



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1998

The Honorable James A. Farren  
Criminal District Attorney  
Randall County Courthouse  
501 16th Street  
Canyon, Texas 79015

Letter Opinion No. 98-098

Re: Whether the criminal-district attorney's spouse  
may serve as the prosecutor's victim-assistance  
coordinator and the local law-enforcement agency's  
crime-victim liaison (RQ-1139)

Dear Mr. Farren:

You question whether the spouse of the criminal-district attorney may serve as the unpaid victim-assistance coordinator in the criminal-district attorney's office and, simultaneously, as the paid crime-victim liaison in the local law-enforcement agency. We conclude that she may as a matter of law.

Initially, we will recount the facts underlying your question as you have provided them to us. You relate that in 1995 the Randall County Criminal District Attorney's office employed a victim-assistance coordinator in accordance with Code of Criminal Procedure article 56.04(a).<sup>1</sup> She received her salary from the county. Also, in accordance with Code of Criminal Procedure article 56.04(c), the Randall County Sheriff designated a deputy to serve as crime-victim liaison; the deputy was not paid additional compensation for the liaison duties. Later in 1995, the criminal-district attorney and the victim-assistance coordinator planned to marry. To avoid nepotism problems, the criminal-district attorney and the sheriff proposed to the Randall County Commissioners Court that it make the victim-assistance coordinator's position in the criminal-district attorney's office an unpaid position and the crime-victim liaison position in the sheriff's office a paid position. The county commissioners court accepted the criminal-district attorney's and the sheriff's recommendation. Then, the sheriff employed the (now unpaid) victim-assistance coordinator as the (now paid) crime-victim liaison, but she also continues to serve as the (now unpaid) victim-assistance coordinator in the criminal-district attorney's office. Subsequently, the criminal-district attorney and the victim-assistance coordinator/crime-victim liaison married. The Randall County Judge now asserts that the arrangement violates state nepotism laws.

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<sup>1</sup>Code of Criminal Procedure article 56.04(a) requires a criminal-district attorney to "designate" a victim-assistance coordinator, as we shall see. We express no opinion here as to whether the term "designate" means "employ."

Before we examine the nepotism issue, we believe we must consider whether Code of Criminal Procedure article 56.04 permits one person to serve both as a victim-assistance coordinator in the prosecutor's office and a crime-victim liaison in the local law-enforcement agency's office. That article creates the positions and prescribes their duties:

(a) The district attorney, criminal district attorney, or county attorney who prosecutes criminal cases shall designate a person to serve as victim assistance coordinator in that jurisdiction.

(b) The duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, and relatives by Article 56.02 of this code. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Board of Pardons and Paroles, and the judiciary in carrying out that duty.

(c) Each local law enforcement agency shall designate one person to serve as the agency's crime victim liaison. Each agency shall consult with the victim assistance coordinator in the office of the attorney representing the state to determine the most effective manner in which the crime victim liaison can perform the duties imposed on the crime victim liaison under this article.

(d) The duty of the crime victim liaison is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, or close relatives of deceased victims by Subdivisions (4), (6), and (9) of Article 56.02(a) of this code. . . . [Footnotes omitted.]

Although article 56.04 is not entirely clear on the question of whether one person may serve simultaneously as victim-assistance coordinator and crime-victim liaison,<sup>2</sup> we conclude that the practice is not forbidden. The article does not explicitly prohibit the practice. Moreover, the legislative history of the 1989 legislation that amended article 56.04 to create the crime-victim liaison position in local law-enforcement agencies<sup>3</sup> suggests that the legislature desired to leave open to prosecutors and law-enforcement agencies various ways of filling the two positions. Testifying

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<sup>2</sup>The second sentence of subsection (c), "Each agency shall consult with the victim assistance coordinator in the [prosecutor's office] to determine the most effective manner in which the crime victim liaison can perform the duties imposed on the crime victim liaison . . . ," particularly gives us pause.

<sup>3</sup>See Act of May 28, 1989, 71st Leg., R.S., ch. 996, § 3, 1989 Tex. Gen. Laws 4087, 4087-88.

on the bill before the House Committee on Criminal Jurisdiction, Representative Cuellar listed several “[s]atisfactory ways” a law-enforcement agency, particularly one in a small jurisdiction, might fill the liaison position: “for example, to name a receptionist with that responsibility or to contract with a service provider outside of the agency or to reach an agreement with other agencies and *to provide a single contact person for several agencies* or to obtain a volunteer to do the job.”<sup>4</sup>

We turn now to the nepotism question you raise. We are not aware of any anti-nepotism provision pertaining to these positions specifically, and you do not cite any. We therefore consider the propriety of the arrangement under the generally applicable anti-nepotism statute, Government Code chapter 573.

We conclude that this arrangement does not violate the letter of the nepotism law. First, because the victim-coordinator position in the prosecutor’s office is unpaid, the prosecutor may appoint his or her spouse to fill the position. Under Government Code section 573.041, a public official may not appoint a close relative, including a spouse, to fill a position, but only if the position is paid with public funds.<sup>5</sup> Additionally, we assume that the sheriff’s employment of the woman to serve as the paid crime-victim liaison does not violate section 573.041. Second, it does not appear, from the facts you have presented, that the prosecutor and the sheriff have contravened chapter 573 by trading otherwise prohibited nepotistic appointments. Section 573.044 prohibits one public official from appointing the close relative of another public official if the appointment “would be carried out in whole or partial consideration for the other public official appointing . . . an individual who is related to the first public official within” a prohibited degree. Whether trading has, in fact, occurred is a question of fact that we cannot resolve in the opinion process.<sup>6</sup>

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<sup>4</sup>Hearings on H.B. 828 Before the House Comm. on Criminal Jurisprudence, 71st Leg., R.S. (Mar. 20, 1989) (statement of Representative Cuellar) (tape available from House Video/Audio Services Office) (emphasis added).

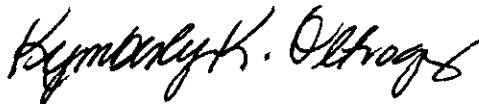
<sup>5</sup>See also Gov’t Code §§ 573.002, .021-.025 (describing prohibited degree of relationships by consanguinity or by affinity).

<sup>6</sup>See, e.g., Attorney General Opinions DM-98 (1992) at 3; H-56 (1973) at 3; M-187 (1968) at 3; O-2911 (1940) at 2.

S U M M A R Y

Code of Criminal Procedure article 56.04 does not preclude one person from serving both as the criminal-district attorney's victim-assistance coordinator and as the local law-enforcement agency's crime-victim liaison. Government Code chapter 573, the general anti-nepotism statute, does not, as a matter of law, prohibit the prosecutor's spouse from serving as the unpaid victim-assistance coordinator in the prosecutor's office or as the paid crime-victim liaison in the local sheriff's office. Whether the prosecutor and the sheriff have engaged in trading, which Government Code section 573.044 prohibits, is a question of fact.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kymberly K. Oltrogge". The signature is fluid and cursive, with a large, stylized initial "K".

Kymberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee