



**THE ATTORNEY GENERAL
OF TEXAS**

June 19, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Patrick Hardy
Criminal District Attorney
100 Courthouse, Room 106
Woodville, Texas 75979

LO-89-50

Dear Mr. Hardy:

You ask whether the wife of the Tyler County Judge may be employed by the Tyler County Hospital as head of a new Cardiac Rehabilitation Department. Your question raises an issue under the nepotism law, which prohibits governing boards from employing any person related to a board member within the second degree by affinity or the third degree by consanguinity, where the employee's compensation is paid out of public funds. V.T.C.S. art. 5996a. A wife is related to her husband by affinity within the prohibited degree. See Attorney General Opinion MW-286 (1980). The hospital is supported by public funds. See generally Tex. Const. art. XI, § 9; Acts 1963, 58th Leg., ch. 110, at 201.

The county hospital is operated by the Tyler County Hospital District, which was created pursuant to a 1963 statute. Acts 1963, 58th Leg., ch. 110, at 201. Section 6 of the statute provides for the governing body of the district and sets out its powers. A six member Board of Hospital Managers is appointed by the commissioners court and the county judge serves as an ex officio member of the board. The board is authorized to promulgate rules and regulations for the operation of the hospital. The board is to appoint a hospital administrator to perform the duties required of him and to have general direction of the district, within the limitations it prescribes. The hospital district's by-laws, which you have sent us, state in article VI that the hospital administrator has authority to select, employ, and discharge all employees.

However, the statute expressly vests authority to hire employees in the board:

The Board of Hospital Managers shall have the authority to employ such employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system; provided that no contract or term of employment shall exceed the period of two (2) years.

Id. at 205.

Thus, the board of managers holds the power to hire employees for the hospital district, even though it may acquiesce in the hospital administrator's hiring decisions rather than exercise this power itself. Letter Advisory No. 148 (1977) of this office dealt with an analogous situation, in which the regents of Texas A & M University had express statutory authority to appoint employees, but took no active role in appointing graduate assistants and did not vote for or confirm a departmental decision to employ one. This office determined that the nepotism statute would prohibit the university from employing the niece of a regent as a graduate assistant, pointing out that graduate assistants "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." Id. at 4.

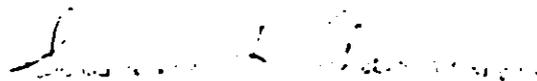
A Texas court has also dealt with a related question. In Pena v. Rio Grande City Consol. Indep. School Dist., 616 S.W.2d 658 (Tex. Civ. App. - Eastland 1981, no writ), the court determined that a superintendent of schools did not violate the nepotism law by appointing his wife as a teacher in his district. The Education Code gave the board of trustees "the exclusive right and sole legal authority to appoint or employ teachers." Id. at 659. The superintendent's recommendations to the school board about the appointment of teachers, "even when consistently followed, cannot abrogate or limit the exclusive authority granted by statute to the board of trustees." Id. The board of trustees did not abdicate its statutory authority to hire employees by its delegation of hiring decisions to the superintendent.

Since statutory authority to hire hospital employees is vested in the board of managers, the nepotism law prevents the hospital district from hiring any person related within a prohibited degree to a board member. Accordingly, the

Honorable Patrick Hardy
June 19, 1989
Page 3

Tyler County Hospital District may not employ the wife of
the Tyler County Judge.

Very truly yours,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

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Letter Opinion Section

SLG/mc

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