



TEXAS EDUCATION AGENCY

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OPINION COMMITTEE

OPEN RECORDS DIVISION

Honorable Greg Abbott
Attorney General of Texas
Price Daniel Building
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43472-0A
I.D. # 43472

RE: Clarification of Attorney General's Opinion GA-123 (2003)

Dear General Abbott:

I am writing to seek your guidance on several questions that have arisen from your opinion GA-123 regarding Chapter 573 of the Texas Government Code and delegation of final hiring authority pursuant to Section 11.163 of the Texas Education Code. As you know, that decision determined that under the terms of such a delegation, a superintendent could be subject to the state nepotism prohibitions in Section 573.041 of the Government Code as a "public official". Two questions are submitted in this letter that are of immediate concern to school districts and administrators as they make employment decisions for the 2004-2005 school year. Your expedited consideration would be greatly appreciated.

The conclusion in GA-123 that superintendents could be subject to nepotism prohibitions was contrary to the advice previously given by this agency and generally by the school law bar. Some superintendents may have hired relatives within the prohibited degrees to employment contracts and are in immediate need of guidance as to whether those contracts may be honored. In some instances, the appropriate calculation of the "continuous employment" exception in Section 573.062 of the Government Code is also relevant.

My questions are as follows:

1. Are school districts permitted to honor current written employment contracts of employees whose relationship to the superintendent would otherwise render their employment illegal under the nepotism law?

Many school district employees are hired on probationary, term or continuing contracts under Chapter 21 of the Texas Education Code¹. Such employees are entitled to rely on the employment contract absent grounds for termination². Although probationary contracts are limited to a one-year term³, term contracts may be for a term as long as five years⁴ and continuing contracts are indefinite in term⁵. For term contract employees, school districts

¹ See, Subchapters C, E and D, respectively.

² Termination procedures are set out in Sections 21.103, 21.156 and 21.211, Texas Education Code.

³ Section 21.102(b), Texas Education Code.

⁴ Section 21.205, Texas Education Code.

⁵ Section 21.154, Texas Education Code.

are required to make a determination to "nonrenew" a contract no later than the 45th day before the last day of instruction⁶. School districts have a pressing need to determine the status of any written employment contracts affected by GA-123 in time to make staffing decisions for both the current and the next school year.

2. For purposes of determining whether the "continuous employment" exception in Section 573.062 of the Texas Government Code applies, what is the effective date that the superintendent is "appointed" as an officer of the school district, thus becoming a "public official" under Section 573.001?

We have assumed that the continuous employment exception that is applicable to superintendents is the 30-day provision in Subsection 573.062(a)(2)(A), as the other two possibilities apply to elected officials. However, different parties have proposed to make that determination from the day of the superintendent's initial employment with the district, the date of a delegation to make final hiring decisions, the date of AG-123, or the latter of some combination of those dates.

Thank you for your consideration of this request on an expedited basis. A number of other questions may arise regarding GA-123, but these two are of immediate concern to school districts as they consider their current employment contracts and plan for the next school year. Should you need any further information, please feel free to contact me or David Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Shirley J. Neeley, Ed.D.
Commissioner of Education

SNDA/mw

⁶ Section 21.206, Texas Education Code.