nepotism statute?

Article 5996a provides that "[n]o officer of . . . any . . . city . . . shall appoint, or vote for, or confirm the appointment to any office . . . of any person related. . . ." Policemen are officers within the statute, Attorney General Opinion V-833 (1949), and brothers-in-law are within the prohibited degree of relationship. See Letter Advisory Nos. 70, 67 (1973).

When a vacancy occurs in a police department covered by the civil service law, the vacancy is filled by the chief executive officer of the city from a list of three names provided by the Civil Service Commission. V.T.C.S. art. 1269m, § 10. These three names are the ones that rank highest on the eligibility list. Id. The eligibility list is prepared pursuant to competitive examinations and other requirements. V.T.C.S. art. 1269m, § 9. The person appointed is then placed on a six-month probationary period. V.T.C.S. art. 1269m, § 12. Only after the six-month period do the probationary employees "become full-fledged civil service employees and . . . have full civil service protection." Id.

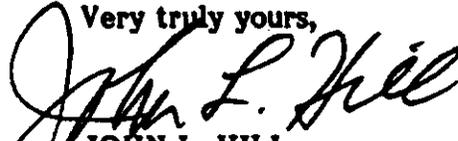
The power of the chief of police to discharge probationary employees was discussed in Sfair v. City of San Antonio, 274 S.W.2d 581 (Tex. Civ. App. — Austin 1955, writ ref'd n.r.e.). The court held that the chief of police, under section 12, had the authority to discharge probationary employees and that the decision was final and unappealable to the courts or to the civil service commission. We are informed that under the procedures operating in your city the chief of police makes a final recommendation either to keep the candidates on the payroll or to let them go. Thus the chief of police can determine whether the probationary employee will be discharged and has influence over the decision as to whether he becomes a full-fledged employee.

It is our opinion, therefore, that the appointment of the brother-in-law of the chief of police as a police officer violates the nepotism statute. Letter Advisory No. 70 (1973); Attorney General Opinions O-7516 (1946); O-6406 (1945); O-1408 (1939).

S U M M A R Y

The appointment as a police officer of the brother-in-law of the chief of police under the civil service law, article 1269m, V.T.C.S., would violate the nepotism law, article 5996a, V.T.C.S.

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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