

# 2010 TEXAS NEPOTISM LAWS MADE EASY

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Answers to the most frequently asked  
questions about Texas Nepotism Laws

ZINDIA THOMAS  
COUNTY AFFAIRS SECTION  
OFFICE OF THE ATTORNEY GENERAL  
(512)936-9901

JULIAN GRANT  
MUNICIPAL AFFAIRS SECTION  
OFFICE OF THE ATTORNEY GENERAL  
(512)475-4683

BECKY CASARES  
COUNTY AFFAIRS SECTION  
OFFICE OF THE ATTORNEY GENERAL  
(512)936-7949



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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# Texas Nepotism Laws Made Easy

Nepotism laws refer to limitations on governmental entities' authority to hire certain close relatives of public officials. The following questions and answers provide a layperson's explanation of state nepotism laws as they apply to Texas local government officials and are intended to provide general guidance on the issues. The Municipal Affairs section and County Affairs section of the Office of the Attorney General are available to answer questions about this handbook from city and county officials, who should consult with local legal counsel regarding the application of the law to the facts of each particular situation. This handbook may give guidance to officials of other public entities as well.

## 1. What is nepotism?

Nepotism is the hiring of family or relatives. Anti-nepotism laws prohibit a governmental entity from hiring certain close relatives of a public official. The nepotism laws are contained in chapter 573 of the Texas Government Code. The nepotism statutes prohibit a public official from appointing, confirming the appointment of, or voting on the appointment of a close relative to a paid public position.<sup>1</sup> A close relative under nepotism laws is someone who is related to the official within a prohibited degree by consanguinity (relationship by blood) or a prohibited degree by affinity (relationship by marriage).<sup>2</sup>

## 2. What types of local government officials are subject to the nepotism laws?

The nepotism statutes apply to any public official<sup>3</sup> who is the final hiring authority or is a member of the governing body that has final hiring authority.<sup>4</sup> If the governing body is the hiring authority, then nepotism limitations would apply to close relatives of any members of the governing body. However, if an employee such as the city manager possesses the final hiring authority, then the nepotism limitations relate to persons who are close relatives of the city manager. It should be noted that the determination of who is the hiring authority depends on whether an officer may exercise control over hiring decisions.<sup>5</sup> For example, a governing body or public employee would still be considered the hiring authority if either may exercise control over a hiring decision, even though such authority may have been delegated to another individual or entity. See question 13 below for further details.

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<sup>1</sup> TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004).

<sup>2</sup> *Id.* § 573.002.

<sup>3</sup> *Id.* § 573.001(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.)

<sup>4</sup> *Id.* § 573.041.

<sup>5</sup> *Pena v. Rio Grande City Consol. Indep. Sch. Dist.* 616 S.W.2d 658, 659 (Tex. Civ. App.–Eastland 1981, no writ); Op. Tex. Att'y Gen. Nos. GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.

### **3. What types of actions are generally prohibited under the nepotism law?**

The nepotism statutes prohibit a public official from appointing, confirming the appointment of, or voting on the appointment of a close relative of certain public officials to a paid public position or employment.<sup>6</sup>

### **4. What relatives of a public official are covered by the statutory limitations on relationships by consanguinity (blood)?**

A public official may not vote on the appointment of an individual who is related to an official within the first, second, or third degree by consanguinity (relationships by blood). Such relationships occur if the official and the potential hire share either a common ancestry or where one is the descendant of the other.<sup>7</sup> The following relatives of a public official would fall within the prohibited first, second or third degree of consanguinity:

Relatives related within the first degree by consanguinity include a public official's mother, father, sons and daughters.

Relatives related within the second degree by consanguinity include a public official's brothers, sisters, grandmothers, grandfathers, grandsons and granddaughters.

Relatives related within the third degree by consanguinity include a public official's great-grandfathers, great-grandmothers, aunts, uncles, nephews, nieces, great-grandsons and great-granddaughters.<sup>8</sup>

A public official's adopted child is considered to be the child of the public official under the nepotism laws.<sup>9</sup>

### **5. What relationships by affinity (marriage) are covered by the statutory limitations?**

A public official is prohibited from voting on the appointment of an individual who is related to the official within the first or second degree by affinity (marriage).<sup>10</sup>

Relatives related within the first degree by affinity include a public official's husband, wife, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons and stepdaughters.

