



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1998

The Honorable Joe Frank Garza
District Attorney
79th Judicial District of Texas
P.O. Drawer 3157
Alice, Texas 78333

Letter Opinion No. 98-046

Re: Whether the board of an independent school district may hire as a teacher the spouse of a trustee (RQ-1075)

Dear Mr. Garza:

Under state laws prohibiting nepotistic appointments, a governmental body may not hire an individual, to be compensated from public funds, who is the spouse of a member of the governmental body. Excepted from this prohibition is the hiring of an individual who, at the time the individual's spouse assumes office, has been continuously employed for a specified period of time in the position to which she or he is being appointed. You ask whether the board of an independent school district may hire as a teacher the wife of a trustee who was not employed by the district at the time the teacher's husband took office. We conclude the board may not.

You explain the situation in which the question has arisen. According to your letter, the board of the Brooks Independent School District ("district") voted in June 1996 to close its Encino campus. A group called "The Encino Save Our School, Inc." ("ESOS") then sued the district. Pending resolution of the litigation, and prior to the beginning of the 1996-1997 school year, the district agreed to permit ESOS to operate a private school on the Encino campus for that school year. To operate the school, the ESOS hired many of the (former) district employees who had worked at the Encino campus. Among these was a teacher who had been a district employee for twenty-five years, who thus resigned her position with the district on July 26, 1996. The board accepted her resignation in a special meeting on July 31, 1996,¹ and it became effective August 1, 1996. Then, during the spring of 1997, the teacher's husband was elected to the district board. ESOS and the district now have settled the lawsuit, and under the terms of the settlement, the district will operate a public school on the Encino campus. You ask whether the board may once again hire the teacher.²

We conclude the board may not hire her. We initially determine that Government Code section 573.041 forbids the board to hire the teacher unless an exception applies. That section

¹We assume for purposes of this opinion that the board's special meeting on July 31, 1996, was held in accordance with the law. *See, e.g.*, Gov't Code ch. 551 (Open Meetings Act).

²We assume the board wishes to hire the teacher as a teacher, not a substitute teacher. *See* Gov't Code § 573.061(6).

prohibits a governmental body from appointing or employing to a position that is paid with public funds anyone who is related to a member of the governmental body within the third degree by consanguinity or the second degree by affinity.³ Because spouses are related to each other within the first degree by affinity,⁴ the teacher and her husband are related to each other within a prohibited degree.

Moreover, no exceptions apply. We do not understand from the facts you describe that any of the specific positions listed in Government Code section 573.061 are at issue here. In addition, because the teacher was employed by ESOS, not the district, at the time her husband assumed the office of district trustee, the continuous employment exception does not apply. Government Code section 573.062(a) excepts from the general nepotism prohibition in section 573.041 the appointment of an individual who has been continuously employed in the position for a specified period of time:

A nepotism prohibition prescribed by Section 573.041 . . . does not apply to an appointment . . . of an individual to a position if:

(1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree;⁵ and

(2) that prior employment of the individual is continuous for at least:

(A) 30 days, if the public official is appointed;

(B) six months, if the public official is elected at an election other than the general election for state and county officers; or

(C) one year, if the public official is elected at the general election for state and county officers.⁶

³See also Gov't Code § 573.002 (limiting application of anti-nepotism laws to relationships within third degree by consanguinity or second degree by affinity).

⁴See *id.* § 573.025(a).

⁵But see *Bean v. State*, 691 S.W.2d 773, 775 (Tex. App.--El Paso 1985, writ ref'd) (stating that critical date in calculating continuous employment is date that relative first assumed office).

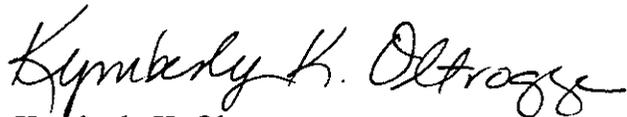
⁶(Footnote added.)

Your letter makes it clear that when the teacher's husband took office, in spring 1997, the teacher was an employee of ESOS, not the district.⁷ Consequently, despite her prior twenty-five years of service to the district, she is ineligible for the continuous employment exception, and the board may not hire her.⁸

S U M M A R Y

A school district may not hire as a teacher (as opposed to a substitute teacher) the spouse of one of the district's trustees where the spouse was not employed by the district when the trustee-spouse assumed office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

⁷Letter Opinion 96-015 states that an employee "continues in a position," for purposes of section 573.062(b), if the employee has been "continuously employed both prior to and after" the employee's relative assumes office. *See* Letter Opinion No. 96-015 (1996) at 2. You suggest that opinion misconstrues Government Code section 573.062 because the statute does not explicitly "require continuous employment both 'prior to' and 'after the election' of the person's relative." We need not address your contention here. Section 573.062(b), the section Letter Opinion 96-015 construes, pertains to an employee who qualifies for the continuous employment exception under subsection (a). The teacher about whom you ask does not qualify for the exception under section (a) because she was not a district employee "immediately before" her husband took office, as subsection (a)(1) requires. Consequently, subsection (b) is not at issue here.

⁸*Cf.* Elec. Code §§ 141.031(4)(L), 252.0032(a)(2) (stating that candidate for public office must sign statements affirming that he or she "is aware of the nepotism law").