



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 17, 1995

Honorable Tracey Bright
Ector County Attorney
Ector County Courthouse
Room 218
Odessa, Texas 79761

Letter Opinion No. 95-012

Re: Whether chapter 573 of the Government Code prohibits the nephew of a school district trustee from serving as a referee at high school football games in which the district schools participate (ID# 28818)

Dear Ms. Bright:

You have asked whether the statutory nepotism prohibitions, found in chapter 573 of the Government Code, preclude the nephew of a school district trustee from serving as a referee at high school football games in which the district schools participate. You explain as follows:

The [Ector County Independent School District (the "district")] obtains officials for its football games from the Permian Basin Chapter of the Southwest Football Association (the "Chapter"), of which the nephew is a member. Members of the Chapter must meet the Chapter's qualifications and be certified by the Chapter before they are allowed to officiate games. For varsity games, the coaches of the respective teams meet and must agree as to who, out of the members of the Chapter, will officiate each game. For the sub-varsity games, the Chapter, itself, assigns one of its members to officiate each game. However, there is a process whereby a sub-varsity coach who disagrees with one of the officials assigned by the chapter may complain to the Chapter and that particular official could be removed.

You advise that the district directly compensates those officials serving at district games. You also state that the nephew officiates varsity and subvarsity games. You emphasize, however, that in neither the varsity nor the subvarsity context does the district's board of trustees appoint, confirm the appointment of, or vote for the appointment or confirmation of an official to any district football game.

Section 573.041 of the Government Code prohibits a public officer from appointing, confirming the appointment of, or voting

for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within [the third degree by consanguinity or the second degree by affinity].

The nephew is related to the public official within the third degree by consanguinity. *See* Gov't Code § 573.023(c)(3). Furthermore, you have informed us that individuals who officiate varsity or subvarsity football games are compensated directly from district funds.

We conclude, however, that section 573.041 of the Government Code does not preclude the nephew from officiating district high school football games. The nepotism laws apply only to those officers who may exercise control over hiring decisions. Attorney General Opinion DM-2 (1991) at 1 (citing *Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658, 659 (Tex. Civ. App.—Eastland 1981, no writ); Letter Advisory No. 148 (1977)). As you have described the circumstances, the trustees may not exercise any control over the choice of officials. Rather, for a varsity game, the coaches of the teams playing choose the officials for the game. For a subvarsity game, the chapter selects the officials, subject to the complaint process you described.

S U M M A R Y

In the circumstances described here, section 573.041 of the Government Code, the prohibition against nepotism, does not preclude the nephew of a school district trustee from officiating district high school football games.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee