



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2019

The Honorable Dana Norris Young
Cherokee County Attorney
Post Office Box 320
Rusk, Texas 75785

Opinion No. KP-0238

Re: Application of Government Code section 573.062, the nepotism continuous-employment exception, to a tax assessor-collector's sister-in-law (RQ-0243-KP)

Dear Ms. Young:

You ask whether a county tax assessor-collector may supervise and employ her sister-in-law who has worked in the tax assessor's office for over a year.¹ You tell us the current tax assessor-collector plans to retire prior to the end of her term. *See* Request Letter at 1. One of the individuals seeking appointment to fill the vacancy has worked in the tax assessor's office for over twenty-three years. *See id.* If the commissioners court appoints a particular individual to fill the vacancy, she will supervise her sister-in-law. *See id.* The tax office has employed the sister-in-law for over six years. *See id.* You ask whether these circumstances are within the scope of section 573.062 of the Government Code. *See id.* at 2.

Government Code chapter 573—the nepotism statute—generally prohibits a public official² from appointing a person, compensated from public funds, who is related to the public official within the specified degree of consanguinity or affinity. *See* TEX. GOV'T CODE § 573.041; *see also* Tex. Att'y Gen. Op. Nos. GA-0419 (2006) at 2 (“Section 573.041 applies to an officer who ‘may exercise control over hiring decisions, even if the officer refrains from confirming, appointing, or voting in a particular case.’”), GA-0121 (2003) at 3 (“[I]n the case of an at-will employee, it is presumed that a public official makes a new decision each month to retain the employee.”). A sister-in-law is within the prohibited degree of affinity.³ *See* TEX. GOV'T CODE §§ 573.023, .024(a)(2), .025(a).

¹*See* Letter from Honorable Dana Norris Young, Cherokee Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Aug. 17, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²Under chapter 573, a “public official” includes “an officer of this state, or of a district, county, municipality, precinct, school district, or other political subdivision of this state.” TEX. GOV'T CODE § 573.001(3)(A).

³People are related by affinity if “they are married to each other” or “the spouse of one of the [persons] is related by consanguinity to the other individual.” *Id.* § 573.024(a). “A husband and wife are related to each other in the first degree by affinity.” *Id.* § 573.025(a). “For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.” *Id.* For example, a person's relatives within the

Section 573.062 excepts from the application of the prohibition persons who have been continuously employed for specified periods of time depending on the nature of the office of the public official. *See id.* § 573.062. Under section 573.062, the person must be “employed in the position immediately before the . . . appointment of the public official to whom the [person] is related in a prohibited degree,” and the employment must be continuous for “one year, if the public official is elected at the general election for state and county officers.” *Id.* § 573.062(a)(1), (2). While the circumstances you describe involve the appointment of the tax assessor-collector, the office of county tax assessor-collector is an elective office, elected at the general election for county officers. *See* TEX. CONST. art. VIII, § 14 (“The qualified voters of each county shall elect an assessor-collector of taxes for the county, except as otherwise provided by this section.”); TEX. LOC. GOV’T CODE § 87.041(a)(8) (authorizing commissioners court to appoint a county tax assessor-collector to fill a vacancy until the next general election); *see also* Tex. Att’y Gen. Op. No. JM-253 (1984) at 1 (recognizing that the county tax assessor-collector holds an elective office but that the commissioners court is authorized to fill a vacancy in the office until the next election). Thus, the relevant period under section 573.062(a) is one year. *See* TEX. GOV’T CODE § 573.062(a)(1), (a)(2)(C).

The starting date for calculating the continuous employment is the first day the tax office employed the sister-in-law in her current position. *See* Tex. Att’y Gen. Op. Nos. GA-1024 (2013) at 2, GA-1016 (2013) at 3. The ending date for calculating the continuous employment is the date the individual appointed as tax assessor-collector assumes office. *See Bean v. State*, 691 S.W.2d 773, 775 (Tex. App.—El Paso 1985, pet. ref’d); *see also* Tex. Att’y Gen. Op. No. GA-1016 (2013) at 3. Thus, there must be at least one year between the date of employment of the sister-in-law and the date the individual appointed to the vacancy assumes the office of tax assessor-collector. You do not provide the exact dates of the sister-in-law’s employment in her position, so we cannot determine as a matter of law the applicability of section 573.062. You do, however, state that the sister-in-law will have completed one year of continuous employment at the time the individual, if appointed, would assume the position of tax assessor-collector. *See* Request Letter at 2. To the extent the sister-in-law has at least one year of continuous employment in her position in the tax office prior to the individual’s appointment to tax assessor-collector, the sister-in-law’s continued service satisfies the requirement under section 573.062, and her continued employment does not violate chapter 573 of the Government Code.⁴

second degree by affinity include, among others, the person’s (1) mother-in-law, father-in-law, son-in-law or daughter-in-law, and (2) brother-in-law or sister-in-law. *See id.*; *see also id.* § 573.023(c)(1)–(2).

⁴Section 573.062(b) provides:

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 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.

Id. § 573.062(b). This provision would preclude the tax assessor-collector, if appointed, from promoting the sister-in-law or giving the sister-in-law a raise applicable to only the sister-in-law. *See id.*; *see also* Tex. Att’y Gen. Op. No. JM-1188 (1990) at 3 (“A sheriff may not promote his son and daughter even though they had sufficient prior continuous service to retain their jobs in the sheriff’s office after their father became sheriff.”).

S U M M A R Y

Section 573.041 of the Government Code prohibits a public official from employing a person who is related to the public official by the specified degree of consanguinity or affinity. Section 573.062 excepts persons employed in a position for a specified continuous period of time prior to a relative's election or appointment to public office.

To the extent the tax office employs the sister-in-law in her current position for one year prior to the appointment of her relative as county tax assessor-collector, the sister-in-law's service satisfies the requirements under section 573.062 and her continued employment does not violate chapter 573 of the Government Code.

Very truly yours,



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