



TEXAS EDUCATION AGENCY

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Felipe T. Alanis
Commissioner of Education

May 30, 2003

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Aldine Independent School District Nepotism Opinion Request

Dear General Abbott:

At the request of the Aldine Independent School District, I wish to submit the following questions related to the application of the nepotism statute in Chapter 573 of the Government Code for your opinion.

The first question involves the prohibition under Section 573.083 of the Government Code against approval by a public official of payment of compensation to an ineligible individual if the official knows the individual is ineligible. The relevant facts are that the school district transportation director offered employment as a bus driver to the daughter-in-law of a board member on January 11, 2001. The school board did not consider or act on the employment. The employee was terminated on September 18, 2001, after unidentified district officials determined that the person was not eligible for employment under Chapter 573. The next payday was September 20, 2001. The bus driver was not paid on that date because the district had determined that she was ineligible for employment under Chapter 573. The district asks whether it may issue to the bus driver the compensation that would have otherwise been issued on September 20, 2001, without violating Chapter 573.

The other questions relate to a teacher whose father is a board member. The teacher is covered by the continuous employment provision under Section 573.062 of the Government Code. The district asks whether the Superintendent may promote the teacher to a supervisory position (departmental chair) for which there is supplementary pay without action by the board. Relevant statutes related to district employment include Section 11.163(a)(1) of the Education Code which allows the board of trustees by policy to delegate to the superintendent final authority regarding the selection of personnel. Additionally, the superintendent has the authority to assign personnel under Section 11.201(d)(2). Under Section 11.202(b)(5), a school principal has the authority to promote personnel assigned to a campus. In the Aldine district, the school board has delegated to the superintendent the authority to assign teachers to designated supplemental duties with supplemental salaries. If the employee is a board member's relative to whom the continuous employment exception applies, may the superintendent act pursuant to this delegation without action by the school board? In the alternative, must the assignment be acted on by the board due to the requirement under Section 573.062 that the related trustee abstain from any discussion or vote regarding actions related to the employment of the board member's relative?

Thank you for consideration of these questions. If you have any questions, please contact David Anderson, General Counsel, at 463-9720.

Sincerely,

Felipe Alanis
Commissioner of Education

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RQ-0060-GA

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JUN 03 2003

OPINION COMMITTEE

FILE # ML-43124-03

I.D. # 43124