

July 10, 2012

Rick Edwards,

I am requesting information from Kennedale Independent School District through an Open Records Request pursuant to the Public Information Act.

**Paperwork**

- 1. Any and all documentation related to the hiring of Stephanie Dugger such as her application for position with obvious personal information such as social security number or driver's license number etc. redacted for safety of identity purposes.**
- 2. Any documentation showing Stephanie Dugger's hire date, start date, and date acknowledged by and presented to the school board as being hired.**
- 3. Any and all documentation of the position notice for Stephanie Dugger was first hired for. This is to include but not be limited to the public notice used to advertise the job opening to the public.**
- 4. Any and all documentation of the people and number of people other than Stephanie Dugger that were interviewed for the position Stephanie Dugger was first hired for.**
- 5. Any and all documentation allowing for the district to hire Stephanie Dugger to work in the administration building under the supervision of Gary Dugger as the superintendent in regards to district, state, and federal nepotism policies and laws.**

I would prefer all communication to be through email for reasons of documentation.

Email Communication: [Amber@MansfieldLaserCenter.com](mailto:Amber@MansfieldLaserCenter.com)

Physical address communication: 305 Regency Parkway  
Suite 301  
Mansfield, TX 76063

Phone communication: 817-789-0285

**Amber Allee**

# Kennedale Independent School District

## Administrative Services

P.O. Box 467 • Kennedale, TX 76060

phone (817)-563-8000 • fax (817) 483-3688 • [www.kennedaleisd.net](http://www.kennedaleisd.net)

**Rick Edwards**  
Associate Superintendent

Ms. Amber Allee  
305 Regency Pkwy, Ste 301  
Mansfield, TX 76063

July 30, 2012

Dear Ms. Allee:

We have received your request for information, dated: 07/23/2012.

We have determined that complying with your request will result in the imposition of a charge that exceeds \$40. Therefore, we are providing you with this cost estimate as required by section 552.2615 of the Texas Government Code.

### Itemized List of Charges:

Description	Qty x Price	Total
Standard sized copies	73 x \$0.10	\$7.30
Labor minutes (\$15/hour)	165 x \$0.25	\$41.25
Overhead charges	20% of \$41.25	\$8.25
<b>Total cost</b>		<b>\$56.80</b>

There is a less expensive way for you to obtain this information. You may narrow or clarify your request. Since you have been picking up the information you requested, I did not add postage. If you decide you would like to have it mailed to you, please let me know and I will determine the postage cost.

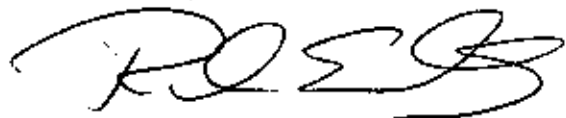
The following information you requested is not available:

3. Any and all documentation of the position notice for Stephanie Dugger was first hired for. The retention requirement for these documents is past, so the district no longer has the records.
4. Any and all documentation of the people and number of people other than Stephanie Dugger that were interviewed for the position Stephanie Dugger was first hired for. Applications are only kept on file for 2 years. There is no requirement to keep such a list as requested, so no documents are available.

Your request will be considered automatically withdrawn if you do not notify us in writing within ten business days from the date of this letter that you either:

1. (a) accept the charges;
2. (b) wish to modify your request; OR
3. (c) have sent to the Open Records Division of the Office of the Attorney General a complaint alleging that you are being overcharged for the information you have requested.

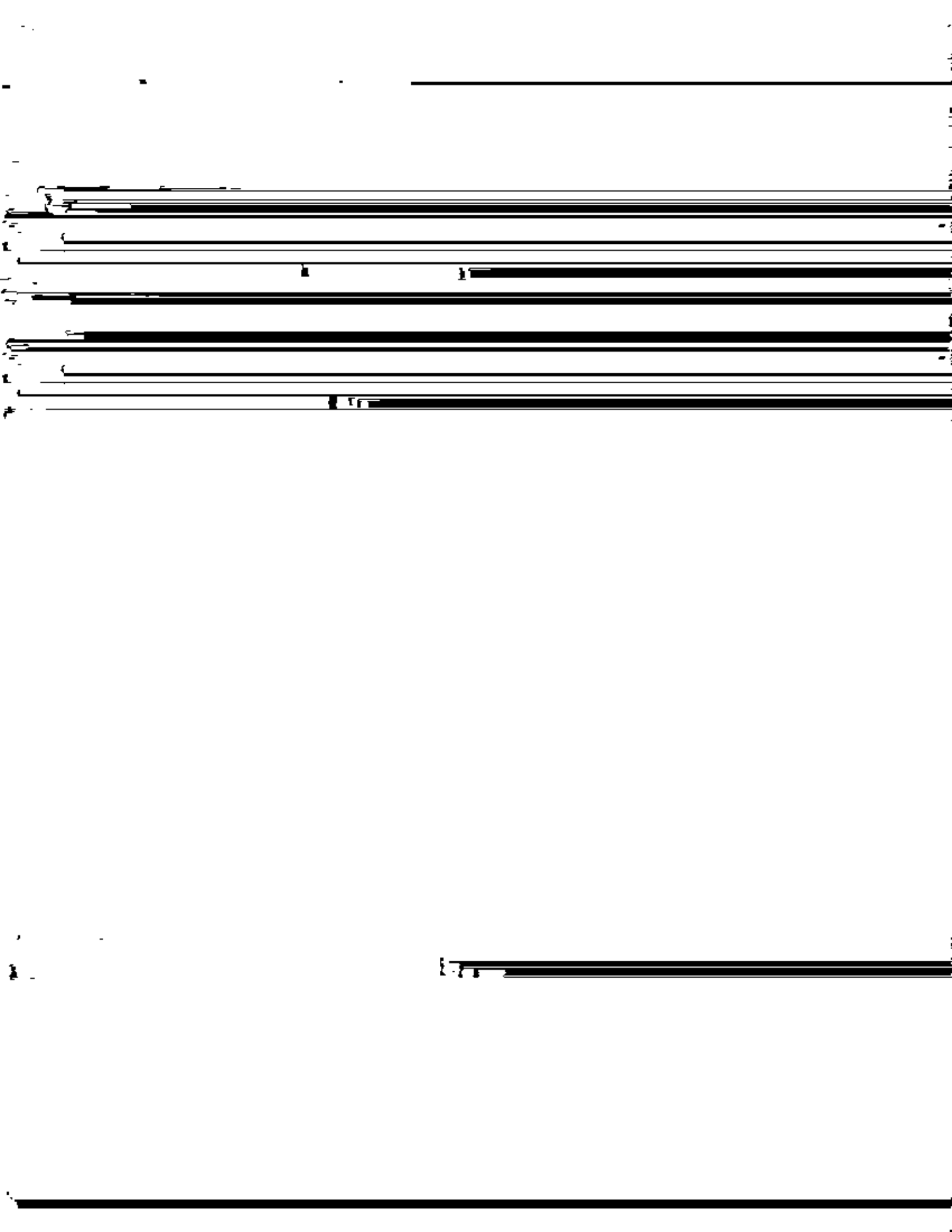
Sincerely,

A handwritten signature in black ink, appearing to read "R. Edwards". The signature is stylized with large, sweeping loops and a long horizontal stroke at the end.

Rick Edwards  
Kennedale ISD  
PO Box 467  
Kennedale, TX 76060







**PERSONAL STATEMENT**

BELOW, IN YOUR OWN HANDWRITING, PLEASE ANSWER THE FOLLOWING:

WITH REGARD TO THE POSITION FOR WHICH YOU ARE APPLYING, WHAT DO YOU FEEL ARE YOUR STRONGEST ASSETS?

This application will remain on file for one year only; it must be renewed if further consideration is desired. You will receive no further reply unless favorable consideration is given your application. Interviews are granted when a vacancy exists.

I hereby certify that the information presented in this application to the best of my knowledge is true, accurate and complete. Any falsification of this record will be sufficient cause for disqualification. Furthermore, it is understood that this application becomes the property of the Kennedale Independent School District which reserves the right to accept or reject it. I hereby authorize Kennedale Independent School District to contact the references listed on this application, and to obtain any criminal history information relevant to this application for employment from any pertinent source in accordance with the provisions of the Texas Education Code Section 21.917, and I further authorize any law enforcement agency, including, but not limited to, any police department or the Department of Public Safety as well as the Texas Department of Corrections to furnish the Kennedale Independent School District any such record. References, placement folder information, and information which become a part of this record may be revealed to all persons who participate in the selection of employees.

Date: 9/22/04

Stephanie [Signature]

Return to: Director of Personnel

Signature of Applicant

Kennedale ISD  
P. O. Box 487  
Kennedale, Texas 76060  
(817) 483-3600

All professional personnel of the Kennedale Independent School District shall be employed without regard to national origin, race, sex, age, creed, or handicapping condition.

NEW EMPLOYEE INFORMATION SHEET

NAME Stephanie D. Dugger

SSN [REDACTED]

BIRTHDATE [REDACTED]

PHONE [REDACTED]

EMAIL ADDRESS \_\_\_\_\_

CAMPUS Special Programs

JOB TITLE Special Programs Assistant

REPLACING New

Salary: State \_\_\_\_\_

Local \_\_\_\_\_

Stipend \_\_\_\_\_

Stipend \_\_\_\_\_

Total Annual Salary: 24,080

Years of Experience: 0

Degree B

Step VII

Dates of Employment: 8/14/07 - 4/30/08

Number of Days Employed:

160

Hourly Salary: 21.50

Previous years in KISD \_\_\_\_\_

Fund Code (payroll use only) \_\_\_\_\_



KENNEDALE ISD

PERSONNEL INFORMATION

The Federal Government and Texas Education Agency (TEA) require us to confirm the following information of our employees for PEIMS data. Please check appropriate box and fill in the blanks.

ETHNICITY:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black, not of Hispanic origin
- Hispanic
- White, not of Hispanic origin

For Office Use Only	
Campus	<u>Spec. prog.</u>
Start Date	<u>8-14-07</u>
Annual Salary	<u>24,080.00</u>
Hourly Pay	_____
Hours Working	<u>1</u>
Replacing	<u>New</u>

DATE OF BIRTH: [REDACTED]

GENDER:

- Female
- Male

SOCIAL SECURITY NUMBER:

[REDACTED]

PHONE NUMBER: [REDACTED]

SIGNATURE & DATE:

Stephanie D Dupper      [Signature]      8/14/07  
Print First Name MI      Last Name      Sign Name      Date

**KENNEDALE INDEPENDENT SCHOOL DISTRICT  
BOARD MEETING**

**SPECIAL SESSION**

**7:00 P.M.**

**August 13, 2007**

The Board of Trustees of the Kennedale Independent School District met in special session August 13, 2007 at the Administration Building.

**CALL TO ORDER:**

The meeting was called to order by President Dr. Mike Walker.

Dr. Mike Walker stated that the Board may retire to executive session under Texas Government Code Section 551.001 et seq.

**ROLL CALL:**

**Members Present:** Dr. Mike Walker, Joe Taylor, Rhonda Barnes, Janet Adams,  
Dr. Lori Glover,

**Members Absent:** Eddie Patterson, Joe Alviar, Sr.

**NEW BUSINESS:**

**CONSIDER RESIGNATIONS**

M/M by Mr. Taylor and 2<sup>nd</sup> by Ms. Adams to accept the resignation from Nancy Neergaard at KJHS.

For: all

Against: none

Motion carried.

August 13, 2007

**Board Minutes (continued)****NEW BUSINESS:****CONSIDER HIRING OF PERSONNEL**

M/M by Mr. Taylor and 2<sup>nd</sup> by Ms. Adams to hire the following personnel for the 2007-2008 school year:

Teresa Allred – KHS  
Jennifer Lofton – KJHS  
Nathan Vandergriff – Delaney  
Stephanie Dugger

For: all  
Against: none  
Motion carried.

**DISCUSS AND CONSIDER CHANGES TO THE JJAEP MEMORANDUM OF UNDERSTANDING**

M/M by Dr. Glover and 2<sup>nd</sup> by Ms. Adams to approve the changes to the JJAEP Memorandum of Understanding.

For: all  
Against: none  
Motion carried.

**DISCUSS AND CONSIDER ACCEPTANCE OF THE TOBACCO COMPLIANCE GRANT**

M/M by Mr. Taylor and 2<sup>nd</sup> by Ms. Adams to accept the Tobacco Compliance Grant based on Administrative approval.

For: all  
Against: none  
Motion carried.

August 13, 2007

**Board Minutes (continued)****NEW BUSINESS:****DISCUSS AND CONSIDER A PROPOSED TAX RATE FOR THE 2007 TAX YEAR AND SET A DATE FOR THE PUBLIC MEETING ON THE BUDGET AND PROPOSED TAX RATE**

M/M by Mr. Taylor and 2<sup>nd</sup> by Dr. Glover to propose a 2007 tax rate of \$1.358610 and set the date of August 30<sup>th</sup> for a public meeting to discuss budget and proposed tax rate.

For: all  
 Against: none  
 Motion carried.

**DISCUSS AND CONSIDER RENEWAL OF PROPERTY CASUALTY INSURANCE**

M/M by Dr. Glover and 2<sup>nd</sup> by Ms. Adams to accept the renewal proposal from TASB for Kennedale ISD's property casualty insurance.

