



TEXAS EDUCATION AGENCY

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November 13, 2009

The Honorable Greg Abbott
Attorney General of Texas
Price Daniel Building
P. O. Box 12548
Austin, Texas 78701-2548

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OPINION COMMITTEE

FILE # ML-46259-09
I.D. # 46259

RQ-0842-GA

Dear General Abbott:

I am writing to seek your opinion regarding the applicability of Chapter 573 of the Government Code, relating to nepotism, to the employment of relatives of members of a school district board of trustees when the board has delegated final authority for selection of personnel to the district Superintendent, pursuant to Section 11.1513 of the Texas Education Code.

Section 11.1513(a)(2) of the Education Code provides that the board of trustees may delegate final authority for selection of personnel to the superintendent. Section 11.1513(f)(2) provides that, if the board delegates final authority to select district personnel to the superintendent, "each member of the board of trustees remains subject to Chapter 573, Government Code, with respect to all district employees". Section 11.1513(g) limits the application of Subsection (f) to a school district with all or a majority of its territory located in a county with a population of at least 35,000.

Section 11.1513, Education Code, was formerly numbered as Section 11.163. In 2003, you issued opinion GA-0123 in which you concluded that a school superintendent to whom the school trustees had delegated authority to hire personnel, under what was then Section 11.163, could employ a relative of a board member under that authority even if the board would be prohibited under Chapter 573 of the Government Code from selecting that person if the board was making the employment decision.

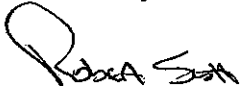
Subsequently, in 2007, the legislature enacted Section 11.1513(f), Education Code. In light of the conclusion in GA-0123, it appears that the intended purpose of Section 11.1513(f) was to prohibit a superintendent from selecting for employment a person who is related to a member of the board of trustees if the board would be prohibited under Chapter 573, Government Code, from selecting that person if the board was making the employment decision. However, a question has been raised as to whether the prohibition of Section 573.041 of the Government Code might not apply in that circumstance because a superintendent is not "a member of a state or local board" as contemplated by Subsection 573.041(2).

I request your opinion regarding whether, after the enactment of Section 11.1513(f), a superintendent to whom final selection of personnel is delegated continues to have the discretion to employ persons related to board members as you concluded in GA-0123. If

you conclude that Sections 11.1513(f) restrains the superintendent from selecting certain relatives of board members, please provide your opinion regarding whether that limitation applies only if the district or the majority of the territory of the district is located in a county with a population of at least 35,000. Also, if you conclude that Section 11.1513(f) restrains the superintendent from selecting certain relatives of board members, please provide your opinion whether a violation of that restriction subjects the superintendent to penalties under Subchapter E, Chapter 573, Government Code and whether such a violation by the superintendent subjects members of the board to penalties under Subchapter E, Chapter 573, Government Code, even though the board did not make the employment decision.

Thank you for your attention to this request. If you have any questions regarding the request, you may contact David Anderson, Chief Counsel, at 463-9728.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Scott". The signature is written in a cursive style with a large initial "R".

Robert Scott
Commissioner of Education

RS/sm/ds