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By Opinion Committee at 11:22 am, Jul 20, 2022



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July 14, 2022

The Hon. Ken Paxton  
Attorney General of Texas  
Opinion Committee Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0469-KP**  
**FILE# ML-49148-22**  
**I.D.# 49148**

VIA CMRRR# 7020 0640 0000 2473 9479

**Re: Opinion Request**

Dear Sir:

On behalf of Mr. Mario Martinez, City Manager of the City of Petersburg, Texas ("the City"), and pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on the following questions:

1. Does the employment of a particular law firm by the City of Petersburg constitute an impermissible conflict of interest under Chapter 176 of the Texas Local Government Code?
2. Does the employment of a particular law firm by the City of Petersburg constitute an impermissible conflict of interest under the Texas Disciplinary Rules of Professional Conduct?

***Factual Background***

The City lies in southeastern Hale County. The 2020 United States Census counted the population as 1,014 people.<sup>1</sup> Mr. Martinez began working as City Manager for the City in April, 2020.<sup>2</sup> The City began using the firm of Owen, Voss, Owen & Melton, P.C. ("the Firm") on June 11, 2020. Lanny Voss and Meredith Hatch, a partner and member in the Firm, respectively, performed most of the City's legal work. Mitchell Williams, the son-in-law of Mr. Martinez,

<sup>1</sup>2020 U.S. Census Gazetteer Files, <https://www2.census.gov/geo/docs/map-date/date/gazetteer>, retrieved July 13, 2022.

<sup>2</sup>Mr. Martinez supplied the dates recited herein.

joined the Firm as an associate in August, 2021, and performed some legal work on behalf of the Firm for the City. On November 10, 2021, the then-mayor of the City published a Facebook post (a copy of which is attached as Exhibit A) that alleged “a conflict of interest or nepotism” existed in the City’s relationship with the Firm. On November 11, 2021, Mr. Williams sent the City a letter (attached as Exhibit B) withdrawing the Firm from its work for the City.

Mr. Martinez requested that I ask for your opinion regarding the two questions set forth above.

### *Legal Authorities*

As a preliminary matter, the nepotism provisions in Chapter 573 of the Texas Government Code and the conflict of interest provisions in Chapter 171 of the Texas Local Government Code do not appear to apply, because Mr. Martinez is not a “public official” or a “local public official” to fall under either of those statutes. *See*, TEX. GOV’T CODE §573.001; TEX. LOCAL GOV’T CODE §171.001(1).

Mr. Martinez would, however, be a “local government officer” subject to the provisions of Chapter 176 of the Local Government Code. TEX. LOCAL GOV’T CODE §176.001(4)(B) or (C). Similarly, Mr. Williams would have a “family relationship” with Mr. Martinez under that statute as well. *Id.*, §176.001(2-a). Thus, each would need to file a conflicts disclosure statement with the City’s records administrator.<sup>3</sup> *Id.*, §176.003(a)(1 and (2)(C)); (b); §176.006(a)(3); (a-1)(2)(C). The City’s governing body could make its own decision whether to hire the Firm for its legal work, in light of the family relationship.<sup>4</sup> Otherwise, nothing in Chapter 176 appears to prohibit completely the City’s using the Firm for its legal work.

With regard to whether a conflict exists that would prevent the Firm’s work for the City under the Texas Disciplinary Rules of Professional Conduct, your office has previously declined to provide an opinion on that sort of question, deferring to the interpretation of the State Bar’s Committee on Professional Ethics. *See Op. Tex. Att’y Gen.* No. GA-0817, 2 (2010). The only apparent source of a conflict in this situation—without a more specific fact scenario—would seem to be whether Mr. Williams’ relationship with Mr. Martinez would hamper his ability to give candid advice. *See*, TEX. DISCIPLINARY R. PROF. CONDUCT 1.06, cmt. 4. Otherwise—again, without further facts—none of the conflict-of-interest provisions of the Rules apply to the City’s mere employment of the Firm. *See, id.*, 1.06; 1.07; 1.08; 1.09. We assume that you would continue to hew to the policy set forth in GA-0817 and defer to the Committee’s decision with regard to this question.

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<sup>3</sup>I do not know, and I have not inquired, whether either filed such a disclosure statement.

<sup>4</sup>The governing body could also avail itself of the ability to take adverse employment action against Mr. Martinez or to declare its contract with the Firm void, if circumstances warranted. TEX. LOCAL GOV’T CODE §176.013(d) and (e). A violation of the statute could constitute a Class C misdemeanor, assuming that the value of the contract with the Firm is less than \$1 million. *Id.*, §176.013(a) and (c)(1).

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Thank you for your attention to this matter. We shall await your opinion. Please let me know if you require additional information or briefing. With best regards, I am,

Sincerely yours,

JAMES M. TIREY

  
Hale County Attorney

Exhibits as stated

cc: Mr. Mario Martinez (via email attachment)  
Mr. Thomas Roden, Mayor, City of Petersburg (via CMRRR)  
Office File