M/M by Dr. Glover and 2<sup>nd</sup> by Mr. Taylor to accept the renewal proposal from TASB for Kennedale ISD's insurance with an amendment to the first motion that we negotiate the hail damage deductible amount.

For: all  
 Against: none  
 Motion carried.

**DISCUSS AND CONSIDER BID FOR STAGE RIGGING FOR PERFORMING ARTS CENTER AND CONSTRUCTION UPDATE FOR KHS**

The following companies submitted proposals:

Company Name	Bid Amount	Performance & Payment Bond	Bid Amount Includes Install	Add #1
National Stage	\$95,551.74	Payment Bond	Yes	
Texas Scenic	\$96,150.00	Payment Bond	Yes	
Dallas Stage	\$119,898.00	Payment & Performance Bond	Yes	

August 13, 2007

**Board Minutes (continued)****NEW BUSINESS:**

M/M by Ms. Adams and 2<sup>nd</sup> by Dr. Glover to accept all three vendors' bids as presented, National Stage, Texas Scenic, & Dallas Stage, for stage rigging at the KHS.

For: all  
 Against: none  
 Motion carried.

**DISCUSS PERFORMANCE HALL "WALK OF FAME"**

Dr. Glover gave information on the "Walk of Fame."

No action taken.

**DISCUSS AND CONSIDER FNA (LOCAL) POLICY – STUDENT RIGHTS AND RESPONSIBILITIES REGARDING STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS**

M/M by Dr. Glover and 2<sup>nd</sup> by Ms. Adams to adopt the FNA (local) policy from TASB.

For: all  
 Against: none  
 Motion carried.


**ADJOURNMENT:**

M/M by Dr. Walker to adjourn meeting at 7:43 p.m.

For: all  
 Against: none  
 Motion carried.

.....

  
 \_\_\_\_\_  
 President

  
 \_\_\_\_\_  
 Secretary

August 13, 2007

This introductory page outlines the contents of the elections policy.  
See the following sections for statutory provisions on:

**SECTION I**

**Elections Generally**

1. Membership and terms
2. General election date
3. Joint elections
4. Method of election
5. Boundary change notice
6. Preclearance
7. Voting rights hotline

**SECTION II**

**Conducting Elections**

1. Election services
2. Election order and notices
3. Filing information
4. Election of unopposed candidate
5. Ballot
6. Election judges and clerks
7. Polling places
8. Bilingual materials
9. Voting systems
10. Early voting
11. Conducting elections

**SECTION III**

**Post-Election Procedures**

1. Determination of results
2. Canvass returns
3. Certificate of election
4. Officer's statement
5. Oath of office

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

**SECTION I: ELECTIONS GENERALLY**

MEMBERSHIP AND  
TERMS

The Board consists of seven members serving terms of three years, with elections held annually. The terms of one-third of the Board members, or as near to one-third as possible, expire each year. *Education Code 11.051(b), 11.059*

Board policy shall state the schedule on which specific terms expire. *Education Code 11.059* [See BBB(LOCAL)]

ADJUSTMENTS

Not later than December 31, 2011, the Board may adopt a resolution changing the length of the terms of its members. The resolution must provide for staggered terms of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for Board members that occurs after January 1, 2012, and a member who serves on that date shall serve the remainder of that term. *Education Code 11.059(e)*

Not later than December 31, 2012, if the District elects its Board members to a term that consists of an odd number of years, the District may adopt a resolution changing the length of the terms of its members to an even number of years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term. *Act of the 82nd Legislative Session, Senate Bill 100, Sec. 52*

GENERAL ELECTION  
DATE

Election of Board members of the District shall be on the May uniform election date. *Election Code 41.001*

CHANGING TO  
NOVEMBER  
ELECTION DATE

If the Board holds its general election for officers in May, the Board is authorized to change its general election for officers to the November uniform election date. The District must take such action not later than December 31, 2012. If the District changes its election date under this provision, it shall adjust the terms of office to conform to the new election date. *Election Code 41.0052(a), (b)*

JOINT ELECTIONS  
REQUIRED

A District Board member election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the District;
2. The general election for state and county officers. The general election for state and county officers is the first Tuesday after the first Monday in November in even-numbered years;

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

3. The election for the members of the governing body of a hospital district, if the District:
  - a. Is wholly or partly located in a county with a population of less than 40,000 that is adjacent to a county with a population of more than three million; and
  - b. Held its election for Board members jointly with the election for the members of the governing body of the hospital district before May 2007; or
4. The election for the members of the governing board of a public junior college district in which the District is wholly or partly located.

The election shall be held as a joint election under Election Code Chapter 271 and the voters shall be served by common polling places consistent with Election Code 271.003(b).

The Board shall adjust the terms of office of its members to conform to the new election date if the election date is changed to comply with Education Code 11.0581 [see ADJUSTMENTS, above].

*Education Code 11.0581; Election Code 41.002*

ADMINISTRATOR

The District may seek to create the position of joint elections administrator under Election Code Chapter 31, Subchapter F. *Election Code 31.152*

METHOD OF  
ELECTION

Election of Board members is by position or place in accordance with Texas law. The decision to elect Board members by this method shall not be rescinded. *Education Code 11.058*

BOUNDARY CHANGE  
NOTICE

If the District changes its boundaries, it shall not later than the 30th day after the date the change is adopted:

1. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and
2. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

*Election Code 42.0615*

PRECLEARANCE

The Board, being subject to the Voting Rights Act of 1965, shall submit any changes that affect elections to the U.S. Justice Department for preclearance and shall implement such changes unless the justice department interposes an objection within 60 days



after the date of submission. 42 U.S.C. 1973c; 28 CFR 51.6; Garza v. Gates, 482 F. Supp. 1211 (D.C. Tex. 1980)

NOTICE OF VOTING  
RIGHTS HOTLINE

A notice of voter's rights, in the form prescribed by the secretary of state and including information required by the secretary of state, shall be publicized as provided by the secretary of state. The notice shall, in part, inform voters of the telephone number and purpose of the secretary of state's toll-free hotline for reporting existing or potential abuse of voting rights. *Election Code 31.0055, 62.0115*

**SECTION II: CONDUCTING ELECTIONS**

ELECTION SERVICES

If requested to do so by the District, a county elections administrator shall enter into a contract to furnish election services, as set forth at Election Code Chapter 31, Subchapter D. A county elections administrator is not required to enter into a contract to furnish elections services for an election held on the second Saturday in May in an even-numbered year. *Election Code 31.093, 41.001(d)*

ELECTION ORDER

A call for an election shall be made not later than the 71st day before election day, except that for an election to be held on the date of the general election for state and county officers (the November uniform election date of even-numbered years), the election shall be called not later than the 78th day before the election day. The Board shall order the election. *Election Code 3.004-.005*

Each election order must state the date of the election, the offices or measures to be voted on, the location of the main early voting polling place, the dates and hours for early voting, the dates and hours of any Saturday and Sunday early voting, and the early voting clerk's official mailing address. The Board shall retain the election order for at least 22 months after election day. *Election Code 3.006, .008, 66.058(a), 83.010, 85.004, .007*

FAILURE TO ORDER  
AN ELECTION

Failure to order a general election does not affect the validity of the election. *Election Code 3.007*

ELECTION NOTICE  
CONTENTS

Notice of the election shall state:

1. The nature and date of the election;
2. The location of each polling place;
3. The hours the polls will be open; and
4. For early voting:
  - a. The location of the main early voting place, as determined under Election Code 85.002;

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

- b. The dates and hours for early voting, including the dates and hours of any Saturday and Sunday early voting; and
- c. The early voting clerk's official mailing address.

*Election Code 4.004(a), 83.010, 85.004, .007*

NOTICE OF SPECIAL ELECTION The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. *Election Code 4.004(b)*

PUBLICATION Notice of the election shall be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the District's boundaries or in a newspaper of general circulation in the District if none is published within the District's boundaries. The Board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication. The Board shall preserve that copy for at least six months after election day. *Election Code 4.003(a)(1), (c), .005(a), 66.058(a)(2)*

POSTING In addition to the notice described above, the District shall, not later than the 21st day before election day, post a copy of the notice on the bulletin board used for posting notices of the meetings of the Board. The notice must remain posted continuously through election day. The notice must include the location of each polling place. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the Board after the last posting is made. *Election Code 4.003(b), .005(b)*

NOTICE TO COUNTY CLERK AND VOTER REGISTRAR The Board shall also deliver notice of the election to the county clerk and voter registrar of each county in which the District is located not later than the 60th day before election day. *Election Code 4.008(a)*

NOTICE TO ELECTION JUDGE Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the Board shall deliver to the presiding judge of each election precinct in which the election is to be held in the District a written notice of:

1. The nature and date of the election;
2. The location of the polling place for the precinct served by the judge;
3. The hours that the polls will be open;
4. The judge's duty to hold the election in the precinct specified by the notice; and

BOARD MEMBERS  
ELECTIONS

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5. The maximum number of clerks that the judge may appoint for the election.

*Election Code 4.007*

FAILURE TO GIVE  
NOTICE OF  
ELECTION

Failure to give notice of a general election does not affect the validity of the election. *Election Code 4.006*

FILING INFORMATION  
NOTICE TO  
CANDIDATES

The District shall post notice of the dates of the filing period in a public place in a building where applications are filed not later than the 30th day before the last day on which a candidate may file an application for a place on the ballot. This requirement does not apply to an office to be filled at the general election for state and county officers (the November uniform election date of even-numbered years). *Election Code 141.040*

GENERAL  
ELECTION

An application for a place on the ballot may not be filed earlier than the 30th day before the date of the filing deadline.

An application must be filed not later than 5:00 p.m. of:

1. The 78th day before election day, if the election is to be held on the date of the general election for state and county officers (the November uniform election date of even-numbered years); or
2. The 71st day before election day, if the election is to be held on any other uniform election date.

*Education Code 11.055(a), (c); Election Code 144.005*

SPECIAL ELECTION

An application for a place on a special election ballot may not be filed before the election is ordered.

An application must be filed not later than:

1. 5:00 p.m. of the 62nd day before election day if election day is on or after the 70th day after the election is ordered;
2. 5:00 p.m. of the 31st day before election day, if election day is on or after the 36th day and before the 70th day after the date the election is ordered; or
3. 5:00 p.m. of a day fixed by the District, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before election day, if election day is before the 36th day after the date the election is ordered.

EXCEPTION

For a special election to be held on the date of the general election for state and county officers (the November uniform election date

BOARD MEMBERS  
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of even-numbered years), the day of the filing deadline is the 75th day before election day.

*Election Code 201.054(a), (d), (f)*

WRITE-IN  
CANDIDACY

A declaration of write-in candidacy must be filed no later than 5:00 p.m. of:

1. The 74th day before election day, if the election is to be held on the date of the general election for state and county officers (the November uniform election date of even-numbered years); or
2. The 71st day before election day, if the election is to be held on any other uniform election date.

*Education Code 11.056(b); Election Code 146.054*

APPLICATION

The application shall include all statutorily required information, including that found at Election Code 141.031 and 141.039, such as an oath and a statement that the candidate is aware of the nepotism law [see BBBB]. *Election Code 31.0021, 141.031, .039*

ELECTION OF  
UNOPPOSED  
CANDIDATE

The Board may declare each unopposed candidate elected to office if each candidate for an office that is to appear on the ballot is unopposed.

For purposes of determining whether all offices on a ballot are unopposed, a special election of the District is considered to be a separate election with a separate ballot from:

1. A general election for officers of the District held at the same time as the special election; or
2. Another special election of the District held at the same time as the special election.

*Election Code 2.051*

PROCEDURE FOR  
CANCELING  
ELECTION

The Board may declare each unopposed candidate elected to the office upon receipt of certification from the authority responsible for having the official ballot prepared. The certification must state that if the election were held, only the votes cast for that candidate in the election for that office may be counted. If the Board makes such a declaration, the election is not held. *Election Code 2.052, .053(a), (b)*

If no election is to be held by the District on election day, a copy of the order shall be posted on election day at each polling place used or that would have been used in the election.

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

If a Board member election has been canceled but a separate election is to be held by the District on election day, the ballots used at the separate election shall include the offices and names of the candidates declared elected. The offices and names of unopposed candidates shall be listed separately, after the measures or contested races in the separate election, under the heading "Unopposed Candidates Declared Elected." The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the unopposed candidates.

