

Committees:  
Business & Industry, Chairman  
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**RECEIVED**

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**OPINION COMMITTEE**

March 28, 2013

FILE # ML-47241-13  
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**RQ-1117-GA**

The Honorable Greg Abbott  
Texas Attorney General  
Office of the Attorney General  
PO Box 12548  
Austin, Texas 78711-25483

Dear General Abbott:

Section 572.041, Government Code, generally prohibits a public official from appointing, confirming the appointment, or voting to appoint or confirm an immediate family member to a position compensated by public funds. Section 573.062 of the Texas Government Code sets out a continuous employment exception to the general nepotism prohibition, and states that the 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.

From our reading, it is clear that if a public official (member of a school board of trustees) is appointed to office, the applicable period of service required to be completed by relatives of such official, in order to retain employment with the district, is at least 30 days. An ambiguity arises out of the timing of the election cycle and the calendar for the employment of teachers under Chapter 21, Texas Education Code.

First, I request your opinion regarding whether a school district should use a six-month time period or a one-year time period to calculate the applicable period of service required to be completed by relatives of members of a school board of trustees elected at a general election that

was conducted with the governing body of a municipality located in the district or at the general election for state and county officers?

Under Section 11.0581, Education Code, school districts are required to conduct joint elections on the same date as the election for the members of the governing body of a municipality located in the school district, or at the general election for state and county officers. After the adoption of this section by the Texas Legislature, many Texas school districts moved their trustee elections to November and held joint elections with the counties in which they were located. Section 573.062(a)(2), Government Code, states that the applicable time period an individual must be employed with the entity is (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.

Arguably, a member of a school board of trustees is elected at an election other than a general election for state and county officers, as a member of a school board of trustees is not a state or county officer. But because school districts are required to conduct joint elections on a uniform date with municipalities or at election for state and county officers, an argument can also be made that a member of a school board of trustees is elected at the general election for state and county officers. The question is therefore, does the fact of the joint election date define the one-year proscription, or is the one-year proscription triggered by the nature of the office itself as separate and apart from the date?

I also ask for an opinion on whether a school district employee, for purposes of calculating the applicable period of service required by Section 573.062 of the Texas Government Code to be completed by relatives of members of a school board of trustees, is deemed hired upon the action of the board to offer a contract or on or the first day the employee actually reports for duty? If the employee signed a contract with the district in mid-July and reported for duty in mid-August, which of the two events would be the controlling date for purposes of analyzing whether an employee met the continuous employment exception of Section 573.062 of the Texas Government Code?

Finally, if at the time the newly elected board member was first called upon to vote for his/her spouse, as described in the foregoing facts, the required continuous employment period had already run, has the continuous employment provision been met? In other words is the continuous employment prohibition calculated as the period between first hire and the qualification of the elected official, presumably by taking the qualifying oath of office, or is the continuous employment exception, measured as the time between the employee's first employment and the date upon which their spouse in the foregoing example would be first called upon to consider an extension of their employment contract? A review of the specific language set forth in Tex. Gov't. Code section 573.062(b) seems to indicate that the relevant time period is between the dates of the employee's hiring and any required action by the elected official.

In addressing the previous questions, please assume the following facts, typical for a newly hired teacher

1. A newly hired teacher was offered a probationary teacher contract by school board vote in mid-July.
2. Because the teacher was a new employee, the teacher/spouse was given a one-year probationary contract by the school board as provided by Chapter 21, Subchapter C of the Texas Education Code.
3. Pursuant to the one year contract, the teacher commenced actual work in mid-August.
4. At the time of the teacher hiring decision (Item 1, above) there was no active election order in the District, and therefore no announced candidates for office.
5. The spouse to the teacher referenced in Item 1 then files for election for a school trustee position at an election to be held on the Election Code's November uniform election date.
6. The date of the election canvass is within six months of the spouse/teacher's initial contract date and also within six months of the spouse/teacher's first day of work.
7. The newly elected Board member is not called on to consider or vote upon the spouse's teacher spouse until mid-May of the following school year, when the new contract is proposed by the Superintendent.
8. At the time of the Superintendent's recommendation, the teacher/spouse was continuously employed by the school district since the Board had acted on the contract the previous July, and the teacher/spouse had actually been working for the school district since mid-August.

## **Conclusion**

In conclusion, I ask:

- 1) What is the relevant time period under the continuous employment nepotism exception for a school district which conducts joint elections with a county?

The Honorable Greg Abbott

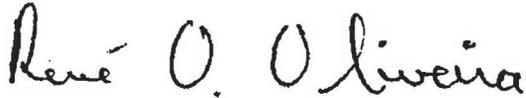
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- 2) What is the starting date for calculating the continuous employment nepotism exception? Is it the date upon which the employee's contract was approved, or the first date of service by the employee?
  
- 3) What is the date for calculating the end of the period for the continuous employment nepotism exception. In the example above, is it the date the spouse is sworn into office, or the date upon which the spouse is called upon to participate in a deliberation or a vote upon a new contract for the spouse?

Thank you for your attention to this request. If you have any questions, please feel free to contact my office at (512) 463-0640.

Sincerely,

A handwritten signature in black ink that reads "René O. Oliveira". The signature is written in a cursive, flowing style.

René O. Oliveira  
Chairman,  
House Committee on Business and Industry