

# 2004 TEXAS NEPOTISM LAWS MADE EASY

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Answers to the most frequently asked questions  
about Texas Nepotism Laws

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# Index to Nepotism FAQ

<b>Issue Addressed</b>	<b>Page Number</b>
1. What is nepotism? .....	3
2. City officials subject to nepotism laws .....	3
3. Actions prohibited under the nepotism laws .....	3
4. Relationships by consanguinity (blood) .....	4
5. Relationships by affinity (marriage) .....	4
6. Application of nepotism if two marriages needed to establish relationship .....	4
7. Required action if nepotism conflict .....	5
8. No application of nepotism laws to cities with fewer than 200 persons .....	5
9. No application of nepotism laws to unpaid positions .....	5
10. Effect of abstention on item that has nepotism issue .....	5
11. Inability to approve hire of close relatives of another official .....	6
12. Inability to separate out an item from a budget if a nepotism conflict .....	6
13. Who is the “hiring authority” for nepotism purposes ? .....	6
14. Limited ability to delegate “hiring authority” .....	6
15. Ability of city manager to hire close relatives of the city council .....	7
16. Ability of city manager to hire his own close relatives .....	7
17. Ability of city administrator to hire close relatives of the city council .....	7
18. Ability of city administrator to hire his own close relatives .....	7
19. Application of nepotism laws to city use of independent contractors .....	8
20. Ability of close relatives to work for the same city .....	8
21. Ability of close relatives to work within same city department .....	8
22. Ability of official’s close relatives to serve on city boards .....	8

<b><u>Issue Addressed</u></b>	<b><u>Page Number</u></b>
23. Ability of official’s close relatives to serve on advisory committees .....	9
24. Application of nepotism law to unpaid city volunteer positions .....	9
25. Ability of official’s close relatives to be elected to city council .....	9
26. Ability of official’s close relatives to be appointed to city council .....	9
27. Ability to run for city council if close relative is city employee .....	9
28. Ability of city employee to keep job if relative is elected to council .....	10
29. Application of the “prior continuous employment” exception .....	10
30. Effect of marriage on ability to keep job .....	10
31. Ability of “prior continuous” employee to receive a raise/promotion .....	10
32. Effect of resignation on ability to hire an official’s close relative .....	11
33. Application of nepotism laws to close relatives of official’s ex-spouse .....	11
34. Application of nepotism laws to “trading hires” .....	11
35. Ability of home-rule cities to provide stricter nepotism limitations .....	11
36. Ability of general law cities to provide stricter nepotism limitations .....	12
37. Stricter nepotism restrictions within other state statutes .....	12
38. Validity of a contract that violates the nepotism laws .....	12
39. Criminal penalties for violation of nepotism laws .....	12
40. Civil remedies for violation of nepotism laws .....	13
41. Application of nepotism laws to municipal utility districts .....	13
42. Application of nepotism laws to economic development corporations .....	13
43. Effect of disqualification of member by nepotism laws on super-majority votes .....	13
44. Final approval of reassignment of continuously employed relative .....	14
<b>Endnotes</b> .....	<b>15</b>

# **Texas Nepotism Laws Made Easy**

Nepotism laws refer to limitations on governmental entities' hiring of 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 city officials and are intended to provide general guidance on the issues. The Municipal Affairs section of the Office of the Attorney General is available to answer questions about this handbook from city officials, who should nonetheless consult with their 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 means the hiring of family or relatives. Anti-nepotism laws prohibit a governmental entity hiring certain "close relatives" of a public official. The nepotism laws are contained in chapter 573 of the Texas Government Code.<sup>1</sup> The nepotism statutes prohibit a city official from appointing, confirming the appointment, or voting on the appointment of a "close relative" to a paid public position.<sup>2</sup> A close relative under nepotism laws is someone who is related to the city official within a prohibited degree of consanguinity (relationship by blood) or a prohibited degree of affinity (relationship by marriage).<sup>3</sup>

## **2. What types of city officials are subject to the nepotism law?**

The nepotism statutes apply to any city official who is the "final hiring authority" or is a member of the governing body that has final hiring authority.<sup>4</sup> If the city council is the hiring authority, then nepotism limitations would apply to "close relatives" of any members of the city council. However, if 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 city council or city officer 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 14 below for further details.

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

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

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

A city 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 where 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 city 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 city 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>

#### **6. What happens if it takes two marriages to establish the relationship with the city 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. Here, 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 city council member (or other officer) take if he or she has a nepotism conflict?**

If a city council member has a nepotism conflict, neither the city council nor its members may employ or contract with a close relative of that council member, unless there is a specific statutory exception that allows such an action.<sup>14</sup> Similarly, if a city manager or other city officer who has final hiring authority has a nepotism conflict, the city 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?**

The nepotism statute does not apply to cities with fewer than 200 persons.<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?**

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

**10. May a council member discuss an issue for which he or she has a nepotism conflict if the council member abstains from voting on the item?**

State law does not prohibit a council member from discussing an item for which he or she has a nepotism conflict. It only prohibits members of the governing body or an officer who is the hiring authority from appointing or voting for the appointment of a close relative.<sup>18</sup> However, if a close relative continues in his or her employment due to the continuous employment exception (see question 29), the related council member is prohibited from deliberating or voting on issues such as a merit pay raise or promotion.<sup>19</sup>

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

Other members of the governing body may not vote to hire a person who is a close relative of a city official. The abstention of a city official with the nepotism conflict does not relieve the remaining council members from the prohibition against hiring a close relative.<sup>20</sup>

**12. May a city separate out a budget item to allow the official with the nepotism conflict to vote on the budget?**

A city may not separate out a budget item to allow the official with the nepotism conflict to vote on the budget. The general conflict of interest statute allows a city council to separate out an item from a budget if one member of the governing body has a conflict of interest.<sup>21</sup> However, there is not a similar provision in the nepotism statutes.