Relatives related within the second degree include a public official's sisters-in-law (brother's spouse or spouse's sister), brothers-in-law (sister's spouse or spouse's brother), spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, and spouse's grandsons.<sup>11</sup>

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<sup>6</sup> TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004).

<sup>7</sup> *Id.* § 573.022.

<sup>8</sup> *Id.* § 573.023(c)(1) - (3).

<sup>9</sup> *Id.* § 573.022(b).

<sup>10</sup> *Id.* § 573.002.

<sup>11</sup> *Id.* § 573.025.

## **6. What happens if it takes two marriages to establish the relationship with the public official?**

If it takes two marriages to establish a relationship between the public official and the proposed hire, the nepotism laws do not apply.<sup>12</sup> For example, the attorney general concluded that a public entity was not prohibited from hiring the brother-in-law of a public official's wife.<sup>13</sup> In this situation, it takes two marriages to establish the relationship because the public official is related by marriage to his wife, who is related to her brother-in-law by marriage. However, the nepotism laws would prevent a public official from hiring his sister's husband (brother-in-law). In this case, only one marriage separates the two individuals; therefore, nepotism provisions would apply.

## **7. What actions must a public official take if he or she has a nepotism conflict?**

If a governing body member has a nepotism conflict, neither the governing body nor its members may employ or contract with a close relative of that member, unless a specific statutory exception allows such an action.<sup>14</sup> Similarly, if a city manager or other officer who has final hiring authority has a nepotism conflict, the governing body may not appoint or vote for the individual who is the close relative of that city officer unless there is a specific statutory, or possibly a city charter exception that allows such an action.<sup>15</sup> State law does not require any specific procedural steps or documentation of a nepotism conflict.

## **8. Do the nepotism laws apply to cities with a population of less than 200?**

No. The nepotism statute does not apply to cities with fewer than 200 people.<sup>16</sup> However, a city may adopt local prohibitions in its home-rule charter, ethics ordinances, or personnel policies that would prevent hiring a close relative.

## **9. May a close relative be appointed to an unpaid position?**

Yes. The nepotism laws apply to paid positions only. A paid position is one that is directly or indirectly *compensated* from public funds or fees.<sup>17</sup> If the individual holding the position is merely reimbursed for actual expenses, it is not a paid position.

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<sup>12</sup> Op. Tex. Att'y Gen. Nos. O-119 (1939); O-7424 (1946); Tex. Att'y Gen. LO-88-121.

<sup>13</sup> Tex. Att'y Gen. LO-88-121.

<sup>14</sup> TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004); *see also* Op. Tex. Att'y Gen. No. JC-184 (2000) at 2 (noting that municipal utility district board of directors who voted to employ the husband of another board member violated Texas Government Code section 573.041 and were subject to removal from office pursuant to Texas Government Code section 573.081).

<sup>15</sup> TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004).

<sup>16</sup> *Id.* § 573.061(7).

<sup>17</sup> *Id.* § 573.041; Tex. Att'y Gen. LO-96-10.

**10. May other members of a governing body vote to hire a person who is a close relative of a public official if the official with the nepotism conflict abstains from deliberating and/or voting?**

No. Other members of the governing body may not vote to hire a person who is a close relative of a public official. The abstention of a public official with the nepotism conflict does not relieve the remaining members from the prohibition against hiring a close relative of another public official.<sup>18</sup>

**11. Who is considered the hiring authority for purposes of potential nepotism violations?**

For nepotism purposes, the hiring authority is the individual or entity that may exercise control over the hiring decision.<sup>19</sup> If the governing body is the hiring authority, then nepotism limitations would apply to close relatives of any of the members of the governing body. If the city manager possesses the hiring authority, then the city may not hire persons who are close relatives of the city manager.

