



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL,
ATTORNEY GENERAL**

December 12, 1975

The Honorable Clarence L. Darter
County Attorney
Childress County Courthouse
Childress, Texas 79201

Letter Advisory No. 116
Re: Whether a sheriff
can hire the son-in-law
of a county commissioner.

Dear Mr. Darter:

You have asked if the nepotism law, article 5996a, V.T.C.S., is violated if the sheriff of the county hires the son-in-law of a county commissioner to serve as jailer.

In discussing the nepotism statute, we said in Attorney General Opinion H-697 (1975):

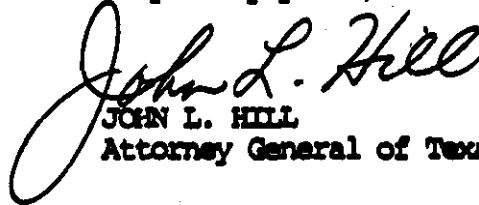
Article 5996a generally provides that no officer of a county or member of a county board or court may appoint, vote for, or confirm the appointment to any office or position compensated by public funds of any person related to the person so appointing or so voting or to another member of the board or court within the second degree by affinity or the third degree of consanguinity. See Letter Advisory No. 67 (1973). County commissioners are included. V.T.C.S., art. 5996b.

This provision is not violated, however, if a relative of a member of a governing body is hired for a position authorized by that body, when the governing body does not exercise control over the person to be selected. See Attorney General Letter Advisory No. 79 (1973) and authorities cited therein.

Each sheriff is by statute made the keeper of the jail of his county and is empowered to appoint a jailer. V.T.C.S. art. 5116. See Attorney General Opinion H-196 (1974). The commissioners' court of a county and its members are statutorily prohibited from attempting to influence the appointment of any person as a deputy, assistant or clerk in another office. V.T.C.S. art. 3902. See Neeper v. Stewart, 66 S.W. 2d 812 (Tex. Civ. App. — Eastland 1933, writ ref'd.); Attorney General Opinion H-697 (1975). In our opinion, that would include the position of jailer. Cf. Attorney General Opinions V-1436 (1952), O-2444 (1940).


Inasmuch as the right to hire and fire this jailer rests exclusively in the sheriff, and the commissioners' court or individual commissioners cannot properly exercise control over the selection of the person to fill the position, article 5996a is not violated by the circumstance, alone, that the person selected by the sheriff is closely related by affinity to a county commissioner. We caution, however, that article 5996c, V.T.C.S., prohibits the practice of trading and similar evasions of the nepotism law. Attorney General Letter Advisory No. 115 (1975).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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