*Election Code 2.053(a), (c)*

BALLOT

The ballot shall be printed in the form required by law. *Election Code 52.061-.064, .069, .093-.094; Education Code 11.058(g)*

BALLOT POSITION

Except as otherwise provided by law, for an election at which the names of more than one candidate for the same office are to appear on the ballot in an independent column or are to appear on a general or special election ballot that does not contain a party nominee, the order of the candidates' names shall be determined by a drawing consistent with the requirements of Election Code 52.094. *Election Code 52.094*

ELECTION JUDGES  
AND CLERKS

The Board shall appoint election judges and set the maximum number of election clerks. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. *Election Code Chapter 32*

The nepotism prohibitions [see DBE] do not apply to appointment of an election clerk under Election Code 32.031 if the clerk is not related in the first degree by consanguinity or affinity to an elected official of the District. *Gov't Code 573.061(8)*

POLLING PLACES

The Board shall designate polling places. Each polling place shall be accessible to and usable by the elderly and physically handicapped. *Election Code 43.004, .034*

If the District holds an election on the November uniform election date, the District shall follow procedures from the secretary of state and designate as the polling places for the election the regular county polling places in the county election precincts that contain territory from the District. *Election Code 42.002(a)(5), .0621, 43.004(b)*

POSTING SIGNS  
PROHIBITED

A person other than an election officer commits an offense if the person posts a sign, card, poster, or similar material at a polling place, including the area within 100 feet of an outside door through which a voter may enter the building in which the polling place is located. *Election Code 62.013(b)*

BOARD MEMBERS  
ELECTIONS

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(LEGAL)

USE OF CERTAIN  
DEVICES  
PROHIBITED

A person may not use a wireless communication device or any mechanical or electronic means of recording images or sound within 100 feet of a voting station.

EXCEPTION

The prohibition does not apply to:

1. An election officer in conducting the officer's official duties;
2. The use of election equipment necessary for the conduct of the election; or
3. A person who is employed at the location in which a polling place is located, while the person is acting in the course of the person's employment.

*Election Code 61.013*

BILINGUAL MATERIALS  
SPANISH

Bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions.  
*Election Code 272.002*

An election precinct may apply for an exemption from the requirement to provide election materials in Spanish if official census information or other information indicates that persons of Spanish origin or descent comprise less than five percent of the precinct's inhabitants. *Election Code 272.003*

OTHER  
LANGUAGES

If the director of the census determines that the District must provide election materials in a language other than English or Spanish, the District shall provide election materials in that language in the same manner in which the District would be required to provide materials in Spanish, to the extent practicable. *Election Code 272.011; 42 U.S.C. 1973aa-1a*

VOTING SYSTEMS

A voting system shall be selected and utilized in accordance with Election Code Title 8. *Election Code Title 8*

VOTING MACHINES  
AND PUNCH-CARD  
BALLOTS

A voting system may not be used in an election if the system uses mechanical voting machines or a punch-card ballot or similar form of tabulating card. *Election Code 122.001(d)*

VOTERS WITH  
DISABILITIES  
ACCESSIBLE  
VOTING  
STATIONS

Each polling place in an election of the District must provide at least one voting station that complies with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments, and

BOARD MEMBERS  
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ELECTRONIC  
VOTING  
SYSTEMS  
EXCEPTIONS

that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012(a)*

Upon providing the notice detailed in Election Code 61.013(d), the District is not required to meet the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments if the District's election is not held jointly with another election in which a federal office appears on the ballot and if the District is located in a county:

1. With a population of less than 2,000;
2. With a population of 2,000 or more but less than 5,000, and the District provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day;
3. With a population of 5,000 or more but less than 10,000, and the District provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance;
4. With a population of 10,000 or more but less than 20,000, and the District:
  - a. Makes a showing in the manner provided by Election Code 61.103(c) that compliance with Section 61.012(a)(1)(C) constitutes an undue burden on the county;
  - b. Provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance; and
  - c. Provides a mobile voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) that during the period for early voting by personal appearance is deployed at least once at each polling place used for early voting by personal appearance.

For purposes of the above requirement, a district located in more than one county may choose:

- a. To be considered located in the county that contains the greatest number of registered voters of the District; or

BOARD MEMBERS  
ELECTIONS

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- b. For each portion of the District located in a different county, to be considered a separate political subdivision.

*Election Code 61.013*

MULTIPLE VOTING SYSTEMS PERMITTED	The District may use more than one type of voting system in a single polling place in order to provide a person with physical disabilities with a method of casting a secret ballot. 1 TAC 81.55 [See GA]
VOTING SYSTEM MALFUNCTION	If no private vendor supports the District's voting system, the District must give notice to the secretary of state within 24 hours of a malfunction of the District's voting system software or equipment in an election. The notice may be verbal or in writing. 1 TAC 81.64
EARLY VOTING	The Board shall provide for early voting in Board elections by personal appearance at an early voting polling place and by mail in accordance with Election Code Title 7. <i>Election Code 81.001</i>
CONDUCTING ELECTIONS	Elections shall be conducted in accordance with Election Code Title 6. <i>Election Code Title 6</i>

**SECTION III: POST-ELECTION PROCEDURES**

DETERMINATION OF RESULTS PLURALITY	To be elected to a public office, a candidate must receive a plurality of votes, more votes than any other candidate, except as otherwise provided by law. <i>Election Code 2.001</i>  The candidate receiving the highest number of votes for each respective position voted on is entitled to serve as Board member. <i>Education Code 11.057(a)</i>
MAJORITY VOTE OPTION	The Board may provide by resolution, not later than the 180th day before the date of an election, that a candidate must receive a majority of the votes cast for a position to be elected.  The resolution is effective until rescinded by a subsequent resolution adopted not later than the 180th day before the date of the first election to which the rescission applies.  <i>Education Code 11.057(c)</i>
RUNOFF ELECTION	If no candidate for a particular office receives the vote necessary to be elected in an election requiring a majority vote, a runoff election for that office is required. <i>Election Code 2.021 et seq.</i>
WRITE-IN VOTING	A write-in vote may not be counted for a person who has not filed a declaration of write-in candidacy with the Secretary of the Board in the manner provided for write-in candidates in a general election for state and county officers. To the extent practicable and in accordance with rules adopted by the secretary of state, Election



BOARD MEMBERS  
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Code Chapter 146, Subchapter B, shall govern write-in voting in Board member elections. *Education Code 11.056*

TIE VOTES

In accordance with Election Code 2.002, if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held, unless the candidates agree to cast lots, one candidate withdraws, or an automatic recount resolves the tie. *Election Code 2.002*

CANVASS RETURNS

Except as provided below, the Board shall canvass the returns at the time set by the presiding officer not earlier than the eighth day or later than the 11th day after election day.

For an election held on the uniform election date in May, the local canvass must occur not later than the 11th day after election day and not earlier than the later of:

1. The third day after election day;
2. The date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or
3. The date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.

Two members of the Board constitute a quorum for purposes of canvassing an election.

*Election Code 67.003, .004(a)*

CERTIFICATE OF  
ELECTION

After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass. A certificate of election must contain:

1. The candidate's name;
2. The office to which the candidate is elected;
3. A statement of election to an unexpired term, if applicable;
4. The date of the election;
5. The signature of the officer preparing the certificate; and
6. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

The authority preparing a certificate of election shall promptly deliver it to the person for whom it is prepared, subject to the submission of a recount petition.

BOARD MEMBERS  
ELECTIONS

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A recount petition shall delay the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount. A candidate may not qualify for an office involved in a recount before completion of the recount. A candidate who has received a certificate of election and qualified for an office before the submission of a recount petition shall not be affected by the recount petition.

A certificate of election may not be issued to a person who has been declared ineligible to be elected to the office.

The presiding officer of the canvass shall also prepare a report of the precinct results as contained in the election register and shall deliver the report to the secretary of state as required by law.

*Election Code 67.016, .017, 212.0331*

CERTIFICATE OF  
ELECTION FOR  
UNOPPOSED  
CANDIDATE

A certificate of election shall be issued to each unopposed candidate in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election. *Election Code 2.053(c)*

OFFICER'S  
STATEMENT

Newly elected and appointed Board members, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer's statement. The statement shall be retained with the official records of the office. *Tex. Const. Art. XVI, Sec. 1(b)* [See BBB(EXHIBIT)]

OATH OF OFFICE

After the officer's statement has been signed and certificates of election have been issued, but before entering upon the duties of the office, the Board member shall take the oath or affirmation of office and shall file it with the President of the Board. *Tex. Const. Art. XVI, Sec. 1(a); Education Code 11.061* [See BBB(EXHIBIT)]

The oath may be administered and a certificate of the fact given by the individuals listed at Government Code 602.002, including:

1. A judge, retired judge, or clerk of a municipal court.
2. A judge, retired judge, senior judge, clerk, or commissioner of a court of record.
3. A notary public.
4. A justice of the peace or clerk of a justice court.
5. The secretary of state or a former secretary of state.
6. The speaker of the house of representatives or a former speaker of the house of representatives.

**BOARD MEMBERS  
ELECTIONS**

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7. The lieutenant governor or a former lieutenant governor.
8. The governor or a former governor.
9. A legislator or retired legislator.
10. The attorney general or a former attorney general.

*Gov't Code 602.002*

ELECTIONEERING

The Board may not use state or local funds or other resources of the District to electioneer for or against any candidate, measure, or political party. *Education Code 11.169*

POLITICAL  
ADVERTISING

No officer or employee of the District shall knowingly expend or authorize the expenditure of District funds for the purpose of political advertising. Funds may be expended, however, for advertising that describes the factual reasons for a measure and does not advocate the passage or defeat of such measure.

No officer or employee of the District shall spend or authorize the expenditure of District funds for a communication describing a measure if the communication contains information that:

1. The officer or employee knows is false; and
2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

It is an affirmative defense that the officer or employee reasonably relied on a court order, or an interpretation in a written opinion issued by a court of record, the attorney general, or the Ethics Commission.

On written request of the District that has ordered an election on a measure, the Ethics Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to a measure complies with the section.

*Election Code 255.003 [See CPAB]*

NEWSLETTERS

A newsletter of a public officer of the District is not political advertising if:

1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
2. It includes no more than eight personally phrased references on a page that is 8 1/2" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and
3. When viewed as a whole and in the proper context:
  - a. Is informational rather than self promotional;
  - b. Does not advocate passage or defeat of a measure; and

ELECTIONS  
ETHICS

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- c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

*1 TAC 26.2*

NEPOTISM

A candidate shall not take affirmative action to influence a District employee or current Trustee regarding the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation, or dismissal of a person related to the candidate within a prohibited degree of relationship under the nepotism law. [See DBE(EXHIBIT)] However, this prohibition does not apply to a candidate's actions taken with respect to a bona fide class or category of employees or prospective employees. Gov't Code 573.042

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PROHIBITED PRACTICES

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RESTRICTIONS ON  
PUBLIC SERVANTS —  
PENAL CODE

"Public servant" shall mean a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed his or her duties:

1. An officer, employee, or agent of government; or
2. A candidate for nomination or election to public office.

*Penal Code 1.07(a)(41)(A), (E)*

Prohibited activities are covered by, but are not limited to, the following:

BRIBERY

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
  - a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
  - b. As consideration for a violation of a duty imposed on the public servant by law.
  - c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

*Penal Code 36.01(3), .02*

ILLEGAL GIFTS

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of the District. *Penal Code 1.07(41)(A), (E), 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section

may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

EXCEPTIONS

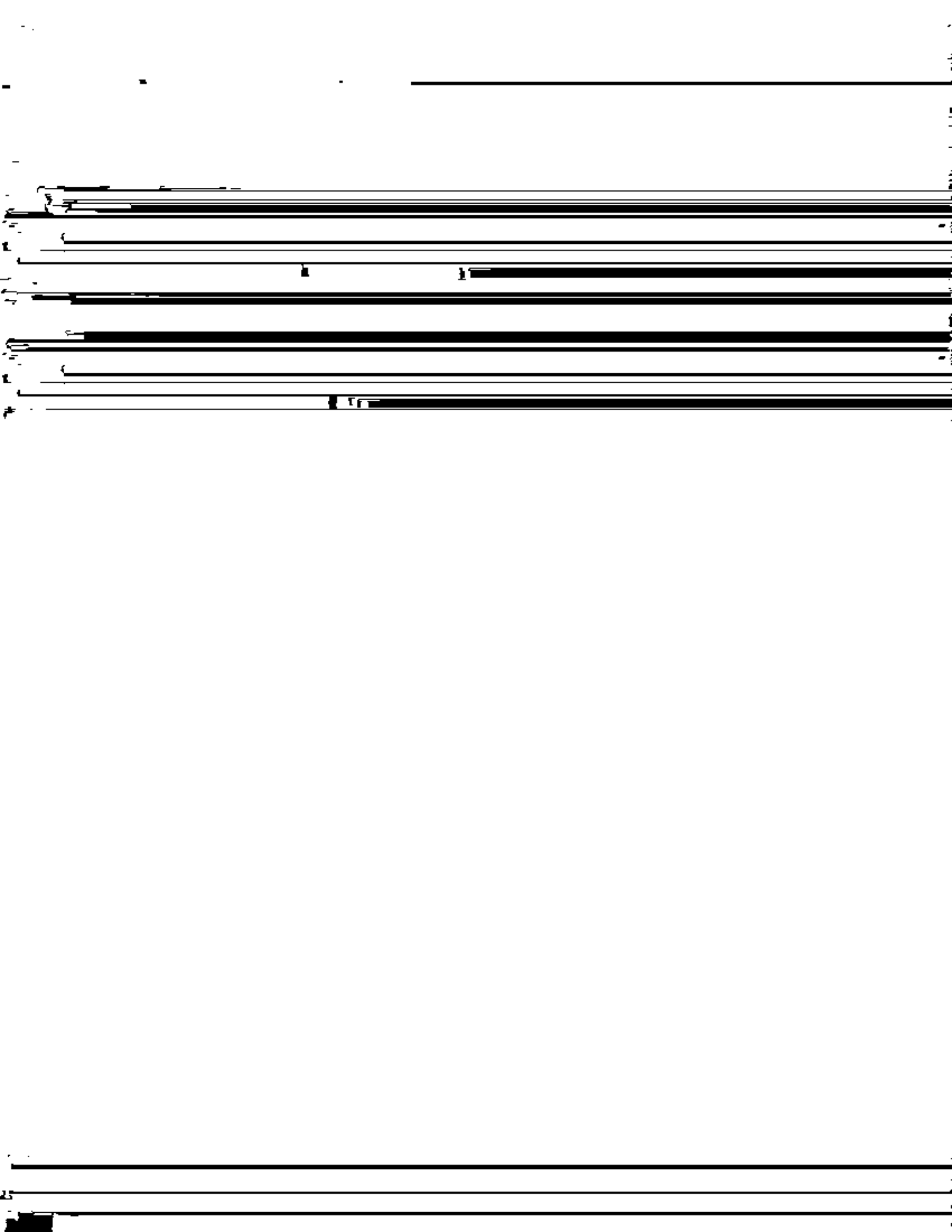
"Illegal gifts to public servants" does not apply to:

- a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;
- b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
- c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
  - (1) The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
  - (2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;
- d. A political contribution as defined by Title 15, Election Code;
- e. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
- f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or
- g. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

*Penal Code 36.10*

HONORARIA AND  
EXPENSES

3. A public servant commits a class A misdemeanor offense if he or she solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not





related to another member of the board by blood or marriage within a prohibited degree.