**12. May a city council or a city manager delegate the power to hire to avoid a nepotism problem?**

The “applicability of the nepotism law depends on whether an officer or the governing body may exercise control over hiring decisions.”<sup>20</sup> For example, a city council would still be considered the hiring authority if it could exercise control over a hiring decision, even though it delegated the hiring decision to another person or entity by ordinance. The attorney general in one instance reviewed a city council’s attempt, by city ordinance, to delegate the hiring authority for city staff to a city administrator. The attorney general concluded that this delegation did not relieve the members of the city council from being considered the hiring authority for purposes of the nepotism statutes.<sup>21</sup>

Texas law distinguishes between the power of a home-rule city to delegate hiring authority through its city charter versus a delegation that is done by city ordinance.<sup>22</sup> If the delegation of the hiring authority is contained in the city charter, it is recognized for nepotism purposes as a valid delegation of the hiring power. However, if a city simply delegates the hiring authority by ordinance, it would not, for nepotism purposes, change who was considered the hiring authority.<sup>23</sup> This conclusion is based on the fact that the council could amend or repeal an ordinance at any time, while it would take an election to amend a city charter. For example, the attorney general has concluded that the nepotism statutes did not preclude a city from hiring a

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<sup>18</sup> Op. Tex. Att’y Gen. No. JC-184 (2000).

<sup>19</sup> *Pena*, 616 S.W.2d at 659; Op. Tex. Att’y Gen. Nos. GA-415 (2006); GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.

<sup>20</sup> Op. Tex. Att’y Gen. No. DM-2 (1991) at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*; see also Op. Tex. Att’y Gen. No. JC-336 (2001). (Nor would a collective bargaining agreement that delegated hiring authority from the police chief to someone else avoid the nepotism problem. The agreement would have to be amended to place the final hiring authority with someone other than the police chief.)

relative of a city council member where the city charter provided that the city manager was the final hiring authority and the council members reserved no authority to participate in the hiring decision.<sup>24</sup>

**13. If a city has a city manager form of government, may the city manager hire close relatives of city council members?**

If a city has a city manager form of government, the city manager may hire close relatives of city council members if the city manager alone possesses the hiring authority. See question 12 above. Such relatives would include persons who are related to city council members within the first, second or third degree by consanguinity or within the first or second degree by affinity.

**14. If a city has a city manager form of government, may the city manager hire his or her own close relatives?**

If a city has a city manager form of government and the city manager alone possesses the hiring authority, the city manager may not hire his or her own close relatives. See question 13 above. Such relatives would include persons who are related to the city manager within the first, second or third degree by consanguinity or within the first or second degree by affinity.

**15. If a city has a city administrator but has never adopted a city manager form of government, may the city administrator hire close relatives of city council members?**

No. If a city has a city administrator, but has never adopted a city manager form of government, the city will generally be unable to hire close relatives of city council members. In an attorney general opinion, the attorney general's office stated the "applicability of the nepotism law depends on whether an officer *may* exercise control over hiring decisions."<sup>25</sup> Since the city council usually exercises control over the hiring decision by a city administrator, the nepotism statute would usually not prevent the city administrator from hiring his or her close relatives.

**16. If a city has a city administrator but has never adopted a city manager form of government, may the city administrator hire his or her own close relatives?**

Yes. If a city has a city administrator, but has never adopted a city manager form of government, the city administrator will generally be able to hire his or her own close relatives. Since the city council usually exercises control over the hiring decision by a city administrator, the nepotism laws would not prevent the city from hiring the administrator's own close relatives. If a city administrator did have final hiring authority, the nepotism laws would prevent the hiring of the administrator's close relatives.

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<sup>24</sup> Op. Tex. Att'y Gen. Nos. GA-595 (2008); O-5274 (1943). However, if the city charter reserves a role for the city council such as consultation, the nepotism restrictions still apply. Op. Tex. Att'y Gen. No. GA-226 (2004) at 3. For additional discussion of the delegation issue in regard to school district boards and superintendents, *see* Op. Tex. Att'y Gen. Nos. GA-123 (2003); GA-177 (2004).

<sup>25</sup> Op. Tex. Att'y Gen. No. DM-2 (1991)

**17. Do the nepotism laws apply to the appointment or hiring of an independent contractor by the governing body if the contractor is a close relative of an official?**

Yes. The nepotism laws prohibit the appointment or hiring of an independent contractor by the governing body if the contractor is a close relative of one of the members of the governing body. Nonetheless, the nepotism prohibition would not prohibit the governing body from executing a contract with a corporation that employs the close relative unless the corporation is in actuality “the alter ego” of an individual who is closely related to an official.<sup>26</sup>

**18. Do the nepotism laws prohibit close relatives from being hired to work together for the same entity?**

The nepotism laws do not generally prohibit close relatives from being hired to work together for the same entity; the laws do not apply unless either relative has final hiring authority as a public official. Home-rule cities and possibly general-law cities might prohibit such arrangements by charter, ordinance or policy.

