

County of Nueces



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September 8, 2000

RQ-0283-90

Honorable John Cornyn
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SEP 13 2000
OPINION COMMITTEE

FILE # ML-41637-00
I.D. # 41637

Dear General Cornyn:

I am requesting an expedited opinion and your guidance on the following questions:

- 1) Based upon the facts described below, may the Chief's nephew be promoted to lieutenant?
- 2) If the answer to question 1 is no, could the collective bargaining agreement be amended to permit such a promotion; for example, by providing that if the Chief's relative were a candidate for promotion, all decisions relating to the Promotion would be made by some other official such as the city manager?
- 3) If a relative in the position of the Chief's nephew could be promoted under the answer to either question 1 or question 2, how could he be initially assigned in light of Opinion JC-0193? Would he have to be given the same assignment as the lieutenant who vacated the position being filled?

The facts are as follows:

The Chief of Police for the City of Corpus Christi has a nephew employed as a Senior Officer within the Police Department. The nephew's employment preceded the Chief's appointment by several years. Through a competitive process, the nephew ranks number two on the promotional eligibility list for lieutenant in the department. The list expires August 16, 2001.

One lieutenant vacancy exists and will shortly be filled. The next vacancy could occur at any time. Since, under Section 143.036(c) of the Texas Local Government Code, the chief only has 60 days after the vacancy to make an appointment, your expedited opinion on this matter is respectfully requested.

Corpus Christi has adopted Chapter 143 (Firefighters and Police Offices Civil Service Law) and Chapter 174 (Fire and Police Employee Relations Act) of the Texas Local Government Code.

The current Collective Bargaining Agreement pursuant to Chapter 174 between the City and the Police Association is attached (it remains in effect under Article XIX, A, because it has not been superseded by a new agreement). The ranks in the police department in declining order are chief, assistant chief, commander, captain, lieutenant, senior officer, and officer. The procedures for promotion are contained in Article XIII (page 30-34). Specific sections of that article relating to lieutenant promotions are A (3rd paragraph), E, F, G, H, and I. The process may be summarized as follows: The promotional examination for lieutenant has two parts. The candidates take a written exam. The top 15 continue to an assessment center. An eligibility list is established based on the assessment center weighted at 60% and the written exam at 40%, with up to 10 extra points for years of service. The written exam and assessment center are developed by an independent consultant. Upon a lieutenant vacancy, the civil service commission certifies the three top names on the list to the chief. The chief may select any of the three. Appeal may be made by a rejected candidate to an arbitrator. A person promoted may be demoted within 365 days of promotion at the discretion of the chief without appeal to the commission. In addition, statutory promotional procedures are contained in subchapter B of Chapter 143.

Section C of Article XIX of the collective bargaining agreement provides:

The provisions of this contract shall take precedence over all State and local Civil Service provisions which are in conflict herewith, including for example and not by way of limitation, any contrary provisions of Chapter 143; City Charter of the City of Corpus Christi, Texas; ordinances of the City; Rules and Regulations of the Firefighter's and Police Officers' Civil Service Commission; and Rules and Orders of the Police Department of the City.

Section 174.006(a), Texas local Government Code, provides:

A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.

The part of the state nepotism law which excepts a previously appointed relative, Section 573.062(b), Texas Government Code, provides:

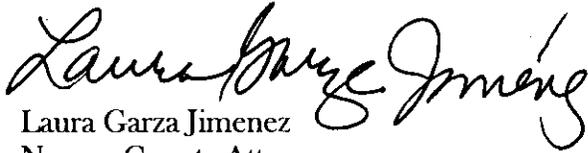
If, under Subsection (a) an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any

deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

Texas Attorney General Letter Advisory No. 152 (1978) held that the appointment as a police officer of the brother-in-law of the chief of police under the Firefighters and Police Officers Civil Service Law would violate the nepotism law. That opinion did not involve a promotion or a collective bargaining agreement. Texas Attorney General Opinion No. JC-0193 (2000) addressed whether the Corpus Christi police chief could approve reassignment of the nephew involved here.

I thank you in advance for your consideration and opinion.

Sincerely,



Laura Garza Jimenez
Nueces County Attorney

LGJ/pbi

Enclosure