*Gov't Code 573.002, .041; Atty. Gen. Op. JC-184 (2000) [See DBE]*

DEFINITION OF  
PUBLIC OFFICIAL

"Public official" shall mean:

- a. An officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; or
- b. An officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state.

*Gov't Code 573.001(3)*

The nepotism law governs the hiring of an individual, whether the individual is hired as an employee or an independent contractor. *Atty. Gen. Op. DM-76 (1992)*

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible. *Gov't Code 573.083*

COUNTIES WITH  
POPULATION  
35,000 OR MORE

In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the District's employment policy [see DC], the Board delegates to the Superintendent the final authority to select District personnel:

- a. The Superintendent is a public official for the purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and
- b. Each member of the Board remains subject to the nepotism prohibitions with respect to all District employees.

For purposes of this provision, a person hired by the District before September 1, 2007, is considered to have been in continuous employment [see DBE] and is not prohibited from continuing employment with the District subject to the abstention requirements.

*Education Code 11.1513(f)-(h)*

- COUNTIES WITH POPULATION LESS THAN 35,000
- In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000:
- a. A member of a board that has delegated to the Superintendent final authority for personnel selection is not subject to the nepotism provisions to the extent of such delegation. *Atty. Gen. Op. GA-123 (2003)*
  - b. Nevertheless, a Board member may remain the relevant public official for nepotism purposes concerning some employment decisions, such as renewal. *Atty. Gen. Op. GA-177 (2004)*
- FORMER BOARD MEMBER EMPLOYMENT
6. A Board member of the District may not accept employment with the District until the first anniversary of the date the Board member's membership on the Board ends. *Education Code 11.063*
- INCOMPATIBILITY OF OFFICE
7. One person may not occupy two legally incompatible offices. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. A person may not serve in one branch of government while exercising any powers properly attached to either of the other branches of government. *Texas Constitution, Art. II, Sec. 1; State v. Martin, 51 S.W.2d 815 (Tex. Civ. App. 1932); Thomas v. Abernathy County Line Indep. Sch. Dist., 290 S.W. 152 (Tex. Comm. App. 1927); Turner v. Trinity Indep. Sch. Dist., 700 S.W.2d 1 (Tex. Ct. App. 1983); Atty. Gen. Op. JM-634 (1987)*
- DEPOSITORY CONFLICT
8. A Board member who is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become a depository for the District shall not vote on the awarding of a depository contract to said bank. *Education Code 45.204(b)*
- INSTRUCTIONAL MATERIALS VIOLATIONS—COMMISSIONS
9. A Board member commits a class B misdemeanor offense if the Board member receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the Board member is associated. *Education Code 31.152(a)*
- INSTRUCTIONAL MATERIALS VIOLATIONS—CONFLICT
10. A Board member commits a class B misdemeanor offense if the Board member accepts a gift, favor, or service that:
- a. Is given to the Board member or the Board member's school;

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PROHIBITED PRACTICES

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- b. Might reasonably tend to influence the Board member in the selection of instructional materials or technological equipment; and
- c. Could not be lawfully purchased with state instructional materials funds.

"Gift, favor, or service" does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

*Education Code 31.152(b)-(d)*

INSTRUCTIONAL  
MATERIALS  
VIOLATIONS—  
PURCHASE AND  
DISTRIBUTION

- 11. A Board member commits a Class C misdemeanor offense if the Board member knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*

LOCAL REVENUE SOURCES  
APPRAISAL DISTRICT

CCH  
(LEGAL)

PARTICIPATION	The District shall participate in the appropriate countywide appraisal district or districts. <i>Tex. Const., Art. VIII, Sec. 18(b)</i>
APPRAISAL FUNCTION	The county appraisal district shall be responsible for appraising District property in the appraisal district for ad valorem tax purposes. <i>Tax Code 6.01(b)</i>
APPRAISAL DISTRICT BOARD OF DIRECTORS	The Board shall participate in the election of the board of directors of the appraisal district or districts as provided by law.
ELIGIBILITY	<p>To be eligible to serve on the appraisal district board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the appraisal district and must have resided in the appraisal district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the appraisal district board is not ineligible because of membership on the governing body of a taxing unit.</p> <p>A District employee is not eligible to serve on the board of directors unless the employee is also a member of another governing body or an elected official of a taxing unit that also participates in the appraisal district.</p> <p><i>Tax Code 6.03(a)</i></p>
RESTRICTIONS NEPOTISM	<p>An individual is ineligible to serve on an appraisal district board of directors if the individual is related:</p> <ol style="list-style-type: none"><li>1. Within the second degree by consanguinity or affinity, as determined under Government Code Chapter 573, Subchapter B [see DBE], to an individual who is engaged in the business of appraising property for compensation for use in proceedings relating to property taxes or of representing property owners for compensation in proceedings relating to property taxes in the appraisal district.</li><li>2. Within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B [see DBE], to a member of the appraisal district's board of directors.</li></ol>
DELINQUENT TAXES	<p>An individual is ineligible to serve on an appraisal district board of directors if the individual owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless the delinquent taxes and any penalties and interest are being paid under an installment payment agreement, or a suit to collect the delinquent taxes is deferred or abated.</p> <p><i>Tax Code 6.035(a)</i></p>

LOCAL REVENUE SOURCES  
APPRAISAL DISTRICT

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(LEGAL)

CONFLICT OF INTEREST	<p>An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:</p>
	<ol style="list-style-type: none"><li>1. The appraisal district; or</li><li>2. A taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity relating to property taxes.</li></ol>
	<p>An individual has a substantial interest in a business entity if the combined ownership of the individual and the individual's spouse is at least ten percent of the voting stock or shares of the business entity or the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.</p>
	<p>"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.</p>
	<p><i>Tax Code 6.036</i></p>
RECALL	<p>The School Board, by resolution submitted to the county clerk, may call for the recall of a member of the board of directors of an appraisal district for whom the School Board cast any of its votes in the appointment of the appraisal district board in accordance with Tax Code 6.033. <i>Tax Code 6.033(a)</i></p>
TERMS	<p>The taxing units participating in an appraisal district may provide that the terms of the appointed members of the appraisal district board of directors be staggered in accordance with Tax Code 6.034. <i>Tax Code 6.034(a)</i></p>
APPRAISAL OFFICE	<p>The board of directors of an appraisal district may contract with a taxing unit in the appraisal district to perform the duties of the appraisal office for the appraisal district. <i>Tax Code 6.05(b)</i></p>
OWNERSHIP OR LEASE OF REAL PROPERTY	<p>The acquisition or conveyance of real property or the construction or renovation of a building or other improvement by an appraisal district must be approved by the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of appraisal district board members.</p>
	<p>The appraisal district board of directors by resolution may propose a property transaction or other action for approval of the taxing units. The chief appraiser shall notify the School Board President by delivering a copy of the appraisal district board's resolution, together with information showing the costs of other available alternatives to the proposal.</p>

LOCAL REVENUE SOURCES  
APPRAISAL DISTRICT

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(LEGAL)

On or before the 30th day after the date the School Board President receives notice of the proposal, the School Board by resolution may approve or disapprove the proposal. If the School Board fails to act on or before that 30th day or fails to file its resolution with the chief appraiser on or before the 10th day after that 30th day, the proposal is treated as if it were disapproved by the School Board.

PROCEEDS

The proceeds of a conveyance of appraisal district property shall be credited to each taxing unit that participates in the appraisal district in proportion to the unit's allocation of the appraisal district budget in the year in which the transaction occurs.

*Tax Code 6.051(b)-(c)*

BUDGET AND  
FINANCING

Each year the chief appraiser shall prepare a proposed budget for the operations of the appraisal district for the following tax year as described in Tax Code 6.06(a) and shall submit a copy to the School District before June 15.

PUBLIC POSTING

Each taxing unit entitled to vote on the appointment of appraisal district board members shall maintain a copy of the proposed budget for public inspection at its principal administrative office.

BUDGET ADOPTION

The appraisal district board of directors shall hold a public hearing to consider the budget. The secretary of the appraisal district board shall deliver to the School Board President not later than the 10th day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The appraisal district board of directors shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15.

If governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving a budget and file them with the secretary of the appraisal district board within 30 days after its adoption, the budget does not take effect, and the appraisal district board shall adopt a new budget within 30 days of the disapproval.

AMENDMENTS

The appraisal district board may amend the approved budget at any time, but the secretary of the appraisal district board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the district not later than the 30th day before the date the board acts on it.

LOCAL REVENUE SOURCES  
APPRAISAL DISTRICT

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(LEGAL)

ALLOCATION	<p>Each taxing unit participating in the appraisal district is allocated a portion of the amount of the budget and must pay its allocation as provided by Tax Code 6.06.</p> <p><i>Tax Code 6.06(a)-(d)</i></p>
CHANGES IN METHOD OF FINANCING	<p>The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the appraisal district after June 15 and before August 15, may prescribe a different method of allocating the costs of operating the appraisal district unless the governing body of any taxing unit that participates in the appraisal district adopts a resolution opposing the different method, and files it with the appraisal district board of directors before September 1. If an appraisal district board proposal is rejected, the appraisal district board shall notify, in writing, each taxing unit participating in the appraisal district before September 15.</p> <p>The taxing units participating in an appraisal district may adopt a different method of allocating the costs of operating the district in accordance with Tax Code 6.061.</p> <p><i>Tax Code 6.061(a)-(b)</i></p>
DISAPPROVAL OF APPRAISAL DISTRICT BOARD ACTIONS	<p>If the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board of directors and file them with the secretary of the appraisal district board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed. <i>Tax Code 6.10</i></p>
APPRAISAL REVIEW BOARD	<p>An appraisal review board is established for each appraisal district, unless the boards of directors of two or more adjoining appraisal districts provide for the operation of a consolidated appraisal review board by interlocal contract. Members of the appraisal review board are appointed by the appraisal district board of directors.</p> <p>Members of the appraisal review board are subject to the eligibility restrictions described in Tax Code 6.412, including prohibitions on service by school district board members, officers, and employees, and Tax Code 6.413, including prohibitions on service by individuals who are parties to certain contracts.</p> <p><i>Tax Code 6.41, .412-.413</i></p>
EXCEPTION	<p>In a county with a population of 3.3 million or more or a county with a population of 550,000 or more that is adjacent to a county with a population of 3.3 million or more, the members of the appraisal re-</p>

LOCAL REVENUE SOURCES  
APPRAISAL DISTRICT

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view board are appointed in accordance with Tax Code 6.41 by the local administrative district judge in the county in which the appraisal district is established. *Tax Code 6.41(d-1)*

PROHIBITION ON  
CONTRACTS

The School District may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the School District participates or with a business entity in which a member of the appraisal review board has a substantial interest as defined in Tax Code 6.413. *Tax Code 6.413*

AUXILIARY APPRAISAL  
REVIEW BOARD  
MEMBERS

The board of directors of an appraisal district by resolution of a majority of the members may provide for a number of auxiliary appraisal review board members that the appraisal district board considers appropriate to hear taxpayer protests before the appraisal review board and to assist the appraisal district board in performing its duties. *Tax Code 6.414(a)*

An auxiliary board member is appointed in the same manner and for the same term as an appraisal review board member and is subject to the same eligibility requirements. *Tax Code 6.414(b)*

An auxiliary board member may:

1. Attend meetings of the appraisal review board but may not vote in a determination made by the board or serve as chairman or secretary of the board. An auxiliary board member is not included in determining what constitutes a quorum of the board or whether a quorum is present at any meeting of the board.
2. Hear taxpayer protests before the appraisal review board. If one or more auxiliary board members sit on a panel established under Tax Code 41.45 to conduct a protest hearing, the number of regular appraisal review board members required to constitute the panel is reduced by the number of auxiliary board members sitting. An auxiliary board member sitting on a panel is considered a regular board member for all purposes related to the conduct of the hearing.
3. Make a recommendation to the appraisal review board regarding a protest heard by the member but is not entitled to vote on the determination of the protest by the board.

