



STEPHEN F. AUSTIN STATE UNIVERSITY

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OPEN RECORDS DIVISION

BOARD OF REGENTS

P.O. Box 6108, SFA Station

Nacogdoches, Texas 75962

November 25, 2002

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OPINION COMMITTEE

RQ-0004-GA

Opinions Division  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

Re: Opinion Request

FILE # ML-42915-02  
I.D. # 042915

Dear Sir or Madam:

On behalf of the Stephen F. Austin State University (SFA) Board of Regents, we seek an official Attorney General opinion regarding the nepotism prohibitions in Chapter 573 of the Texas Government Code. Specifically, the SFA Board of Regents seeks an interpretation of the meaning of "public official" under the statute as it applies to the University President. The question is whether the SFA Board of Regents has the discretion to hire the spouse of the President in an employment or independent contractor role without violating the nepotism provisions of Chapter 573.

SFA was established pursuant to Chapter 101 of the Texas Education Code. It is an institution of higher education managed and controlled by a nine-member Board of Regents appointed by the Governor. Pursuant to Section 101.16, the SFA Board of Regents selects and employs the President of the University. The SFA Board of Regents has the same powers and duties conferred on the Board of The Texas State University System (Section 101.41 Texas Education Code). The general responsibilities and authorities of the Board are stated in Section 95.21 of the Texas Education Code as follows:

(a) The board is responsible for the general control and management of the universities in the system and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other employees; fix the salaries of the persons employed; and perform such other acts as in the judgment of the board contribute to the development of the universities in the system or the welfare of their students.

(b) The board has authority to promulgate and enforce such rules, regulations, and orders for the operation, control, and management of the university system and its institutions as the board may deem either necessary or desirable. When a power is vested in the board, the board may adopt a rule, regulation, or order delegating such power to any officer, employee, or committee as the board may designate.

Thus, the SFA Board of Regents retains statutory hiring authority for all University employees.

In Pena v. Rio Grande City Consolidated Independent School District, 616 S.W.2d 658 (Tex.Civ.App. – Eastland 1981, no writ), the court concluded that the school district superintendent was not an officer for purposes of the nepotism statute, because statutory hiring authority was vested in the Board of Trustees. We believe this analysis is applicable to the SFA President, because the SFA Board of Regents has the statutory authority to appoint personnel as previously cited in this letter.

Due to the steep penalties of the nepotism statute and the likelihood of public interest in any such potential appointment, the SFA Board of Regents requests a legal opinion from the Texas Attorney General's Office. This is a request initiated solely by the SFA Board of Regents, without request or involvement of the President and his spouse. Thank you for your time and attention in this matter.

Sincerely,



Michael W. Enoch  
Board Chair

Certified Mail,  
RRR# 7099 3220 0009 8810 9012

cc: SFA Board of Regents  
Dr. Tito Guerrero, President  
Ms. R. Yvette Clark, General Counsel