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RQ-0086-GA

July 23, 2003

Attorney General Greg Abbott
Office of the Attorney General
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OPINION COMMITTEE

FILE # ML-43201-0
I.D. # 43201

Dear Attorney General Abbott:

Pursuant to Government Code §402.043, I am requesting your opinion on an issue which falls under my jurisdiction for possible prosecution, if the action I'm requesting an opinion on is not legal.

The facts in this case are very similar to Letter Opinion 95-012. In that opinion, you stated that the prohibition against nepotism does not preclude the nephew of a school district trustee from officiating high school football games. This was based on the fact the nepotism laws apply only to those officers who may exercise control over hiring decisions. Attorney General's Opinion DM-2 (1991) at (citing Pena v. Rio Grande City CISD, 6616 SW 2d 658-659 (Tex. Civ. App--Eastland, 1981 no writ) and Letter Advisory No. 148 (1977)). In that opinion the trustees did not exercise any control over the choice of officials.

The question we ask is virtually the same, except we are asking whether a school district trustee may serve as an umpire at a baseball game. This differs slightly because the person being paid by school district funds is in fact trustee and not relative of a trustee. Thus, not only does nepotism not apply, but the common law doctrine of incapability of offices must be reviewed.

The facts in this matter are that the Beeville ISD obtains official (umpires) for its baseball games from the Corpus Christi Umpires Association (the "Chapter") of which the trustee is a member. Members of the Chapter must meet the qualifications of the Chapter and be certified by the Chapter before they are allowed to officiate games. For the games, the Chapter itself assigns one of its members to officiate each game. However, there is a process whereby a coach who disagrees with one of the officials assigned by the Chapter, may complain to the Chapter and that particular official could be removed.

The district directly compensates these umpires serving at the district games. The trustee would like to officiate at both varsity and sub-varsity games. In neither of the varsity or sub-varsity context does the school district's board of trustees appoint, confirm the appointment of, or vote the appointment or confirmation of any official to any district baseball game. Additionally, the school district does not have any authority in choosing who umpires at the game, other than as described above. The school district board of trustees does not supervise the performance of these officials, nor have any input into their performance, the assignment or the removal, other than as described above.

The analysis of the Common Law Doctrine of Incapability of Offices, we consider three distinct aspects of the doctrine, "self-appointment," "self-employment," and "conflicting loyalties." The first aspect, self-appointment does not appear to apply. The trustees do not appoint these positions, or have any input into the appointment of who umpires these games other than described above.

The "self-employment" aspect of doctrine has been held to prohibit an individual from holding two separate positions in which one is subordinate and/or accountable to the other. Attorney General's Opinions JM-934 (1988) at 3, C-425 (1965) at 3; Attorney General Letter Advisory No. 114 (1975); See also Turner v. Trinity ISD, 700 SW2d 1, 2 (Tex. App.--Houston [14th Dist.] 1983, no writ). The "self-employment" aspect also does not appear to apply. Again, the school district is not in a position to supervise, grade, employ, hire, or otherwise affect the work of the umpire. It is my opinion that an umpire is not a position that is subordinate to or accountable to the board of trustees of this school district.

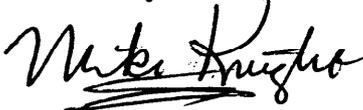
The last aspect is that of "conflicting loyalties." I also believe that does not apply because the umpire is not an officer that makes decisions affecting the school district other than the actual calls he makes during the game. The conflicts of interest issue is handled in several ways. The Corpus Christi Umpire Association normally does not assign important varsity games to someone who either is an employee or an officer of the district, or has a child at that district. If the game is less important, such as a sub-varsity game, it is possible the individuals could be in the case of district and varsity games and both the school district agrees to the use of that official, they waive any potential conflict of interest. As a general rule, however, those with ties to the school would normally only referee sub-varsity games.

The umpires are assigned by the Corpus Christi Umpires Association. This is a division of the Texas Association of Sports Officials. The Umpires Association has a board and does training, supervision and assignment of the umpires. They normally do not assign umpires to schools where there is a potential conflict of interest, such as for an employee of the school district, or an umpire of child who attends the school district. This would be true of a trustee also. However, if the school districts agree, an umpire could be assigned to a school district of which he

has an interest, such as trustee. This would only take place when the coaches of the respective school districts agree to waive that potential conflict of interest.

In conclusion, I am asking for your opinion as to whether it is legal in circumstances when a trustee is assigned by the Corpus Christi Umpires Association to work a game that Beeville would be paying for, and the coaches have not objected to the potential conflict of interest, for the school district to pay for the umpiring services. Based on the above-briefing, I believe it should be legal and I am respectfully requesting opinion.

Thanks for your attention to this matter.

A handwritten signature in black ink, appearing to read "Mike Knight", with a horizontal line drawn underneath the name.

**Michael J. Knight
Bee County Attorney**