*Tax Code 6.414(c), (d), (e)*



EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
NEPOTISM

DBE  
(EXHIBIT)

These illustrations depict the relationships that violate the nepotism law.

CONSANGUINITY Board member is prospective employee's:  
(Blood) Kinship

First Degree	Parent	Child		
Second Degree	Grandparent	Grandchild	Sister/Brother	
Third Degree	Great-Grandparent	Great-Grandchild	Aunt/Uncle	Niece/Nephew

AFFINITY  
(Marriage) Kinship

Board member's spouse is the prospective employee.

OR

Board member's spouse is prospective employee's:

OR

Prospective employee's spouse is the Board member's:

First Degree	Parent	Child	
Second Degree	Grandparent	Grandchild	Sister/Brother

NOTE: The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the Board member and prospective employee through either of their spouses.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
NEPOTISM

DBE  
(LEGAL)

**DEFINITION** In this policy, the term "appoint" includes appointing, confirming the appointment of, and voting to appoint or confirm the appointment of a person.

**NEPOTISM PROHIBITED** Except as provided by this policy, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The person is related to the public official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree [see below]; or
2. The public official holds the appointment or confirmation authority as a member of a local board and the person is related to another member of the board by blood or marriage within a prohibited degree.

*Gov't Code 573.002, .041; Atty. Gen. Op. JC-184 (2000)*

**INDEPENDENT CONTRACTOR** The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor.  
*Atty. Gen. Op. DM-76 (1992)*

**SUPERINTENDENT COUNTIES WITH POPULATION 35,000 OR MORE** In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the employment policy [see DC], the Board delegates to the Superintendent the final authority to select District personnel:

1. The Superintendent is a public official for purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and
2. Each member of the Board remains subject to the nepotism prohibitions with respect to all District employees.

For purposes of this provision, a person hired by the District before September 1, 2007, is considered to have been in continuous employment [see CONTINUOUS EMPLOYMENT, below] and is not prohibited from continuing employment with the District subject to the abstention requirements.

*Education Code 11.1513(f)-(h)*

**COUNTIES WITH POPULATION LESS THAN 35,000** In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, to the extent the Board has delegated final hiring authority to the Superintendent to select personnel [see DC], the Superintendent is a "public official" for purposes of the nepotism laws. *Atty. Gen. Op. GA-123 (2003)* [See BBFB]

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
NEPOTISM

DBE  
(LEGAL)

COMPENSATION OF  
PROHIBITED  
EMPLOYEE

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the person is ineligible. *Gov't Code 573.083*

CONSANGUINITY

Two persons are related to each other by consanguinity (blood) if one is a descendant of the other or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parents for this purpose. *Gov't Code 573.022*

An individual's relatives within the third degree by consanguinity are the individual's:

1. Parent or child (first degree);
2. Brother, sister, grandparent, or grandchild (second degree); and
3. Great-grandparent, great-grandchild, aunt or uncle (who is a sibling of a parent of the person), nephew or niece (who is a child of a brother or sister of the person) (third degree).

*Gov't Code 573.023(c)* [See DBE(EXHIBIT)]

HALF-BLOOD  
RELATIVES

There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

AFFINITY

Two persons are related to each other by affinity (marriage) if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. This provision applies to a Board member or officer of the District only until the youngest child of the marriage reaches the age of 21 years.

*Gov't Code 573.024*

A husband and wife are related to each other in the first degree by affinity. For other relationships, the degree of affinity is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the persons is related to the other person in the second degree by affinity.

A person's relatives within the second degree by affinity are:

1. The person's spouse;

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
NEPOTISM

DBE  
(LEGAL)

2. Anyone related by consanguinity to the person's spouse within the first or second degree; and
3. The spouse of anyone related to the person by consanguinity within the first or second degree.

*Gov't Code 573.025*

EFFECT OF BOARD  
MEMBER  
RESIGNATION

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Board member's resignation is filled by a successor, the Board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), O-6259 (1945)*

EXCEPTIONS

CONTINUOUS  
EMPLOYMENT  
(“GRANDFATHER  
CLAUSE”)

The nepotism prohibitions do not apply to the appointment of a person to a position if the person is employed in the position immediately before the election or appointment of the public official to whom the person is related in a prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

*Gov't Code 573.062(a)*

RETIREES

A teacher who has retired from a full-time, certified teacher position has broken his or her employment with the District and does not qualify for the continuous-employment exception to the nepotism laws. *Atty. Gen. Op. JC-442 (2001)*

For purposes of calculating the appropriate date for the applicability of the continuous-employment exception, a superintendent with final authority to select personnel is an appointed public official. *Atty. Gen. Op. GA-177 (2004)*

ABSTENTION

If an employee continues in a position under this exception, the public official to whom the employee is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the employee, if the action applies only to the employee and is not taken regarding a bona fide class or category of employees. *Gov't Code 573.062(b)*

A "change in status" includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. *Atty. Gen. Op. JC-193 (2000)*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
NEPOTISM

DBE  
(LEGAL)

For an action to be "taken with respect to a bona fide category of employees," the officeholder's action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. *Atty. Gen. Op. DM-46 (1991)*

SUBSTITUTE  
TEACHER

The nepotism prohibitions do not apply to appointment or employment of a substitute teacher. *Gov't Code 573.061*

BUS DRIVER

COUNTIES WITH  
POPULATION  
LESS THAN  
35,000

In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, the nepotism prohibitions do not apply to an appointment or employment of a bus driver. *Gov't Code 573.061(4)*

TRADING

A public official may not appoint a person to a position in which the person's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The person is related to another public official within the prohibited degree; and
2. The appointment would be carried out in whole or in partial consideration for the other public official's appointing a person who is related to the first public official within a prohibited degree.

*Gov't Code 573.044*

FEDERAL FUNDS

The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. *Atty. Gen. L.A. No. 80 (1974)*

PENALTIES

An individual who violates the nepotism prohibitions shall be removed from his or her position. *Gov't Code 573.081, .082*

An individual who violates Government Code 573.041 [see NEPOTISM PROHIBITED], 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION], or 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE] commits an offense involving official misconduct. *Gov't Code 573.084*

EMPLOYMENT PRACTICES

DC  
(LEGAL)

EMPLOYMENT  
POLICIES

The Board shall adopt a policy providing for the employment and duties of District personnel. The policy shall provide that:

- SUPERINTENDENT 1. The Board employs and evaluates the Superintendent;
- SELECTION OF PERSONNEL 2. The Superintendent has sole authority to make recommendations to the Board regarding the selection of all personnel, except that the Board may delegate final authority for those decisions to the Superintendent [see SUPERINTENDENT RECOMMENDATION, below];
- CAMPUS ASSIGNMENTS 3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP]; and
- JOB POSTINGS 4. Notice will be provided of vacant positions [see POSTING OF VACANCIES, below].
- EMPLOYEE GRIEVANCES 5. Each employee has the right to present grievances to the Board. [See GRIEVANCES, below]

*Education Code 11.1513*

CONTRACT  
POSITIONS

The Board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)*

DELEGATION OF  
AUTHORITY

The District's employment policy may specify the terms of District employment or delegate to the Superintendent the authority to determine the terms of employment with the District. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

INTERNAL AUDITOR

If the District employs an internal auditor, the Board shall select the internal auditor and the internal auditor shall report directly to the Board. *Education Code 11.170*

SUPERINTENDENT  
RECOMMENDATION

The Board may accept or reject the Superintendent's recommendation regarding the selection of District personnel and shall include the Board's acceptance or rejection in the minutes of the Board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If the Board rejects the Superintendent's recommendation, the Superintendent shall make alternative recommendations until the Board accepts a recommendation. *Education Code 11.1513*

POSTING OF  
VACANCIES

The District's employment policy must provide that not later than the tenth school day before the date on which the District fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position

EMPLOYMENT PRACTICES

DC  
(LEGAL)

that affects the safety and security of students as determined by the Board, the District must provide to each current District employee:

1. Notice of the position by posting the position on:
  - a. A bulletin board at:
    - (1) A place convenient to the public in the District's central administrative office, and
    - (2) The central administrative office of each campus during any time the office is open; or
  - b. The District's Internet Web site, if the District has a Web site; and
2. A reasonable opportunity to apply for the position.

*Education Code 11.1513(d)*

EXCEPTION

If, during the school year, the District must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the District must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, the District is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

GRIEVANCES

The District's employment policy must provide each employee with the right to present grievances to the Board. The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

*Education Code 11.1513(i)-(j)* [See DGBA]

TRANSFERS

The District's employment policy may include a provision for providing each current District employee with an opportunity to participate in a process for transferring to another school in or position with the District. *Education Code 11.1513(c)(3)* [See DK]

CONTRACT  
EMPLOYEES

The District shall employ each classroom teacher, principal, librarian, nurse, or counselor under a probationary contract, a continu-

EMPLOYMENT PRACTICES

DC  
(LEGAL)

	<p>ing contract, or a term contract. The District is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. <i>Education Code 21.002</i></p> <p>"Classroom teacher" means an educator who is employed by the District and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. <i>Education Code 5.001(2)</i></p>
LENGTH OF CONTRACT	<p>A contract between the District and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. The Commissioner may reduce the number of days of service, but such a reduction by the Commissioner does not reduce an educator's salary. <i>Education Code 21.401</i></p>
EDUCATIONAL AIDES	<p>The Board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. <i>Education Code 54.214(f)</i></p>
EMPLOYMENT OF RETIREES	<p>The District shall file a monthly certified statement of employment of a retiree in the form and manner required by TRS. The District shall inform TRS of changes in status of the District that affect the District's reporting responsibilities.</p> <p>The certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the District.</p> <p>An administrator of the District who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.</p> <p><i>Gov't Code 824.6022, 825.403(k); 34 TAC 31.2</i></p>
FORMER BOARD MEMBER EMPLOYMENT	<p>A Board member is prohibited from accepting employment with the District until the first anniversary of the date the Board member's membership on the Board ends. <i>Education Code 11.063</i></p>
NEW HIRES I-9 FORMS	<p>The District shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.</p> <p>The District must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:</p>



EMPLOYMENT PRACTICES

DC  
(LEGAL)

1. Within three business days of initial hiring. If the District hires an individual for employment for a duration of less than three business days, the District must verify employment at the time of hire.

The District shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

When the District rehires an individual, the District may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

*8 CFR 274a.2(b)(1)(ii), (iii), (vii), (viii)*

NEW HIRE  
REPORTING

The District shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain the District's name, address, and employer identification number.

The District may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the District's payroll address for mailing of notice to withhold child support.

The District shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the District and in a format acceptable to the attorney general.

DEADLINE

New hire reports are due:

1. Not later than 20 calendar days after the date the District hires the employee; or
2. In the case of the District transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

PENALTIES

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

*42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. 1*

EMPLOYMENT PRACTICES

DC  
(LEGAL)

SOCIAL SECURITY  
NUMBERS

The District shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

EXCEPTIONS

The above provision does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;
2. Any disclosure to the District maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or
3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within the District's jurisdiction.

STATEMENT OF  
USES

A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

*Privacy Act of 1974, Pub. L. No. 93-579, sec. 7, 88 Stat. 1896, 1897 (1974)*

EMPLOYMENT PRACTICES  
AT-WILL EMPLOYMENT

DCD  
(LEGAL)

The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. Jones v. Legal Copy, Inc., 846 S.W.2d 922 [Tex. App.—Houston [1st Dist.] 1993, no writ]

The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985)

In Texas, at-will employment is presumed unless shown otherwise. Gonzales v. Galveston Ind. Sch. Dist., 865 F.Supp. 1241 (S.D. Tex. 1994)

Employment for an indefinite term may be terminated at-will and without cause, except as otherwise provided by law. Garcia v. Reeves County, Texas, 32 F.3d 200 (5th Cir. 1994); Irby v. Sullivan, 737 F.2d 1418 (5th Cir. 1984); Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723 (Tex. 1990)

EXCEPTION

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions]

NEPOTISM

A superintendent to whom the Board has delegated final hiring authority to select personnel is a "public official" with appointment authority for purposes of the nepotism laws. Atty. Gen. Op. GA-123 (2003) [See DBE]

DISMISSAL  
PROCEDURE

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement nor right. Mott v. Montgomery County, 882 S.W.2d 635, 638 (Tex. App.—Beaumont 1994, writ denied)

Termination of employment is a condition of work that is a proper subject for the grievance process. Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203 (1984); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984) [See DGBA]

NOTICE TO THE  
COMMISSIONER

See policy DF regarding circumstances under which a certified paraprofessional employee's dismissal will be reported to the Commissioner.

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE B. ETHICS

CHAPTER 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 573.001. DEFINITIONS. In this chapter:

(1) "Candidate" has the meaning assigned by Section 251.001, Election Code.

(2) "Position" includes an office, clerkship, employment, or duty.

