



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

February 6, 1996

The Honorable Kim Brimer
Chair
Committee on Business and Industry
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

Letter Opinion No. 96-010

Re: Whether a city council may appoint the former brother-in-law of one of its members to the board of directors of an industrial development corporation established by the city (ID# 36802)

Dear Representative Brimer:

You seek our opinion about the appointment and removal of a member of the board of directors of an industrial development corporation established under section 4B of the Industrial Development Corporation Act of 1979, V.T.C.S. article 5190.6. You inform us that the City of League City established an industrial corporation in 1994. You continue:

On June 2, 1994, the League City City Council appointed Mr. Barringer to the initial board of directors of the corporation.

Mr. Barringer is the brother of the deceased wife of Mr. Parr, a member of the city council at the time of Mr. Barringer's appointment. Mr. Parr and his now deceased wife, Mr. Barringer's sister, had children who are still living

You first ask whether Mr. Barringer's appointment to the board of the industrial development corporation by the City Council of League City violated Government Code section 573.041. Section 573.041 forbids a public official to "appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if" the individual and the public official are related within the third degree by consanguinity or within the second degree by affinity. *See also* Gov't Code § 573.002 (describing relationships to which chapter 573 applies).

The term "public official" for purposes of chapter 573 of the Government Code includes an officer of a municipality. *See* Gov't Code § 573.001(3)(A). In the situation you describe, the city council member and the director of the development corporation are related within the second degree by affinity. *See id.* §§ 573.024, .025; *see also id.* § 573.023(c)(2).

We do not believe, however, that Mr. Barringer holds a position that is “directly or indirectly compensated from public funds or fees.” In Attorney General Opinion JM-195 this office concluded that the term “compensation,” as used in the statutory predecessor to section 573.041, does not include “statutory reimbursement for expenses incurred in attending meetings” of the public entity involved. Attorney General Opinion JM-195 (1984) at 2. Thus, section 573.041 is inapplicable to an appointment to a board where the board member is statutorily precluded from receiving salary, fees, or compensation. *See id.* at 3.

Section 11(a) of the Development Corporation Act of 1979, V.T.C.S. article 5190.6, under which League City established its development corporation, provides that the members of the board of directors of the industrial development corporation “shall serve . . . without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.” Consistently with article 5190.6, article II, section 9 of the city’s industrial development corporation’s bylaws requires the directors of the corporation to “serve without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.”

Pursuant to Attorney General Opinion JM-195, Mr. Barringer is not “directly or indirectly compensated from public funds” for purposes of section 573.041 of the Government Code. Section 573.041 is, therefore, inapplicable. The City Council of League City’s appointment of Mr. Barringer to the board of the industrial development corporation did not violate Government Code section 573.041, even though Mr. Parr participated in the city council’s vote (and in fact made a motion to appoint Mr. Barringer to the industrial development corporation).¹ *See* City Council of the City of League City minutes (June 2, 1994).

You next ask whether Mr. Parr may participate in and vote on the removal of Mr. Barringer from the industrial development corporation. Section 4B(c) of the Development Corporation Act authorizes the governing body of a city that has established an industrial development corporation under that act to remove a director of the corporation “at any time without cause.” Likewise, article III, section 1 of League City’s industrial development corporation’s bylaws provides that “[a]ll officers [of the industrial development corporation] shall be subject to removal, with or without cause, at any time

¹A letter you attached to your request letter indicates that League City’s home-rule charter “prohibits the appointment of persons related to city council members within the second degree of affinity to any office, position or service in the City.” Letter from Albert Garcia, Attorney, Mayor, Day, Caldwell & Keeton, L.L.P., to A.T. Frankovich, Mayor, City of League City (Aug. 4, 1995). You do not ask whether Mr. Barringer’s appointment to the board of the industrial development corporation contravenes the city charter. Indeed, the attorney general does not construe municipal charters. Attorney General Opinion JM-846 (1988) at 1. Consequently, we refrain from considering whether the municipal charter of League City prohibits the appointment about which you ask.

by a vote of a majority of the whole board.” *See also* Articles of Incorporation of City of League City Section 4B Industrial Development Corporation art. VI.

Nothing in chapter 573 of the Government Code precludes Mr. Parr from voting on Mr. Barringer’s removal. Additionally, we are unaware of any relevant provisions in chapter 171 of the Local Government Code, regulating conflicts of interest for, among others, members of the governing body of a municipality. We conclude, therefore, that Mr. Parr may participate in the discussion of and choose to vote on the issue of removing Mr. Barringer from the board of the industrial development corporation.²

S U M M A R Y

Because a member of the board of directors of an industrial development corporation, established under the Development Corporation Act of 1979, V.T.C.S. article 5190.6, receives only reimbursement for the member’s expenses, the member is not “directly or indirectly compensated from public funds or fees of office.” Thus, section 573.041 of the Government Code, which generally prohibits nepotistic appointments, is inapplicable.

We find no statute that precludes one member of a city council from voting on removal of a member of the board of directors of an industrial development corporation, even where the city council member and director of the industrial development corporation are related within the second degree by affinity.

Yours very truly,



Kyemberly K. Oltrogge
Assistant Attorney General
Opinion Committee

²We express no opinion on whether any provision of the League City municipal charter or any applicable code of ethics requires Mr. Parr to recuse himself from participation in the city council’s deliberations and vote on whether to remove Mr. Barringer from the board of the industrial development corporation.