

SENATE COMMITTEE ON INTERNATIONAL RELATIONS AND TRADE
80TH LEGISLATURE

SENATOR EDDIE LUCIO, JR.
Chair



SENATOR DAN PATRICK
Vice Chair
SENATOR CRAIG ESTES
SENATOR TROY FRASER
SENATOR MARIO GALLEGOS
SENATOR KEL SELIGER
SENATOR CARLOS URESTI

RECEIVED

JUL 30 2007

July 18, 2007

OPINION COMMITTEE

FILE # ML-45285-07
I.D. # 45285

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

RQ-0608-GA

Dear General Abbott:

As chair of the Senate Committee on International Relations and Trade, and on behalf of the City of Pharr, I ask for your opinion on several questions regarding the application of the nepotism statutes to the employment of a particular individual by the City of Pharr.

Mayor Leo "Polo" Palacios, Jr., of the City of Pharr informs me that a member of the city's governing board of commissioners recommended to the city manager that a particular woman be hired for a city job. The woman was not at that time married to the commissioner's son, but before being hired by the city gave birth to the child of the commissioner's son. A city department head and the city manager subsequently hired the woman as a clerk and, after the employment began, the woman and the commissioner's son married.

Section 1, Article IV, of the Pharr City Charter provides in part:

(a) The Board of Commissioners shall appoint and fix the compensation of a City Manager who shall be the chief administrative and executive officer of the city

(b)(2) He [the city manager] shall appoint, subject to consultation with the Board of Commissioners, all department heads, and without such consultation all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this charter. . . .

Under Chapter 573, Government Code, 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 compensated from public funds if the individual is related to the public official "within the third degree by consanguinity or within the second degree by affinity." Sec. 573.002, Government Code; see also Section 573.041, Government Code. Section 573.001(3)(B),



Government Code, in part defines "public official" to include "an officer or member of a board ... of a ... municipality."

Section 573.024, Government Code, in part provides:

- (a) Two individuals are related to each other by affinity if:
 - (1) they are married to each other; or
 - (2) the spouse of one of the individuals is related by consanguinity to the other individual.
- (b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Section 573.062(a), Government Code, provides an exception to the nepotism prohibitions for continuous employment:

- (a) A nepotism prohibition prescribed by Section 573.041 ... does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:
 - (1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and
 - (2) that prior employment of the individual is continuous for at least:
 - (A) 30 days, if the public official is appointed;
 - (B) six months, if the public official is elected at an election other than the general election for state and county officers; or
 - (C) one year, if the public official is elected at the general election for state and county officers.

In light of the above facts and statutory provisions, I ask that you answer the following questions:

- (1) Did the birth of a child whose father is the son of a city commissioner create a relationship by affinity between the commissioner and the child's mother such that employment of the mother by the city violates Chapter 573, Government Code?

(2) If a relationship subject to Chapter 573, Government Code, existed between the commissioner and the woman, did the city's initial decision to employ the woman, which was not made by the board of commissioners, violate Chapter 573?

(3) Does the subsequent marriage of the woman to the commissioner's son prohibit the continued employment of the woman by the city?

(4) Does the continuous employment exception to the nepotism laws apply if a relationship by affinity is created after a public official takes office?

The central issues involved in the first question do not appear to have been addressed by any previous opinion of your office. If the commissioner's son and the woman had been married before her employment by the city, the commissioner and the woman would have been related in the first degree by affinity, and the relationship could prohibit the employment of the woman. See Sections 573.002, 573.024, and 573.025, Government Code. Given that a divorce or death of a spouse does not end a relationship by affinity if a child of the marriage is living (see Section 573.024(b), Government Code), it seems logical that the existence of a child whose parents are unmarried would result in a similar *de jure* relationship by affinity. However, such an interpretation is contrary to the clear language of Chapter 573, Government Code, which consistently uses the terms "marriage" and "spouse" in reference to relationships by affinity.

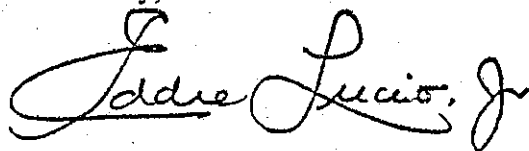
Regarding the second question, even if a relationship by affinity were found to have existed at the time of employment, it appears based on prior opinions of your office that because the Pharr city charter grants the city manager the authority to hire city employees below the level of department head without the approval or involvement of the board of commissioners, the employment of the woman does not violate Chapter 573, Government Code. See, for example, Op. Tex. Att'y Gen. No. GA-0226 (2004), which states at page 3 that if a city charter delegates a city officer "full and final appointing authority" with regard to city employees, the nepotism prohibitions do not apply to the governing board.

The third and fourth questions both raise the issue of the effect of the creation of a relationship by affinity after a public official has taken office and after the beginning of the employment of the person who becomes a relative of the public official. Previously, your office has held that in applying the continuous employment exception to a situation in which, after employment, a public employee marries someone who is related to a public official, the question is whether the employee was employed for the requisite minimum time before the official was elected or appointed. See Op. Tex. Att'y Gen. No. DM-132 (1992) at page 4. Based on this, it appears that because the woman was not employed by the city before the commissioner took office, the continuous employment exception would not apply.

The Honorable Greg Abbott
July 13, 2007
Page 4

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr." The signature is written in black ink and is positioned above a horizontal line.

Eddie Lucio, Jr., State Senator
Chair, Senate Committee on International
Relations and Trade