**19. Do the nepotism laws prohibit close relatives from being hired to work together within the same local government department?**

The nepotism laws do not generally prohibit close relatives from being hired to work together within the same local entity department; the laws do not apply unless either relative has final hiring authority as a public official. Home-rule cities and possibly general-law cities might prohibit such arrangements by charter, ordinance or policy.

**20. Do the nepotism laws apply to the appointment of a public official’s close relatives to serve as board or commission members (e.g., city planning and zoning commission members)?**

The nepotism laws prohibit the appointment of a public official’s close relatives to serve as a board or commission member only if the position is a paid position. The term “position” is defined to include “an office, clerkship, employment, or duty.”<sup>27</sup> Most city planning and zoning commission members are not paid; therefore, the nepotism prohibitions would not apply to these appointments. If the local entity paid such appointees, nepotism statutes would become applicable.

**21. Do the nepotism laws apply to the appointment of a public official’s close relatives to serve as members of purely advisory committees?**

No. Generally, the nepotism law would not apply to the appointment of an official’s close relatives to serve as members of purely advisory committees. The nepotism law governs the

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<sup>26</sup> Tex. Att’y Gen. LO-88-44.

<sup>27</sup> TEX. GOV’T CODE ANN. § 573.001(2) (Vernon 2004).

hiring of an individual to a position that is directly or indirectly compensated from public funds.<sup>28</sup> The term “position” is defined to include “an office, clerkship, employment, or duty.”<sup>29</sup> Since an advisory committee is typically not a paid position, the nepotism laws would not apply. However, if the positions were paid positions, the nepotism laws would prevent the appointment of officials’ close relatives to purely advisory committees.<sup>30</sup>

**22. Do the nepotism laws apply to the appointment of close relatives of an official to unpaid volunteer positions?**

No. The nepotism laws do not apply to the appointment of close relatives of a public official to unpaid volunteer positions. The nepotism law applies only to paid positions.

**23. Do the nepotism laws prohibit close relatives from being elected to serve together on the same governing body?**

No. The nepotism laws do not prohibit close relatives from being elected to serve together on the same governing body. The nepotism laws limit actions only by the governing body or the entity’s employee with final hiring authority. They do not limit the ability of the electorate to elect close relatives to the same governing body.

**24. Do the nepotism laws prohibit close relatives of a member of a governing body from being appointed by that body to serve on the governing body?**

The nepotism laws would prohibit close relatives of a member of a governing body from being appointed by that body to serve on the governing body only if the members of the governing body are paid. While the electorate could elect close relatives to the same governing body, the governing body itself could not appoint close relatives of its members to a paid office or employment.

**25. Do the nepotism laws prohibit a person from running for a governing body if the candidate has a close relative who is currently a public employee?**

No. The nepotism laws do not prohibit a person from running for a governing body if the candidate has a close relative who is currently an employee of the local entity. Nonetheless, the nepotism law may force the employee to resign if the candidate is elected, depending on how long the employee has worked in his or her present job, as discussed in question 27.

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<sup>28</sup> *Id.* § 573.041.

<sup>29</sup> *Id.* § 573.001(2).

<sup>30</sup> *Id.* § 573.041.

**26. May an employee continue employment if a close relative of the employee is elected or appointed to the governing body?**

An employee of a local entity may continue employment if the employee has been continuously employed for a sufficient time period immediately prior to the appointment or election of the close relative. If the employee's close relative was appointed to the governing body, the employee must have been continuously employed by the local entity for at least 30 days prior to the appointment in order to retain his job.<sup>31</sup> If the employee's close relative was elected to a non-county local governing body, the employee must have been continuously employed by the local governing body for at least six months before the member assumed office. If the employee's close relative was elected to a state or county office, the employee must have been continuously employed by that state or county office for at least one year before the public official assumed office.<sup>32</sup>

**27. What is considered “prior continuous employment” for purposes of the nepotism law?**

Prior continuous employment for purposes of the nepotism law is considered to be immediately prior and uninterrupted employment.<sup>33</sup> Additionally, in counting back the required time period, 30 days, six months or one year, the critical date is the date the public official assumes office (sworn in and qualified to serve).<sup>34</sup> In an attorney general opinion, the attorney general concluded that a teacher who retired from a full-time, certified teacher position had broken her employment with the school district and did not qualify for the prior continuous employment exception to the anti-nepotism statute.<sup>35</sup>

