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OPINION COMMITTEE

Luis U. Carrasco
Reeves County Attorney

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FILE # ML-44459-05
I.D. # 44459

October 13, 2005

Nancy Fuller
Chair, Opinion Committee
Post Office Box 12548
Austin, Texas 78717-2548

RQ-D404-GA

RE: Request for Opinion Dated August 1, 2005 (Sheriff's son employed at Detention Facility)

Thank you for agreeing to an extension to supply the information you requested in your letter of August 26, 2005. As you recall from my previous letter, the Reeves County Detention center is a three thousand-bed prison facility under private management by the GEO Group, Inc. in compliance with section 351.103 of the Local Government Code. The facility employs approximately five hundred employees and is the largest penal facility under private management in the World. The facility is located apart from and is completely separate from the County Jail that is managed by the Sheriff. The Sheriff's son sought employment at the Reeves County Detention Center that is the largest employer in Reeves County. The Sheriff's son was denied employment because of concerns by the District Attorney that his employment may violate the nepotism laws.

The Question is: If a County contracts with a private vendor for the management of a County Detention Center under section 351.103 of the Local Government Code would the Sheriff's son be disqualified from employment at the facility under the nepotism statutes.

Briefly, I do not think the employment of the Sheriff's son at the Reeves Detention Center violates the nepotism statute because the Sheriff does not appoint, confirm the appointment of, or vote for the appointment or confirmation of individuals that seek employment at the facility.

Section 573.041 of the Government Code states the general prohibition against nepotism as follows:

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

- 1) the individual is related to the public official within a degree described by Section 575.002; or
- 2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

I acknowledge that if the Sheriff held the power to hire and fire his son this would come within the general nepotism prohibition in section 573.041 because a county sheriff is a public official subject to the nepotism laws. (See TEX. GOV, T CODE ANN. SECTION 573.001(3)(A). The Sheriff's son is related within the degree of affinity proscribed by nepotism statutes. (TEX. GOV. CODE 573.002)

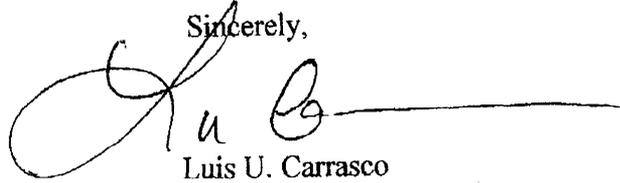
Ordinarily the Sheriff would have the sole authority to employ and terminate all employees of the Sheriff's office. Abbott v. Pollock, 946 S.W.2d 513, 515-17 (Tex.App.--Austin 1977, writ denied) (holding that sheriff, not commissioner's court, has sole authority over employment and termination decisions concerning sheriff's office personnel; employees serve at the sheriff's discretion); Tex. Att'y Gen. Op. No. GA-0037 (2003). The employment of the Sheriff's son in this context would clearly violate the nepotism law. However, Reeves County, through the Reeves County Commissioner's Court, has entered into a contract for private management of the Reeves County Detention Center with the GEO Group. Because management of the facility has been contracted to the GEO Group under section 351.103 of the Local Government Code, the Sheriff does not have the power to hire or fire employees or to manage the facility. Therefore, the Sheriff would not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of his son.

We understand that the Sheriff may not participate in any deliberation or voting on the appointment, reappointment, 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. (Cain v. State, 855 S.W.2d 714 (Tex. Crim. App. 1993))

I hope that I have supplied sufficient information for your opinion with regard to this matter and look forward to hearing from you. I have also enclosed the opinion of the District Attorney that you did not receive.

If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Luis U. Carrasco', followed by a horizontal line extending to the right.

Luis U. Carrasco
Reeves County, Attorney

Randall W. Reynolds
143rd Judicial District Attorney
714 South Eddy
P. O. Box 150
Pecos, Texas 79772
(432) 445-2010

June 14, 2005

~~Sheriff~~ J. Lynn Owens
P.O. Box 2072
Pecos, Texas 79772

RE: Texas Nepotism Statutes and the Reeves County Sheriff and Reeves County Detention Center

Dear Mr. Owens:

Due to Nepotism statutes, you ask whether the son of the Reeves County Sheriff may be hired by the Reeves County Detention Center. In my opinion the answer is no if the Reeves County Detention Center is a Reeves County Jail facility.

You have not provided me with information as to what the son would be hired to do or what position he would fill.

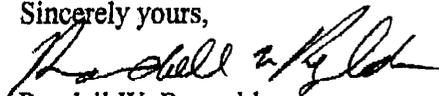
I believe the same analysis and logic applies to the Reeves County Detention Center as in situations where if the son was being considered for possible employment by the Reeves County jail located downtown. For instance, it is my opinion that the nepotism statutes would prevent the son of a County sheriff from being hired to work as a correctional officer for the county jail. If there is more than one county jail in a county, logic would be that the statute would apply to all county jails in the county.

For an analysis related to the nepotism statute and the office of County Sheriff, please see the attached copy AG opinion GA-0121.

You have invited me to differentiate between the Reeves County Jail and the Reeves County Detention Center due to the appearance that the sheriff may have delegated some or all of his authority concerning the operation of the Reeves County Detention Center. I am not willing to attempt to distinguish the two facilities as I view that as a "slippery slope" I am not willing to go down.

If you have any questions regarding this matter, then please contact me at (432) 445-2010.

Sincerely yours,


Randall W. Reynolds

rr/rr

Enclosure

J. LYNN OWENS
REEVES COUNTY AUDITOR

P. O. BOX 2072 PHONE (432) 445-2346
PECOS, TEXAS 79772

June 13, 2005

The Hon. Randall Reynolds
143rd District Attorney
714 S. Eddy Street
Pecos, Texas 79772

Re: Texas Nepotism Statutes

Dear Mr. Reynolds:

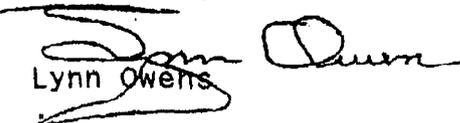
It is my understanding that the Reeves County Detention Center's existence is authorized under the Laws of the State of Texas as a County Jail. Under this authorization it is under the supervision of the County Sheriff.

The Reeves County Sheriff has delegated the day-to-day operations of the Reeves County Detention Center to the Reeves County Commissioners' Court. The Reeves County Commissioners's Court has entered into a contract with GEO Group, Inc. for the management of the Reeves County Detention Center. Under this management contract, GEO Group has the authority to hire and terminate employees at the Reeves County Detention Center. The Reeves County Sheriff has signed the management contracts that employ GEO Group.

The Reeves County Detention Center has agreed, subject to legal interpretation, to hire the son of the County Sheriff. Since the Sheriff does not actually do the hiring at RCDC, does this action violate the State Nepotism statutes? Since the Sheriff cannot assign or delegate the responsibility of his office's oversight of the RCDC, and since the Sheriff does sign the management contracts for the GEO Group; is the Sheriff ultimately the oversight person, and would the hiring of the son be in violation of the State Nepotism statutes?

If you feel comfortable with giving an opinion on this I will appreciate it. If you would rather not, could you please request an opinion from Attorney General Gregg Abbott?

Thank you,


Lynn Owens