



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 7, 1989

Mr. Ed C. Jones
Angelina County Attorney
P.O. Box 1845
Lufkin, Texas 75902-1845

LO-89-90

Dear Mr. Jones:

You ask whether the city manager of Diboll, Texas, may employ his wife as the civic center director. You tell us that the city manager has the right to hire and fire city employees. He is accordingly an officer within the Texas nepotism statute, V.T.C.S. article 5996a. See Attorney General Opinion JM-72 (1983).

The nepotism statute would clearly prohibit the city manager from hiring his wife. You inform us, however that the city of Diboll has adopted the following ordinance:

No persons may be employed by the City if they are related in any of the below stated manner; to the City Manager, or City Council member, (father, mother, brother, sister, son, daughter, grandparents, grandchildren, spouse, spouse's father, mother, sister, brother, son, daughter, grandparents). . . . This policy does not include temporary employees such as summer parks and recreation and civic center employees. (Emphasis in original.)

Diboll, Tex., Policy and Procedure Manual § 11.02 (revised March 20, 1989). The state nepotism law makes no exception for "temporary" employees. Consequently, the ordinance set out above is less restrictive than the state statute.

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Type A municipalities¹ may not adopt any ordinance or regulation that is inconsistent with state law. Local Gov't Code §§ 51.012. On several occasions this office has concluded that regulations that are more restrictive than state law are not inconsistent with state law. Attorney General Opinions MW-540 (1982); H-1071 (1977). An ordinance that is less restrictive than state law, however, is inconsistent with state law. Id. Consequently, the city of Diboll had no authority to adopt the ordinance set out above. The city manager would violate the state nepotism statute if he hired as wife as director of the civic center, regardless of whether the position was "temporary."

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section

APPROVED: Rick Gilpin, Chairman
OPINION COMMITTEE

RG/SW/lcd

Ref.: ID# 7904

1. You state in your letter that the city of Diboll is a type A municipality.