**28. May an employee continue employment if he or she marries a close relative of a member of the governing body?**

An employee of a local entity who marries the close relative of an elected member of the governing body must resign if the employee was not continuously employed for the relevant time period (30 days, six months or one year, as appropriate) before the member assumed office.<sup>36</sup>

**29. May an employee receive a pay raise or promotion in the future if the employee kept his or her job under the prior continuous employment exception?**

Yes. An employee of a local entity is eligible to receive pay raises and promotions after being permitted to keep his or her job under the prior continuous employment exception.<sup>37</sup> The public

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<sup>31</sup> *Id.* § 573.062(a)(1), (2)(A).

<sup>32</sup> *Id.* § 573.062(a)(1), (2)(B) & (C).

<sup>33</sup> *Id.* § 573.062; *see also* Op. Tex. Att’y Gen. No. JM-861 (1988) (holding that service as a substitute teacher did not constitute continuous employment under the nepotism laws, a holding overruled by the subsequent enactment of Government Code section 573.061(6)).

<sup>34</sup> *Bean v. State*, 691 S.W.2d 773, 775 (Tex. App.—El Paso 1985, pet. ref’d).

<sup>35</sup> Op. Tex. Att’y Gen. No. JC-442 (2001).

<sup>36</sup> Op. Tex. Att’y Gen. Nos. DM-132 (1992); GA-121 (2003); Tex. Att’y Gen. Lo-93-114.

<sup>37</sup> Op. Tex. Att’y Gen. Nos. DM-132 (1992); JM-1188 (1990); GA-121 (2003); Tex. Att’y Gen. Lo-93-114.

official who is a relative of the employee generally may not participate in any deliberation or voting on the employee's status or compensation.<sup>38</sup> Nonetheless, the nepotism laws would not prevent an official from voting on a class or category of employees.<sup>39</sup> For example, an official may participate in a decision to give all employees a cost-of-living raise even though an official's close relative is an employee.<sup>40</sup>

### **30. Do nepotism laws apply to hiring close relatives of a former public official or of an official who resigned?**

The nepotism laws may apply to the hiring of close relatives of a former public official or of an official who resigned. Under article XVI, section 17 of the Texas Constitution (the holdover provision), an officer continues to serve and have the duties and powers of the office until a successor qualifies for the office. Thus, the nepotism laws would prohibit the hiring of a holdover officer's close relatives to a paid position with the local entity.<sup>41</sup> However, once the local entity has filled the former officer's position and has qualified and sworn this person into office, the local entity may then hire a close relative of the former official.

### **31. Do nepotism laws apply to hiring persons who are related to a public official's ex-wife or ex-husband?**

In certain situations, the nepotism law will prevent the local entity from hiring close relatives of a public official's ex-wife or ex-husband. Specifically, if there is a living child from the former marriage (regardless of the age of the child), the nepotism law will prevent the local entity from hiring persons who are close relatives of the official's ex-wife or ex-husband. Divorce does not end a nepotism relationship if a child of that marriage is still living.<sup>42</sup>

### **32. Do the nepotism laws apply to "trading hires," where one jurisdiction hires the close relative of a public official in another jurisdiction in exchange for that jurisdiction hiring his close relative?**

Yes. Public officials may not trade nepotistic appointments.<sup>43</sup> In other words, a public official may not appoint an individual who is closely related to a neighboring public official, with the understanding that the other official will return the favor by hiring one's own relatives.

### **33. May a home-rule city provide more restrictive nepotism limitations?**

A home-rule city may generally provide more restrictive nepotism limitations, with one exception. The mere fact that the state legislature has enacted a law addressing a subject does not

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<sup>38</sup> TEX. GOV'T CODE ANN. § 573.062(b) (Vernon 2004).

<sup>39</sup> *Id.* § 573.062(b); *see also* Op. Tex. Att'y Gen. Nos. JC-193 (2000) at 2-3; JC-336 (2001) at 3; JC-442 (2001) at 2; JC-546 (2002); JC-558 (2002) (concluding that city charter's provision did not prevent a council member's brother from receiving a promotion provided council member did not vote on the matter).

<sup>40</sup> Op. Tex. Att'y Gen. No. DM-46 (1991).

<sup>41</sup> Op. Tex. Att'y Gen. Nos. JM-636 (1987); DM-2 (1991).