(3) "Public official" means:

(A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;

(B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or

(C) a judge of a court created by or under a statute of this state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.002. DEGREES OF RELATIONSHIP. Except as provided by Section 573.043, this chapter applies to relationships within the third degree by consanguinity or within the second degree by affinity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

Sec. 573.021. METHOD OF COMPUTING DEGREE OF RELATIONSHIP. The degree of a relationship is computed by the civil law method.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.022. DETERMINATION OF CONSANGUINITY. (a) Two individuals are related to each other by consanguinity if:

- (1) one is a descendant of the other; or
- (2) they share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.023. COMPUTATION OF DEGREE OF CONSANGUINITY. (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's:

(1) parent or child (relatives in the first degree);

(2) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.024. DETERMINATION OF AFFINITY. (a) Two individuals are related to each other by affinity if:

(1) they are married to each other; or  
 (2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(c) Subsection (b) applies to a member of the board of trustees of or an officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 260, Sec. 32, eff. May 30, 1995.

Sec. 573.025. COMPUTATION OF DEGREE OF AFFINITY. (a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

(1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and

(2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER C. NEPOTISM PROHIBITIONS

Sec. 573.041. PROHIBITION APPLICABLE TO PUBLIC OFFICIAL. A public official may not 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:

(1) the individual is related to the public official

within a degree described by Section 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.042. PROHIBITION APPLICABLE TO CANDIDATE. (a) A candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Section 573.002:

(1) an employee of the office to which the candidate seeks election; or

(2) an employee or another officer of the governmental body to which the candidate seeks election, if the office the candidate seeks is one office of a multimember governmental body.

(b) The prohibition imposed by this section does not apply to a candidate's actions taken regarding a bona fide class or category of employees or prospective employees.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.043. PROHIBITION APPLICABLE TO DISTRICT JUDGE. A district judge may not appoint as official stenographer of the judge's district an individual related to the judge or to the district attorney of the district within the third degree.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.044. PROHIBITION APPLICABLE TO TRADING. A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly





(6) an appointment or employment of a substitute teacher by a school district;

(7) an appointment or employment of a person by a municipality that has a population of less than 200; or

(8) an appointment of an election clerk under Section 32.031, Election Code, who is not related in the first degree by consanguinity or affinity to an elected official of the authority that appoints the election judges for that election.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.07(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 33, eff. May 30, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(48), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1026, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1002, Sec. 14, eff. September 1, 2011.

Sec. 573.062. CONTINUOUS EMPLOYMENT. (a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

(1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and

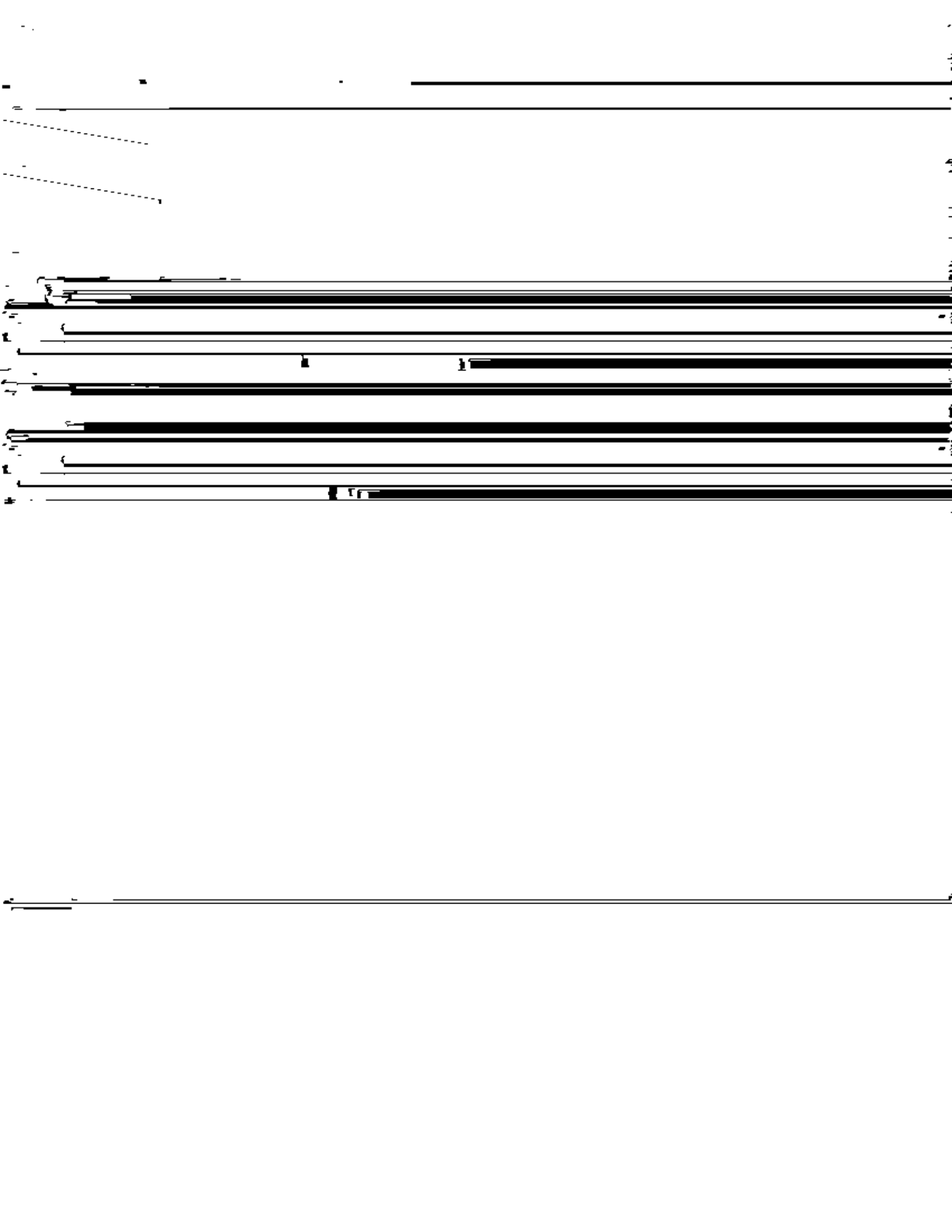
(2) that prior employment of the individual is continuous for at least:

(A) 30 days, if the public official is appointed;

(B) six months, if the public official is elected at an election other than the general election for state and county officers; or

(C) one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or



Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 573.084. CRIMINAL PENALTY. (a) An individual commits an offense involving official misconduct if the individual violates Subchapter C or Section 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

## Sec. 11.1512. COLLABORATION BETWEEN BOARD AND SUPERINTENDENT.

(a) In relation to the superintendent of the school district, the board of trustees of the district has the powers and duties specified by Sections 11.1511(b) and (c). The superintendent shall, on a day-to-day basis, ensure the implementation of the policies created by the board.

(b) The board of trustees and the superintendent shall work together to:

(1) advocate for the high achievement of all district students;

(2) create and support connections with community organizations to provide community-wide support for the high achievement of all district students;

(3) provide educational leadership for the district, including leadership in developing the district vision statement and long-range educational plan;

(4) establish district-wide policies and annual goals that are tied directly to the district's vision statement and long-range educational plan;

(5) support the professional development of principals, teachers, and other staff; and

(6) periodically evaluate board and superintendent leadership, governance, and teamwork.

Added by Acts 2007, 80th Leg., R.S., Ch. 1244, Sec. 3, eff. September 1, 2007.

Sec. 11.1513. EMPLOYMENT POLICY. (a) The board of trustees of each independent school district shall adopt a policy providing for the employment and duties of district personnel. The employment policy must provide that:

(1) the board employs and evaluates the superintendent;

(2) the superintendent has sole authority to make recommendations to the board regarding the selection of all personnel other than the superintendent, except that the board may delegate final authority for those decisions to the superintendent; and

(3) each principal must approve each teacher or staff appointment to the principal's campus as provided by Section 11.202.

(b) The board of trustees may accept or reject the superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's meeting, as required under Section 551.021, Government Code, in the certified agenda or tape recording required under Section 551.103, Government Code, or in the recording required under Section 551.125 or 551.127, Government Code, as applicable. If the board rejects the superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation.

(c) The employment policy may:

- (1) specify the terms of employment with the district;
- (2) delegate to the superintendent the authority to determine the terms of employment with the district; or
- (3) include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district.

(d) The employment policy must provide that not later than the 10th school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Section 21.003, other than a position that affects the safety and security of students as determined by the board of trustees, the district must provide to each current district employee:

- (1) notice of the position by posting the position on:
  - (A) a bulletin board at:
    - (i) a place convenient to the public in the district's central administrative office; and
    - (ii) the central administrative office of each campus in the district during any time the office is open; or
  - (B) the district's Internet website, if the district has a website; and
- (2) a reasonable opportunity to apply for the position.

(e) If, during the school year, the district must fill a vacant position held by a teacher, as defined by Section 21.201, in less than 10 school days, the district:

- (1) must provide notice of the position in the manner described by Subsection (d)(1) as soon as possible after the vacancy occurs;

(2) is not required to provide the notice for 10 school days before filling the position; and

(3) is not required to comply with Subsection (d)(2).

(f) If, under the employment policy, the board of trustees delegates to the superintendent the final authority to select district personnel:

(1) the superintendent is a public official for purposes of Chapter 573, Government Code, only with respect to a decision made under that delegation of authority; and

(2) each member of the board of trustees remains subject to Chapter 573, Government Code, with respect to all district employees.

(g) Subsection (f) does not apply to a school district that is located:

(1) wholly in a county with a population of less than 35,000; or

(2) in more than one county, if the county in which the largest portion of the district territory is located has a population of less than 35,000.

(h) For purposes of Subsection (f), a person hired by a school district before September 1, 2007, is considered to have been in continuous employment as provided by Section 573.062(a), Government Code, and is not prohibited from continuing employment with the district subject to the restrictions of Section 573.062(b), Government Code.

(i) The employment policy must provide each school district employee with the right to present grievances to the district board of trustees.

(j) The employment policy may not restrict the ability of a school district employee to communicate directly with a member of the board of trustees regarding a matter relating to the operation of the district, except that the policy may prohibit ex parte communication relating to:

(1) a hearing under Subchapter E or F, Chapter 21; and

(2) another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by a school district board of trustees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 705, Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 10, Sec. 1, eff. April 23, 2007.

Redesignated from Education Code, Section 11.163 and amended by Acts 2007, 80th Leg., R.S., Ch. 1244, Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.001(4), eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1347, Sec. 1, eff. June 19, 2009.

Sec. 11.152. TAXES; BONDS. The trustees of an independent school district may levy and collect taxes and issue bonds in compliance with Chapter 45. If a specific rate of tax is not adopted at an election authorizing a tax, the trustees shall determine the rate of tax to be levied within the limit voted and specified by law.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 11.153. SALE OF MINERALS. (a) Minerals in land belonging to an independent school district may be sold to any person under this section.

(b) The sale must be authorized by a resolution adopted by majority vote of the board of trustees of the school district.

(c) After adoption of a resolution under Subsection (b), the president of the board of trustees may execute an oil or gas lease or sell, exchange, and convey the minerals. The mineral deed or lease must recite the approval of the resolution of the board authorizing the sale.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 11.154. SALE OF PROPERTY OTHER THAN MINERALS. (a) The board of trustees of an independent school district may, by resolution, authorize the sale of any property, other than minerals, held in trust for public school purposes.

(b) The president of the board of trustees shall execute a deed to the purchaser of the property reciting the resolution of the board of trustees authorizing the sale.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2003

Mr. Robert Scott  
Chief Deputy Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Opinion No. GA-0123

Re: Applying the anti-nepotism laws, Government  
Code chapter 573, to an independent school district  
(RQ-0060-GA)

Dear Mr. Scott:

At the request of the Aldine Independent School District (the "District"), former Commissioner Alanis asked two questions about applying the anti-nepotism statutes, Government Code chapter 573, to an independent school district.<sup>1</sup> See TEX. GOV'T CODE ANN. ch. 573 (Vernon 1994 & Supp. 2004).

Chapter 573 regulates the appointment or employment of a public official's close relatives to positions within the official's appointment or confirmation authority. Section 573.041 prohibits a public official from appointing, confirming the appointment of, or voting to appoint or confirm

an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within a degree described by [s]ection 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board . . . and the individual is related to another member of that board . . . within a degree described by [s]ection 573.002.

*Id.* § 573.041 (Vernon 1994). Section 573.041(1) refers to "relationships within the third degree by consanguinity or within the second degree by affinity." *Id.* § 573.002; see also *id.* §§ 573.021-.025 (Vernon 1994 & Supp. 2004) (providing for determining relationships by consanguinity or by affinity). Appointments to certain positions are excepted, see *id.* § 573.061 (Vernon Supp. 2004), as well as appointments of individuals who have been continuously employed for a certain period

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<sup>1</sup>Letter from Felipe T. Alanis, Commissioner of Education, Texas Education Agency, to Honorable Greg Abbott, Texas Attorney General (May 30, 2003) (on file with Opinion Committee) [hereinafter Request Letter].



of time prior to the official's election or appointment, *see id.* § 573.062 (Vernon 1994). An ineligible individual who is appointed to a position, notwithstanding the prohibition, may not be paid for any work performed in the position: "A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible." *Id.* § 573.083.

