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THE COUNTY OF LIBERTY

Office of the County Attorney
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OPINION COMMITTEE

Attorney General Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0650-GA

FILE # ML-45461-07

I.D. # 045461

RE: Request for Attorney General Opinion

Dear General Abbott:

I am requesting your opinion on whether the Liberty County Central Appraisal District Board of Directors may contract with an appraisal company that has hired the Chief Appraiser's son as an employee. If Liberty County Central Appraisal District contracts that company, it *may* violate one or more provisions of the Tax Code.

There are two sections of the Tax Code which raise possible concerns. Section 6.035 provides:

(a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district...

Section 6.05(g) of the Texas Property Tax Code also provides:

(g) The chief appraiser is an officer of the appraisal district for purposes of the nepotism law, Chapter 573, Government Code. An appraisal district may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

There are potential criminal penalties that may arise if the Appraisal District violates § 6.035 of the Tax Code. With this letter, I am submitting my brief with the relevant facts and research on the issue for your review. Please let me know if you have any further questions on this matter.

Sincerely,

A.J. Hartel

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November 20, 2007

Attorney General Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Attorney General Opinion

Dear General Abbott:

Please allow this letter to serve as my brief on the issue of whether the Liberty County Central Appraisal District Board of Directors may contract with an appraisal company that has hired the Chief Appraiser's son as an employee.

The Board of Directors of the Liberty County Central Appraisal District (LCCAD) contracts with an independent appraisal company to provide certain appraisal services to the District. LCCAD has contracted with the same firm for many years. Specifically, LCCAD contracts out the appraisal of unique or complex properties within its jurisdiction that its staff does not have the time, personnel or expertise to appraise. LCCAD periodically requests proposals from various appraisal firms. The board, with the Chief Appraiser's input, evaluates the proposals, and the Board decides which appraisal firm is awarded the contract. This year several appraisal firms submitted bids for the contract, including a for-profit company which employs the Chief Appraiser's son. The son is an employee of the appraisal company and does not have any ownership interest in the appraisal company at this time. The son does not intend to perform any of the work associated with the contract if the company were to get the contract; the contract would be fulfilled by other employees of the company. The son does receive a salary from the company and it is safe to assume that the majority of his income comes from his salary from the appraisal company.

There are two sections of the Tax Code which raise possible concerns. Section 6.035 provides:

(a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district...

TEX. TAX CODE ANN. § 6.035(a)(emphasis added). Section 6.05(g) of the Texas Property Tax Code also provides:

(g) The chief appraiser is an officer of the appraisal district for purposes of the nepotism law, Chapter 573, Government Code. An appraisal district may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

TEX. TAX CODE ANN. § 6.05(g)(emphasis added).

Section 6.035(b) would disqualify a chief appraiser from employment with an appraisal district if his son is "an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title..." Section 6.035(b) also imposes criminal penalties on the chief appraiser for violating § 6.035(a). Therefore, LCCAD is understandably concerned about any potential violation. The offense is a class B misdemeanor.

Clearly, any appraisal company the District hires will be appraising property for compensation in proceedings under the Tax Code. The Chief Appraiser and his son are related within the prohibited degree. The difficult question is whether LCCAD may contract with the appraisal company which employs the Chief Appraiser's son if the son does not participate in the appraisals for Liberty County Central Appraisal District.

Section 6.05(g) is another statute which might be implicated in the hiring of an appraisal firm with an employee closely related to the chief appraiser. Section 6.05 provides that the district may not employ or contract with an individual closely related to the chief appraiser. A son would fall within the prohibited degree; however, the contract would be with the appraisal company and not the son. Is a contract with an appraisal firm in which the Chief Appraiser's son has no ownership interest prohibited by § 6.05(g)?

The prohibitions in §§ 6.035(b) and 6.05(g) both apply to contracting with an "individual." They do not specify that the District cannot contract with a business entity in which the individual has a substantial interest. However, the legislature has prohibited contracting with both individuals and companies in which the individual has a substantial interest in other conflict of interest provisions. For example, in Tax Code § 6.036, an appraisal district may not enter into a contract with a member of the board of directors, or with a business entity in which the board member has a substantial interest. Because the legislature can and has prohibited contracts with both individuals and businesses in which the individual has a substantial interest, the legislature's omission of the additional language regarding business entities in which the individual has a

substantial interest would seem to indicate that only the individual is prohibited from contracting with the appraisal district under 6.035 and 6.05 of the Tax Code, not the company.

I have not been able to locate any previous AG opinions dealing squarely with this issue. Your opinion on this issue would be greatly appreciated.

Sincerely,



A.J. Hartel