<sup>42</sup> TEX. GOV'T CODE ANN. § 573.024(b) (Vernon 2004).

<sup>43</sup> *Id.* § 573.044.

completely remove the subject matter from regulation of a home-rule city.<sup>44</sup> Thus, a home-rule city could enact stricter nepotism limitations.<sup>45</sup> However, a city ordinance cannot conflict with state law.<sup>46</sup> Therefore, a home-rule city could not adopt a less restrictive nepotism law. A city is specifically forbidden from adopting a local nepotism provision that would provide a tougher threshold for qualifying under the prior continuous employment exception.<sup>47</sup> For example, the attorney general concluded a home-rule city charter provision could not prohibit a son of a council member who had four years of employment with the city from receiving a promotion. Nonetheless, the related council member could not participate in any deliberation or voting on the promotion of her son.<sup>48</sup>

### **34. May a general-law city (Type A, Type B, or Type C city) provide further and more restrictive nepotism limitations?**

Arguably, a general-law city may pass a more restrictive nepotism limitation provided such an ordinance did not conflict with state law and the authority to do so was fairly implied from some other power of the general law city.<sup>49</sup> No court or attorney general opinion has discussed this question.

### **35. Are there other state statutes that may provide stricter nepotism restrictions for particular situations or public officials?**

Yes. There may be certain state statutes that provide stricter nepotism restrictions for particular public officials. Before a public official participates in an official action regarding a close relative, the official may want to consult with local legal counsel as to the applicable law.<sup>50</sup>

### **36. If a contract would result in a violation of the nepotism laws, is the contract illegal and void?**

Yes. The nepotism law addresses the hiring of an individual person by a governmental body. If a contract when signed is an employment contract of an individual who is related within a prohibited degree, the nepotism law would apply and the contract is void from its inception. Attorney General Opinion GA-177 (2004) contains examples of such contracts of employment. On the other hand, several attorney general opinions have held that when a relationship covered by the nepotism statutes arises during the course of an individual's employment, the individual may serve out the term of his or her contract.<sup>51</sup> The reasoning behind this rule is that a violation of the nepotism laws would not occur until the employing body or officer had to take action to

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<sup>44</sup> *City of Richardson v. Responsible Dog Owners of Tex.*, 794 S.W.2d 17, 19 (Tex. 1990).

<sup>45</sup> Tex. Att'y Gen. LO-93-30.

<sup>46</sup> TEX. CONST. art. XI, § 5.

<sup>47</sup> TEX. GOV'T CODE ANN. § 573.062(a) (Vernon 2004).

<sup>48</sup> Op. Tex. Att'y Gen. No. JC-546 (2002).

<sup>49</sup> TEX. LOC. GOV'T CODE ANN. § 51.012 (Vernon 2008).

<sup>50</sup> See generally TEX. GOV'T CODE ANN. §§ 415.114, 465.013(h) (Vernon 2005); TEX. HEALTH & SAFETY CODE ANN. §§ 534.0065(e)(5), 534.0115 (Vernon 2003); TEX. TAX CODE ANN. § 6.05(f) (Vernon 2008); TEX. TRANSP. CODE ANN. § 68.038(c) (Vernon 1999); TEX. WATER CODE ANN. §§ 49.059(a)(1), 57.262 (Vernon 2008).

<sup>51</sup> Op. Tex. Att'y Gen. Nos. MW-286 (1980); V-785 (1949); O-1408 (1939).

renew the individual's contract.<sup>52</sup> In the absence of a valid contract for a specified period of employment or with respect to an employee who is an "at will" employee, an individual could remain until the end of the pay period. At the end of the pay period, the individual would have to resign to avoid a violation of the nepotism laws.<sup>53</sup> The above discussion assumes that the individual does not qualify for the continuous employment exception.