Mr. Alanis's questions involve the appointment of two individuals, each related to District trustees within a prohibited degree. *See* Request Letter, *supra* note 1, at 1. The questions are based on an assumption that, with respect to a school district, the board members are the public officials to whom the statutory nepotism prohibition applies. Your general counsel has asked us to assume that the District school board has, consistently with section 11.163(a)(1) of the Education Code, "delegated to the superintendent the authority to" select personnel. *Id.*; Telephone Conversation with David Anderson, General Counsel, Texas Education Agency (July 29, 2003); *see* TEX. EDUC. CODE ANN. § 11.163(a)(1) (Vernon 1996).

Mr. Alanis asked first about the appointment and compensation of a bus driver. *See* Request Letter, *supra* note 1, at 1. We are informed that the District's transportation director offered a board member's daughter-in-law employment as a bus driver on January 11, 2001. *Id.* The "school board did not consider or act on the employment." *Id.* District officials terminated the individual's employment on September 18, 2001, after determining that it violated chapter 573 of the Government Code. *Id.* The next payday arrived on September 20, 2001, and the District asks whether it may compensate the bus driver as though she had been eligible for employment. *Id.*

A school district's board of trustees has "exclusive power and duty to govern and oversee the management" of a district's public schools, and it may adopt rules and bylaws as necessary to execute its powers. TEX. EDUC. CODE ANN. § 11.151(b), (d) (Vernon 1996). The board "may employ by contract a superintendent," who is the school district's "educational leader and . . . chief executive officer," for a term of no more than five years. *Id.* § 11.201(a)-(b) (Vernon Supp. 2004). Among other things, section 11.163 of the Education Code requires a school board to "adopt a policy providing for the employment and duties of district personnel," which must provide the superintendent with "sole authority to make recommendations to the board regarding the selection of all personnel other than the superintendent, *except that the board may delegate final authority for those decisions to the superintendent.*" *Id.* § 11.163(a)(1) (Vernon 1996) (*emphasis added*). A school district superintendent is also responsible for, among other duties, assigning and evaluating district personnel, and initiating an employee's termination or suspension. *See id.* § 11.201(d)(2)-(4) (Vernon Supp. 2004).

Although you do not ask whether the District correctly assumed that the bus driver's hiring violated section 573.041 of the Government Code, we believe that assumption should be examined. For purposes of chapter 573, a public official includes "an officer or member of a board . . . of a . . . school district." TEX. GOV'T CODE ANN. § 573.001(3)(B) (Vernon 1994). This definition has been interpreted to designate only an officer who may exercise authority over a governmental entity's appointment or employment decisions. *See Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658, 660 (Tex. Civ. App.—Eastland 1981, no writ); Tex. Att'y Gen. Op. Nos. JC-0336 (2001) at 3-4, JC-0193 (2000) at 3, DM-2 (1991) at 1. An officer is a person upon whom a

"sovereign function of the government [has been] conferred . . . to be exercised by him for the benefit of the public largely independent of" others' control. *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955); see *Pena*, 616 S.W.2d at 659-60 (applying *Aldine's* definition of an officer to a nepotism issue); Tex. Att'y Gen. Op. No. JM-91 (1983) at 2 (same). A person with the authority to select personnel exercises a sovereign function. See Tex. Att'y Gen. Op. No. JM-72 (1983) at 6; see also Tex. Att'y Gen. Op. No. JM-91 (1983) at 2 (stating that the superintendent of a mental health and mental retardation facility, as the "person with the power to appoint the . . . staff and fix their salaries," is an officer for purposes of the nepotism laws).

In our opinion, a superintendent to whom a school board has delegated "final authority" to select personnel under section 11.163(a)(1) of the Education Code is a "public official" with appointment authority for purposes of section 573.041, Government Code. A superintendent who exercises final authority to select personnel exercises a sovereign function of the government largely independent of the school board's control. Our conclusion applies to the anti-nepotism laws' application only; we do not consider whether a school district superintendent is an officer for other purposes. See Tex. Att'y Gen. Op. No. JM-72 (1983) at 5.

Furthermore, a member of a school board that has delegated to the superintendent final authority for personnel selection is not a public official with appointment authority for purposes of section 573.041. Although the trustees are officers for other purposes and are members of the board, they have no vestigial authority to select district personnel. Accordingly, while the superintendent may not hire his or her relatives, section 573.041 does not prohibit the hiring of board trustees' relatives. Cf. Tex. Att'y Gen. Op. Nos. JC-0336 (2001) at 1-2 (stating that, for purposes of Government Code section 573.041, "a police chief who has, under a collective-bargaining agreement, final authority to appoint, reward, discipline, or demote employees" is a public official); JC-0193 (2000) at 3 (same); Tex. Att'y Gen. LO-95-012, at 2 (concluding that school board member's nephew may referee high school football games because the board has no control over the choice of referees).

We conclude that, unless the bus driver is also related to the superintendent within a degree prohibited by the anti-nepotism statute, she was lawfully employed and may be compensated for the work she performed. This conclusion is contingent upon the assumption that the District delegated final authority to select personnel to the superintendent.

Our conclusion is distinguishable from the conclusion that the Eastland Court of Civil Appeals reached in the 1981 *Pena* case. See *Pena*, 616 S.W.2d at 660. Relying on two statutes, one that provides trustees with "exclusive" authority to "manage and govern" the districts' public schools, and the second, which authorized a board to "employ by contract a superintendent, a principal or principals, teachers, or other executive officers," the court determined that a school board cannot delegate its statutory authority or control over personnel selection to the superintendent. See *id.* at 659-60; see also Act of June 2, 1969, 61st Leg., R.S., ch. 889, §§ 23.26(b), 23.28(a), 1969 Tex. Gen. Laws 2735, 2954, repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58(a)(1), 1995 Tex. Gen. Laws 2207, 2498 (formerly sections 23.26(b) and 23.28(a) of the Education Code). According to the court, the statutes provided the board with "the exclusive right and sole legal authority to appoint or employ teachers," and the board could not "abdicate" its statutory authority

to appoint or confirm personnel selections. *Pena*, 616 S.W.2d at 659-60. In addition, the court said, a superintendent may recommend certain individuals to the board, but no delegation of authority to the superintendent or others takes away the board's exclusive statutory authority: "A school superintendent merely performs functions delegated to him by the trustees who do not by such delegation abdicate their statutory authority or control." *Id.* at 660.

Since the 1981 *Pena* decision, the legislature has significantly revised relevant portions of the Education Code, providing a school district superintendent with increased authority. In 1995, for example, the legislature amended section 11.201(a) of the Education Code to change the superintendent's status from that of "administrative manager" to "chief executive officer" of the district. Compare Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, sec. 11.201(a), 1995 Tex. Gen. Laws 2207, 2230, with Act of June 30, 1984, 68th Leg., 2d C.S., ch. 28, art. III, part F, § 1, sec. 13.351(a), 1984 Tex. Gen. Laws 117, 156. In the same year, germane to the issue here, the legislature adopted section 11.163(a)(1), which expressly authorizes a school board to delegate "final authority" to select personnel to the superintendent. See Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Gen. Laws 2207, 2230; TEX. EDUC. CODE ANN. § 11.163(a)(1) (Vernon 1996).

A school board that has delegated final authority under section 11.163(a) no longer has "the exclusive right and sole legal authority to appoint" or confirm personnel selections on which the *Pena* decision hinged. See *Pena*, 616 S.W.2d at 659-60. For this reason, the conclusion in *Pena* does not apply here.

Mr. Alanis asked second whether a public school superintendent may reassign a teacher who is related to a school trustee without action by the board. See Request Letter, *supra* note 1, at 1. Your predecessor provided us with the following facts: The school district employs a teacher whose father is a board member. *Id.* The District wants to know if the superintendent "may promote the teacher to a supervisory position (departmental chair) for which there is supplementary pay without action by the board." *Id.* This issue involves the reassignment of an employee, not a selection covered by section 11.163(a)(1).

The superintendent may reassign a trustee's relative to fill a department chair position, and the board is not authorized to act on the matter. Section 11.201(d) of the Education Code expressly reposes in the superintendent the duty to "assum[e] administrative authority and responsibility" for assigning and evaluating district personnel. TEX. EDUC. CODE ANN. § 11.201(d)(2) (Vernon Supp. 2004). The superintendent's duties listed in section 11.201(d) were adopted in 1995 by the same bill that authorized a school board to delegate final authority to select personnel to the superintendent. See Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, secs. 11.163(a)(1), 11.201(d), 1995 Tex. Gen. Laws 2207, 2230-31. Because the District's school board has no authority to assign personnel, board members are not public officials for purposes of chapter 573, Government Code.


Mr. Alanis informed us that the teacher satisfied the continuous employment provision to the anti-nepotism statute, section 573.062 of the Government Code. See Request Letter, *supra* note 1, at 1; see also TEX. GOV'T CODE ANN. § 573.062 (Vernon 1994) (providing continuous employment exception). Because the board members are not the relevant public officials for determining the nepotism laws' applicability, this fact is irrelevant.

**S U M M A R Y**

A school district that has delegated to the superintendent final authority to select personnel under section 11.163(a)(1), Education Code, may employ and compensate a bus driver related to a trustee within a prohibited degree under chapter 573 of the Government Code, unless the driver is also related within a prohibited degree to the superintendent. See TEX. EDUC. CODE ANN. § 11.163(a)(1) (Vernon 1996). The conclusion of *Pena v. Rio Grande City Consolidated Independent School District*, that a school district's superintendent is not a public official for purposes of chapter 573, Government Code, does not apply to a school board that has delegated final authority to select personnel to the district's superintendent. See *Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658, 660 (Tex. Civ. App.—Eastland 1981, no writ).

Because a superintendent has exclusive statutory authority to assign district personnel under section 11.201(d)(2) of the Education Code, he or she may reassign a trustee's relative to fill a departmental chair position. The board is not authorized to act on the reassignment, and board members are not, therefore, public officials for purposes of chapter 573, Government Code, with respect to the reassignment.

Very truly yours,

  
GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

DON R. WILLETT  
Deputy Attorney General for Legal Counsel

NANCY S. FULLER  
Chair, Opinion Committee

Kymerly K. Oltrogge  
Assistant Attorney General, Opinion Committee



February 22, 2000

The Honorable Karen H. Meinardus  
Wharton County Attorney  
103 South Fulton  
Wharton, Texas 77488

Opinion No. JC-0184

Re: Whether a municipal utility district may employ the spouse of a board member in a paid position (RQ-0111-JC)

Dear Ms. Meinardus:

You inform us that the Board of Directors of the Wharton County Isaacson Municipal Utility District (the "District") appointed the husband of a board member to a paid position as utility superintendent. See Letter from Honorable Karen Meinardus, to Honorable John Cornyn, Texas Attorney General 1 (Sept. 8, 1999) (on file with Opinion Committee) [hereinafter "Request Letter"]. On the evening of the hiring, the board member signed an affidavit in compliance with the now-repealed section 54.118 of the Texas Water Code, indicating that she was related to the proposed employee and that she would abstain from further participation in the matter. *Id.*; see Act of April 19, 1971, 62d Leg., R.S., ch. 84, § 1, 1971 Tex. Gen. Laws 774 (adopting chapter 54 of the Water Code); Act of May 25, 1995, 74th Leg., R.S., ch. 715, § 43, 1995 Tex. Gen. Laws 3803 (repealing several sections of chapter 54 of the Water Code, including section 54.118). Although the wife recently resigned from the board, the board of directors wishes advice on this matter because the issues of conflict of interest, nepotism, and official misconduct raised by this employment may arise in the future. Request Letter, *supra*, at 2. You ask whether the board member was required to file subsequent affidavits and further abstain from votes regarding the superintendent's duties, pay, and other such matters in order to avoid official misconduct. *Id.* You also ask whether it was official misconduct for the wife to continue as a board member and the husband to continue as an employee of the District paid with public funds, or did she avoid official misconduct by the one-time signing of an affidavit and abstention from approving her husband's employment. *Id.*

In answer to your first question, we conclude that the superintendent's hiring violated section 573.041 of the Government Code, which prohibits public officers from hiring certain near relatives. TEX. GOV'T CODE ANN. § 573.041 (Vernon 1994). A violation of this provision is an offense involving official misconduct, punishable by a fine not less than \$100 or more than \$1,000. *Id.* § 573.084. In addition, an officer who violates section 573.041 of the Government Code is subject to removal. *Id.* § 573.081.

In answer to your second question, the wife's filing of the affidavit required by former section 54.118 of the Water Code did not exempt the employment from Government Code chapter 573. If chapter 573 allows a board member's relative to keep his job, the board member may not participate in any deliberation or vote on his employment status or compensation if that action applies only to him and not to a bona fide class or category of employees. *Id.* § 573.062(b).

Chapter 573 of the Government Code prohibits public officials from appointing certain near relatives to positions compensated by public funds. Section 573.041 of the Government Code provides that a public official

may not 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:

(1) the individual is related to the public official within a degree described by Section 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board . . . and the individual is related to another member of that board . . . within a degree described by Section 573.002.

