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RQ-0243-KP

FILE # ML-48406-18

I.D. # 48406

RE: May a county tax assessor/collector supervise and employ her sister-in-law who has worked in the tax assessor's office for over 1 year?

Dear Attorney General Paxton:

We would greatly appreciate an opinion from your office related to the following:

Does the exception for continuous employment provided in the nepotism statute apply can the tax assessor/ collector supervise and employ her sister-in-law who has worked in the position for the county tax assessor's office for over 1 year?

The Cherokee County Tax Assessor/Collector plans to retire prior to the end of her elected term. Her retirement will leave a vacancy of the office which will be filled by an individual appointed by the commissioners court per Section 87.041 of the Texas Local Government Code. One of the individuals seeking to be appointed as county tax Assessor/collector has worked in the office of the tax assessor for over 23 years. If the employee of 23 years is appointed she will be supervising her brother's wife/sister-in-law. The sister-in-law has been employed in the tax office for over 6 years.

Section 573.002 of the Texas Government Code says chapter 573 applies to relationships within the third degree by consanguinity or within the second degree by affinity.

The sister-in-law relationship at issue is within the second degree by affinity. V.T.C.A. Government Code §573.024. This relationship is covered by the following prohibition of the nepotism act:

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. V.T.C.A. Government Code §573.041

The circumstances of the potential tax assessor and her sister-in-law appear to come within the general nepotism prohibition. However, the code makes an exception for individuals who have been continuously employed under certain circumstances.

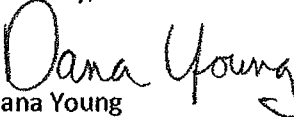
Section 573.062 of the Texas Government code provides:

- (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.

Assuming the sister-in-law is still employed with the tax assessor's office if or when the 23 year employee takes the position of county tax assessor, the sister-in-law will have completed one year of continuous service at a time when her relative is not an officer with the power to hire and fire her.

This issue is of great interest to the citizens of Cherokee County. Please issue your opinion on this matter. Thank you for your assistance and please feel free to contact me with any questions you may have.

Sincerely,


Dana Young
Cherokee County Attorney