**37. May a person be charged with a crime if he or she violates the nepotism laws?**

Yes. An official who violates the nepotism laws commits official misconduct, which is a misdemeanor punishable by a fine of not less than \$100 or more than \$1000.<sup>54</sup>

**38. Must a public official be removed from office if he or she has violated the nepotism laws?**

Yes. An official must be removed immediately from office if he or she is convicted of violating the nepotism laws and the conviction becomes final.<sup>55</sup> State law provides "the removal from the position shall be made immediately and summarily by the original appointing authority" when a criminal conviction becomes final.<sup>56</sup> If the official is not removed within 30 days after the conviction becomes final or if no prosecution occurs, a proceeding by the local prosecutor may be brought to remove the official.<sup>57</sup>

**39. Are board members of a municipal utility district subject to the nepotism laws?**

Yes. Nepotism laws do apply to board members of a municipal utility district (MUD).<sup>58</sup> The nepotism laws apply to "an officer or member of a board of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state."<sup>59</sup> A MUD is a political subdivision created under Texas Constitution article XVI, section 59.<sup>60</sup> Board members of MUDs may not participate in the employment of any individual related to any board member within the third degree by consanguinity or the second degree by affinity.<sup>61</sup>

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<sup>52</sup> *Bean*, 691 S.W.2d at 775.

<sup>53</sup> Op. Tex. Att'y Gen. Nos. MW-286 (1980); V-785 (1949); O-1408 (1939).

<sup>54</sup> TEX. GOV'T CODE ANN. § 573.084 (Vernon 2004).

<sup>55</sup> *Id.* § 573.081.

<sup>56</sup> *Id.* § 573.081(b).

<sup>57</sup> *Id.* §§ 573.081 (a); 573.082.

<sup>58</sup> Op. Tex. Att'y Gen. No. JC-184 (2000).

<sup>59</sup> TEX. GOV'T CODE ANN. § 573.001(3)(B) (Vernon 2004).

<sup>60</sup> Op. Tex. Att'y Gen. No. JC-184 (2000).

<sup>61</sup> TEX. GOV'T CODE ANN. §§ 573.002, 573.041 (Vernon 2004).

#### **40. Does a city council member violate the nepotism laws by appointing a close relative to the board of an economic development corporation?**

No. A city council member does not violate chapter 573 of the Texas Government Code when appointing a close relative to the board of an economic development corporation (EDC).<sup>62</sup> A public official is forbidden to appoint, confirm the appointment of, or vote for the appointment or confirmation of an individual to a position that is to be directly or indirectly compensated from public funds or fees if the individual and the public official are related within the third degree by consanguinity or within the second degree by affinity.<sup>63</sup> However, the Development Corporation Act states that members of the board of directors of an EDC shall serve without compensation except for being reimbursed for their actual expenses incurred in the performance of their duties.<sup>64</sup> The statutory reimbursement for member's actual expenses incurred are not considered compensation for purposes of section 573.041.<sup>65</sup> Thus, the nepotism law would not apply.

#### **41. May a public official make final approval of reassignments of close relatives who have been continuously employed in his or her department?**

A public official's relative who is within the third degree of consanguinity or second degree of affinity may not be employed in a position that the public official may appoint.<sup>66</sup> However, an employee whose close relative is elected or appointed to office may retain employment if, prior to the relative's election or appointment, the employee has been continuously employed in the position for a certain period of time.<sup>67</sup> The public official may not deliberate or vote on "the appointment, reappointment, confirmation of the appointment or reappointment, employment, re-employment, change in status, compensation, or dismissal of" such continuously employed relative.<sup>68</sup> The public official may take action with respect to his or her relative only if the action is "based in objective criteria" and may not take any such action that allows "for the preference or discretion of the officeholder."<sup>69</sup> For example, a police chief who has final approval of employment and reassignments within the police department is prohibited from approving the transfers of his son or nephew because the approval requires an exercise of the chief's discretion.<sup>70</sup>

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<sup>62</sup> Tex. Att'y Gen. LO-96-10.

<sup>63</sup> TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004).

<sup>64</sup> TEX. LOC. GOV'T CODE ANN. § 501.062(d) (Vernon Supp. 2008).

<sup>65</sup> Tex. Att'y Gen. LO-96-10; Op. Tex. Att'y Gen. No. JM-195 (1984).

<sup>66</sup> TEX. GOV'T CODE ANN. §§ 573.002, 573.041 (Vernon 2004); Op. Tex. Att'y Gen. Nos. JC-193 (2000); JC-336 (2001).

<sup>67</sup> TEX. GOV'T CODE ANN. § 573.062(a) (Vernon 2004).

<sup>68</sup> *Id.* § 573.062(b).

<sup>69</sup> Op. Tex. Att'y Gen. Nos. DM-46 (1991); JC-193 (2000); JC-336 (2001).

<sup>70</sup> Op. Tex. Att'y Gen. Nos. JC-193 (2000); JC-336 (2001).