*Id.* § 573.041

The public officials subject to this provision include "an officer or member of a board of this state or of a district, county . . . or other political subdivision of this state." *Id.* § 573.001(3)(B). A municipal utility district, as an entity created under Texas Constitution article XVI, section 59, is a political subdivision of the state. *Lloyd v. Eco Resources, Inc.*, 956 S.W.2d 110, 121-22 (Tex. App.-Houston [14th Dist.] 1997, no pet.) (and authorities cited). Its directors are public officials within section 573.041 of the Government Code, and accordingly, they may not participate in the employment of any individual related to any director within the third degree by consanguinity or the second degree by affinity. TEX. GOV'T CODE ANN. § 573.002 (Vernon 1994); *see id.* §§ 573.023 (listing an individual's relatives within the third degree by consanguinity); 573.025 (listing relatives within the second degree by affinity). A husband and wife are related to one another in the first degree by affinity. *Id.* § 573.025. Government Code section 573.041 thus prohibits a member of the board of directors of a municipal utility district from voting to appoint his or her own spouse or the spouse of another board member to a compensated position. Based on the facts you have provided, the board members who voted to employ the husband of another board member violated section 573.041. This provision is enforceable by removal from office. *Id.* § 573.081 (Vernon 1994). The violation is also an offense involving official misconduct, punishable by a fine not less than \$100 or more than \$1,000. *Id.* § 573.084. Because the wife of the prospective utility superintendent did not vote on her husband's employment, she did not violate section 573.041.

Her signing of an affidavit under now-repealed section 54.118 of the Texas Water Code did not, however, permit her husband to be hired. Former section 54.118 of the Water Code provided as follows:

(a) A director who is financially interested in any contract with the district . . . shall disclose that fact to the other directors, and the disclosure shall be entered into the minutes of the meeting.

(b) An interested director may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) The failure of a director to disclose his financial interest and to have it entered on the minutes shall invalidate the contract.

Act of April 19, 1971, 62d Leg., R.S., ch. 84, § 1, 1971 Tex. Gen. Laws 774, 784, *repealed by* Act of May 25, 1995, 74th Leg., R.S., ch. 715, § 43, 1995 Tex. Gen. Laws 3803. Former section 54.118 of the Water Code does not address chapter 573 of the Government Code and cannot be read to authorize a municipal utility district to employ the spouse of a board member. It allowed a board to enter into a contract despite a board member's financial interest in it, but it did not address the relational interests affected by the nepotism statute.

Although the board of directors is no longer subject to former section 54.118 of the Water Code, it is now subject to chapter 171 of the Local Government Code, the statute regulating conflicts of interest of local officers. See TEX. WATER CODE ANN. §§ 49.001, .058 (Vernon Supp. 2000) (director of water district is subject to provisions of chapter 171, Local Government Code). This statute addresses an officer's interests involving real property and business entities and is not restricted to interests in contracts as was former section 54.118 of the Water Code. Like section 54.118 of the Water Code, chapter 171 requires a local officer with certain economic interests in board decisions to disclose those interests and abstain from participating in the board's action. Pursuant to chapter 171, a director of a municipal utility district may not participate in a vote on a matter involving a business entity or real property if he or she has a substantial interest in the matter and it is reasonably foreseeable that action on the matter would confer an economic benefit on the business entity or real property. TEX. LOC. GOV'T CODE ANN. § 171.004 (Vernon 1999). Under these circumstances, the officer must file an affidavit disclosing the substantial interest in the proposed action and abstain from further participation in the matter. Chapter 171 imputes to a local public officer the substantial interests of certain near relatives in a business entity or in real property. *Id.* § 171.002(c). It does not, however, exempt nepotistic employments from the provisions of chapter 573 of the Government Code. Tex. Att'y Gen. Op. No. DM-76 (1992) at 3.

If the director in question approved her husband's paychecks, she could be subject to charges of official misconduct under Government Code section 573.083. This section provides that a public official who knows that an individual is ineligible for employment under chapter 573 of the Government Code may not "approve an account or draw or authorize the drawing of a warrant or

order to pay the compensation" of the individual. TEX. GOV'T CODE ANN. § 573.083 (Vernon 1994). Violation of this prohibition is a misdemeanor offense involving official misconduct, punishable by a fine of not less than \$100 or more than \$1,000. *Id.* § 573.084. Whether a particular board member violated section 573.083 of the Government Code involves questions of fact, which cannot be resolved in an attorney general opinion. *See* Tex. Att'y Gen. Op. Nos. JC-0152 (1999) at 12; JC-0020 (1999) at 2; DM-98 (1992) at 3; H-56 (1973) at 3; M-187 (1968) at 3; O-2911 (1940) at 2.

An exception to chapter 573 allows an employee of a board to continue his or her employment even after a near relative becomes a board member. This exception does not apply to the employment you have described, but we will summarize it because it may be relevant to the District in the future. Section 573.062(a) states that the section 573.041 prohibition against nepotistic appointments does not apply to an employee of a board who has completed the requisite period of continuous service before his relative is elected or appointed to the board. If the public official is appointed, the individual's prior employment must be continuous for at least thirty days. TEX. GOV'T CODE ANN. § 573.062(a)(2)(A) (Vernon 1994). If the public official is elected at an election other than the general election for state and county officers, the prior service must be continuous for six months, and, if the public official is elected at the general election, it must be continuous for one year. *Id.* § 573.062(a)(B), (C). Elections for directors of municipal utility districts are held on the uniform election date established by the Election Code in either January or May of each even-numbered year, TEX. WATER CODE ANN. § 49.103 (Vernon Supp. 2000), while the general election for state and county officers is held in November in even-numbered years, TEX. ELEC. CODE ANN. § 41.002 (Vernon 1986); *see also* TEX. GOV'T CODE ANN. § 573.042(a) (Vernon 1994) (prohibition against certain actions by candidate to influence governing board for which he or she is a candidate to employ or otherwise affect employment status of near relative). Thus, a relative of a municipal utility district director must serve at least six months continuously before the director assumes office following the election, unless the director is appointed to fill a vacancy. In that case, the relative need serve only thirty days continuously before the director takes office. Tex. Att'y Gen. Op. No. DM-2 (1991) at 3.

If an individual continues his or her employment by virtue of the exception for prior continuous service

the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, . . . employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

TEX. GOV'T CODE ANN. § 573.062(b) (Vernon 1994). Thus, a board member may not participate in any deliberation or vote on the relative's employment status or compensation if that action applies only to the relative, but he or she may participate if the action is taken regarding a bona fide class

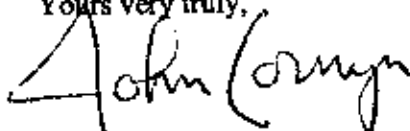


or category of employees. *See* Tex. Att'y Gen. Op. No. DM-46 (1991) at 4 (discussion of action taken regarding a bona fide class or category of employees); *see also* Tex. Att'y Gen. LO-98-097, at 3 (Local Government Code chapter 171 does not prohibit county officer from voting on his own salary, because interest in salary from county is not an interest in a business entity or real property).

S U M M A R Y

A municipal utility district's action in employing the spouse of a board member in a paid position violated section 573.041 of the Government Code, even though the related board member abstained from participation in the action.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large initial "J" and "C".

JOHN CORNYN  
Attorney General of Texas

ANDY TAYLOR  
First Assistant Attorney General

CLARK KENT ERVIN  
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON  
Chair, Opinion Committee

Susan L. Garrison  
Assistant Attorney General - Opinion Committee



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

**DAN MORALES**  
ATTORNEY GENERAL

January 17, 1992

Honorable Romero Molina  
Starr County Attorney  
P. O. Box 1198  
Rio Grande City, Texas 78582

Opinion No. DM-76

Re: Whether nepotism law applies to  
individuals hired as independent  
contractors (RQ-111)

Dear Mr. Molina:

You ask whether a school board has authority to employ a second cousin of a member of the board to perform legal services. The Texas nepotism law, article 5996a, V.T.C.S., prohibits a school board from hiring any person related to a board member within the third degree of consanguinity. The 72d Legislature amended the nepotism law to substitute the civil law method of computing degrees of relationship for the common-law method of computing degrees of relationship. Acts 1991, 72d Leg., ch. 561, at 1979. Under the civil law method, second cousins are related within the sixth degree of consanguinity and are therefore not covered by the nepotism law. *Id.*; See generally Attorney General Opinion JM-581 (1986) (describing civil and common law methods for computing degrees of relationship).

You also ask whether the nepotism law applies to a person hired as an independent contractor rather than as a regular school district employee. Attorney General Opinion JM-45 (1983) stated that the nepotism law makes no distinction between "employees" and independent contractors. See also Attorney General Opinion O-718 (1939) (nepotism law prohibits county commissioners court from hiring son of county commissioner as architect). See generally *Bean v. State*, 691 S.W.2d 773 (Tex. App.—El Paso 1985, pet. ref'd) (nepotism law prohibits district judge from appointing uncle to represent indigent in criminal case).

You suggest, however, that Attorney General Opinion JM-492 (1986) overruled the holding of Attorney General Opinion JM-45 in regard to independent contractors. The issue in Attorney General Opinion JM-492 was whether a county could contract for the construction of a fence with a company owned by a county commissioner's sons. The opinion stated that a contract between a governmental body and a company owned by relatives of a member of the governmental body was

governed not by the nepotism law but by a 1983 enactment that governs contracts between a local governmental body and business entities in which a member of the governmental body or certain relatives of a member of the governmental body have a financial interest. Acts 1983, 68th Leg., ch. 640, at 4079 (initially codified as V.T.C.S. article 968b; recodified in 1987 as chapter 171 of the Local Government Code) (hereinafter chapter 171). The opinion went on to say that the commissioners court had not violated the nepotism law because "that statute no longer controls county contracts with independent contractors." Although the opinion was correct in concluding that chapter 171 applied to the contract in question, the suggestion in the opinion that the 1983 enactment of the conflict-of-interest law somehow altered the scope of the nepotism law and thereby overruled Attorney General Opinion JM-45 was, we conclude, incorrect.

Conflict-of-interest rules existed in the common law for a considerable time before chapter 171 was adopted. See, e.g., *Meyers v. Walker*, 276 S.W. 305 (Tex. Civ. App.-Eastland 1925, no writ); Attorney General Opinion JM-424 (1986). The enactment of chapter 171 made some changes in the common-law conflict-of-interest rules. Unlike the common-law conflict-of-interest rules, the statutory scheme imputes to a member of a governmental body certain financial interests of his relatives within the first degree of consanguinity.<sup>1</sup> It thus applies to certain contracts in which a public officer's relatives have a financial interest that before the adoption of chapter 171 would have been within neither the nepotism statute nor the common-law conflict-of-interest rules. Chapter 171 did not, as Attorney General Opinion JM-492 suggests, make changes that affected the scope of the nepotism statute. In suggesting that it did, Attorney General Opinion JM-492 erred in focusing on the fact that the contract at issue was with an independent contractor. To determine whether the nepotism law applied, Attorney General Opinion JM-492 should have considered whether the independent contractor was a "person" within the nepotism statute, since the nepotism law applies to the hiring of natural persons. See *Lewis v. Hillsboro Roller-Mill Co.*, 23 S.W. 338 (Tex. Civ. App. 1893, no writ) (judge not disqualified under former V.T.C.S. article 1138, now Government Code section 21.005, to try suit when his brother-in-law is stockholder and president of plaintiff corporation). Thus, the nepotism law applies whenever a governmental body hires a natural person, whether as an employee or as an independent

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<sup>1</sup>A more significant change is that under the new law, a conflict of interest does not necessarily prevent a governmental body from entering into a contract. Under the common law, a contract was void if there was a conflict of interest.

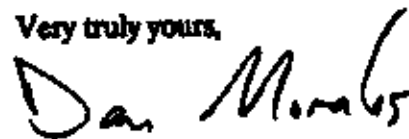
contractor. If the independent contractor is related to a member of the governing body within a prohibited degree, the nepotism law would prohibit the hiring.

In summary, the nepotism law governs the hiring of an individual, whether the individual is hired as an employee or an independent contractor.<sup>3</sup> To the extent that Attorney General Opinion JM-492 stated that the enactment of V.T.C.S. article 988b (now chapter 171 of the Local Government Code) in 1983 made the nepotism statute inapplicable to an individual independent contractor who is hired to provide personal services, it is incorrect and should be disregarded. Therefore, a school district may not hire an individual related to a board member within a prohibited degree to provide legal services, regardless of whether the individual is hired as a regular employee or as an independent contractor.

### SUMMARY

A county commissioners court may not hire an individual related to a county commissioner within a prohibited degree, regardless of whether the individual is hired as a regular employee or as an independent contractor. Statements in Attorney General Opinion JM-492 (1986) to the effect that the nepotism statute did not apply to an individual hired as an independent contractor are incorrect and should be disregarded.

Very truly yours,



DAN MORALES  
Attorney General of Texas

WILL PRYOR  
First Assistant Attorney General

MARY KELLER  
Executive Assistant Attorney General

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<sup>3</sup>We do not address the application of the nepotism statute to a situation in which a business entity serves merely as an alter ego of an individual related in a prohibited degree to a member of the governing body.

**JUDGE ZOLLIE STEAKLEY (Ret)**  
**Special Assistant Attorney General**

**RENEA HICKS**  
**Special Assistant Attorney General**

**MADELEINE B. JOHNSON**  
**Chair, Opinion Committee**

**Prepared by Sarah Wocik**  
**Assistant Attorney General**