OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Gerald C. Mann
Attorney General

Honorable A. J. Bryan, Jr
Criminal District Attorney
Hillsboro, Texas

Dear Sir:

Attention: Mr. Wm. E. Martin

Opinion No. O-2925
Re: Employment for road work in Precinct by County Commissioner of brother-in-law of another commissioner.

This will acknowledge receipt of your letter of November 22, 1940, requesting the opinion of this Department upon the following questions:

"A county commissioner would like to hire a man to work on the roads in his precinct who is a brother-in-law of one of the other commissioners. Would the commissioner be violating the Nepotism law if he hired the man?

"We are in doubt as to whether or not such action would be prohibited by the Nepotism law since the employment need not be confirmed by the commissioners court nor voted on by the Court."

Articles 432 and 435, Vernon's Annotated Penal Code, read as follows:

"Art. 452. 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 appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by af-
finity or within the third degree by consan-
guinity to the person so appointing or so vot-
ing, 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 ap-
pointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. Acts 1909, p. 85, Acts 1915, p. 149."

"Art. 433. The inhibitions set forth in this 

law shall apply to and include the Governor, Lieu-

tenant Governor, Speaker of the House of Represen-
tatives, 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. 

This enumeration shall not be held to exclude 

from the operation and effect of this law any 

person included within its general provisions."

A brother-in-law of one of the county commissioners 
is related to that commissioner by affinity in the first de-


App. C. C., Section 533; Baker vs. McRimmon (T. C. A.) 48 S. 

W. 742; Ex parte West, 60 Tex. Cr. Rep. 485, 132 S. W. 339; 2 

C. J. 379. Such relationship is, of course, within the degree 

prohibited by Article 432.

You state, "we are in doubt as to whether or not 
such action would be prohibited by the Nepotism Law since the 
employment need not be confirmed by the commissioners' court 
or voted on by the Court." We assume that the contemplated 
employment is out of county funds (the County Road and Bridge 
Fund) and under such circumstances the County Commissioners' 
Court must necessarily, for it is its duty, approve such em-
ployment. Under Articles 1675 and 1680, Vernon's Annotated 
Civil Statutes, all claims against a county must first be pre-
sented to the county auditor, if there be one, and then be 
presented to the commissioners' court for approval or rejection. 
Anderson vs. Ashe, 99 Tex. 447, 90 S. W. 874; Yantis vs. Montague 
Co., 50 Tex. Civ. App. 403, 110 S. W. 162; McLennan Co. vs. Miller, 
257 S. W. 680; Bitter vs. Bexar Co., 266 S. W. 264. Under such
circumstances it is our opinion that the employment is prohibited. We have so held.

In opinion No. O-272, this department held that the employment by one county commissioner of the nephew of another county commissioner would be a direct violation of Articles 432 and 433 of the Penal Code.

In opinion No. O-566, this department held that it would be a violation of the law for a commissioner of one precinct to appoint as overseer the nephew of the commissioner of another precinct, or to hire a relative of another commissioner to repair machinery when the labor is to be paid out of county funds.

Consequently, it is the opinion of this department, and you are advised that under Articles 432 and 433 of the Penal Code, a county commissioner may not hire one to work the roads in his precinct who is a brother-in-law of another of the commissioners when such employment is paid for out of public or county funds.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

James D. Smullen
Assistant

JDS:KF

APPROVED DEC 6, 1940

Acting ATTORNEY GENERAL OF TEXAS