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COORDINATING BOARD

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RQ-149

IDA# 13347
mjs

August 21, 1991

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The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

RE: Opinion Request

Dear Mr. Morales:

The Texas Higher Education Coordinating Board requests an informal Attorney General's Opinion regarding the interpretation of Vernon's Ann. Civ. St. art. 5996a. The statute outlines the nepotism restrictions applicable to state agencies and educational institutions.

We request an opinion concerning the application of the statute to the following fact situation.

Two brothers of a College Trustee teach at Laredo Municipal Junior College. One of the brothers was and is a fully tenured professor who has continuously taught full time for the College, a number of years prior to the appointment and subsequent election of his brother to the board.

The facts regarding the remaining brother are as follows:

1. For a number of years prior to, first the appointment and subsequently the election of the Trustee at issue, the other brother has taught as a part time professor at the College.

2. The Trustee at issue was appointed to fill a vacancy on the Board on August 1, 1989.

3. The brother at issue has taught, as a part time professor, without tenure, three courses during the fall semester of 1988, three courses during the spring semester of 1989, and two courses during the first summer school session of 1989. As had been the case in previous years, the brother at issue did not teach the second summer school semester of 1989.

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4. On August 1, 1989, the second summer school semester had ended and the fall semester of 1989 had not commenced.

5. The brother at issue, after the appointment of his brother to the Board, continued teaching on a part time basis in the fall of 1989, spring of 1990, first summer school semester of 1990, fall of 1990, spring of 1991, and first summer school semester of 1991.

6. The brother at issue has received no increase in salary or position, not granted to the faculty in general since the time of his brother's appointment to the Board.

The attorney General's Office, in Opinion No. JM-861, applying the same statute, has held that a substitute teacher's status, did not fulfill the requirement of prior continuous employment, so as to avoid the prescription of the statute.

Because of the continuous as opposed to temporary nature of the brother's employment at the College, it is believed that the prior employment of the brother may come within the savings clause of the statute. The brother's employment appears more akin to a School District Auditor (Opinion JM-45, 1983) than that of a substitute teacher who teaches only on a periodic and temporary basis.

Please let me know if you need additional information from the Coordinating Board to process this request.

Cordially,



Kenneth H. Ashworth

cc: Susan Clare
General Counsel
H.C. Hall, III