



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

LD C. MANN
ATTY GENERAL

February 24, 1959

Hon. Shelburne H. Clever
County Attorney
Marion County
Jefferson, Texas

Dear Sir:

Opinion No. 0-369

Re: Can a brother of a county commissioner be employed on a P. W. A. Project where part of funds are paid by the county and Commissioners' Court has nothing to do with employment of commissioner's relative?

Your request for an opinion on the above stated question has been received by this office.

We quote from your letter as follows:

"I have been asked by the Commissioners Court to request of you an opinion concerning the legality of the employment of a brother of one of the commissioners on a P. W. A. Project where a part of the funds are paid by the county, but the Commissioners Court had nothing to do with the employment of the Commissioner's relative."

Articles 432, 433 and 434 of the Penal Code read as follows:

"Art. 432. No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any state, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall

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appoint, or vote for, or confirm the appointment of any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever.

"Art. 433. The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. The enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions.

"Art. 434. No officer or other person included within any provision of this law shall appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment or duty of any person whose services are to be rendered under his direction or control and to be paid for, directly or indirectly out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any

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provision of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment, to any such office, position, or clerkship, employment or duty of any person whosoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment."

Where the Commissioners' Court does not appoint or vote for or confirm the appointment or does not contract, either directly or indirectly with the employee, although such employee is paid in whole or in part out of county funds, such employment would not be in violation or be prohibited by the above quoted statutes.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that the brother of one of the county commissioners would not be prohibited from working on a P. W. A. Project where part of the funds are paid by the county and where the Commissioners' Court had nothing to do whatsoever in employing or securing employment for such employee.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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APPROVED:

George B. Mann
ATTORNEY GENERAL OF TEXAS

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