



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTON  
ATTORNEY GENERAL**

April 18, 1988

Mr. Milton Carroll  
Chairman  
Board of Regents  
Texas Southern University  
Houston, Texas 77004

LO-88-44

Dear Mr. Carroll:

You have requested our opinion as to whether a particular contract between Texas Southern University and a local business firm violates either the state conflict of interest statute, article 6252-9b, V.T.C.S., or the nepotism statute, article 5996a, V.T.C.S.

You indicate that on October 3, 1986, the board of regents of Texas Southern University awarded a contract for project management services to Top Management Services, Inc. Prior to the award of the contract, it was disclosed that the corporation's president was the brother-in-law of the chairman of the board of regents. On August 7, 1987, the board approved a continuation of the original contract, and on October 2, 1987, the board awarded another contract to the corporation for additional services.

On the date of the original award, the chairman was absent from the meeting. On the two subsequent occasions, he was present but abstained from voting on the contract. You inquire first as to whether any action of the board or the chairman might have violated article 6252-9b, V.T.C.S. That statute applies to any "appointed officer," defined to include "an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education." Section 2(3) (B). If an appointed officer has "a personal or private interest in any measure, proposal, or decision pending before the board," he is required to "publicly disclose the fact to the board," and, in addition, "not vote or otherwise participate in the decision." Section 6(a). Under section 6(b), "the term 'personal or private

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interest' has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution."

Article III, section 22, does not define "personal or private interest," and no annotations thereunder indicate that the term has ever been construed. In our opinion, however, it is clear that the chairman in the present instance has no such interest in the contracts at issue. Neither the chairman, his spouse, nor his dependent children own any interest in, hold any position in, or receive any income or benefit from, Top Management Services, Inc. Furthermore, the chairman disclosed to the board, in advance of the initial award, that his brother-in-law was the president of the corporation, and he abstained from voting on each of the contracts. We conclude that, under the facts you describe, no action of either the board or its chairman violated article 6252-9b. See generally Attorney General Opinion JM-671 (1987).

Article 5996a, V.T.C.S., the nepotism statute, provides that

[n]o officer of this state . . . 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 affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of . . . such board. . . .

The chairman's brother-in-law is related to him within the second degree of affinity.

In Attorney General Opinion JM-45 (1983), we said that the nepotism statute was applicable to an outside auditor hired by a school district as an "independent contractor." The opinion declined to draw a distinction between "employee" and "independent contractor" for purposes of article 5996a; rather, it held "the relevant question" to be "whether the governmental body employed the individual in question to perform some service for it."

This application of the nepotism law to independent contractors was questioned, although not overruled, in Attorney General Opinion JM-492 (1986). In the present instance, we need not determine the continuing validity of Opinion JM-45, since the facts you pose are altogether

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different from those presented there. Top Management Services, Inc., is the independent contractor here. No case or decision has been brought to our attention, nor have we found one, which holds that a corporation can be "related" to any person for purposes of article 5996a. We believe that the nepotism statute applies only to natural persons. Lewis v. Hillsboro Roller-Mill Co., 23 S.W. 338 (Tex. Civ. App. 1893, no writ). By its very nature, a corporation does not have relatives. Thus, the nepotism statute cannot include within its ambit of prohibited dealings any contract with a corporation. We do not address any situation in which a corporation serves merely as the alter ego of an individual. Accordingly, we conclude that, under the facts presented, neither the chairman nor any member of the board has violated article 5996a.

Very truly yours,



Rick Gilpin  
Chairman, Opinion Committee

Prepared by Rick Gilpin  
APPROVED: OPINION COMMITTEE