**13. 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>22</sup> If the city council is the hiring authority, then nepotism limitations would apply to “close relatives” of any of the members of the city council. If the city manager possesses the hiring authority, then the city may not hire persons who are “close relatives” of the city manager.

**14. May the city council or the 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>23</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>24</sup>

However, one must distinguish between the power of a home rule city to delegate hiring authority through its city charter verses a delegation that is done by city ordinance.<sup>25</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>26</sup> This conclusion was 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. However, in Attorney General Opinion O-5274, the Attorney General concluded that the nepotism statutes did not preclude a city from hiring a relative of a city council member, where the city charter provided that the city manager was the final hiring authority and the council members were prohibited from participating in the hiring decision.<sup>27</sup>

**15. 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 14 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.

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

If a city has a city manager form of government where the city manager alone possesses the hiring authority, the city manager may not hire his own close relatives. See question 14 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.

**17. 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?**

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>28</sup> Since the city council usually exercises control over the hiring decision by a city administrator, the nepotism statute would prevent the city administrator from hiring close relatives of city council members.

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

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 own close relatives. Since the city administrator usually does not possess final hiring authority, 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.

**19. Do the nepotism laws apply to the appointment or hiring of an independent contractor by the city council if the contractor is a close relative of a city official?**

The nepotism laws prohibit the appointment or hiring of an independent contractor by the city council if the contractor is a close relative of one of the council members. Nonetheless, the nepotism prohibition would not prohibit the city 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 a city official.<sup>29</sup>

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

The nepotism laws do not prohibit close relatives from being hired to work together for the same city if neither relative has final hiring authority over the other. Home-rule cities and possibly general-law cities might prohibit such arrangements through their own charters, ordinances or policies.

**21. Do the nepotism laws prohibit close relatives from being hired to work together within the same city department?**

The nepotism laws do not prohibit close relatives from being hired to work together within the same city department if neither relative has final hiring authority over the other. Home-rule cities and possibly general-law cities might prohibit such arrangements through their own charters, ordinances or policies.

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

The nepotism laws prohibit the appointment of a city official's close relatives to serve as a city 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>30</sup> Most city planning and zoning commission members are not paid; therefore, the nepotism prohibitions would not apply to these appointments. If the city paid such appointees, nepotism statutes would become applicable.

**23. Do the nepotism laws apply to the appointment of a city official's close relatives to serve as members of purely advisory city committees?**

Generally, the nepotism law would not apply to the appointment of a city official's close relatives to serve as members of purely advisory city committees. The nepotism law governs the hiring of an individual to a position that is directly or indirectly compensated from public funds.<sup>31</sup> The term "position" is defined to include "an office, clerkship, employment, or duty."<sup>32</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 city officials' close relatives to purely advisory city committees.<sup>33</sup>

**24. Do the nepotism laws apply to the appointment of close relatives of a city official to unpaid city volunteer positions?**

The nepotism laws do not apply to the appointment of close relatives of a city official to unpaid city volunteer positions. The nepotism law applies only to paid positions.

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

The nepotism laws do not prohibit close relatives from being elected to serve together on the same governing body. The nepotism laws limit only actions by the city council or city staff with final hiring authority. They do not limit the ability of the electorate to elect close relatives to the same governing body.

**26. Do the nepotism laws prohibit close relatives of a council member from being appointed to serve on the same governing body?**

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

**27. Do the nepotism laws prohibit a person from running for city council if the candidate has a close relative who is currently a city employee?**

The nepotism laws do not prohibit a person from running for city council if the candidate has a close relative who is currently a city employee. 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.

**28. May a city employee continue employment if a close relative of the employee is elected or appointed to the city council?**

A city employee 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 city council, the city employee must have been continuously employed by the city for at least 30 days prior to the appointment in order to retain his job.<sup>34</sup> If the employee's close relative was elected to the city council, the employee must have been continuously employed by the city for at least six months before the council member assumed office.<sup>35</sup>

**29. 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>36</sup> Additionally, to count back the required time period, 30 days or six months, the critical date is the date the public official assumes office (sworn in and qualified to serve).<sup>37</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>38</sup>

**30. May a city employee continue city employment if he or she marries a close relative of a city council member?**

A city employee who marries the close relative of an elected city council member must resign if the employee was not continuously employed for the relevant time period, 30 days or six months, before the council member assumed office.<sup>39</sup>

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

A city employee is eligible to receive pay raises and promotions after being permitted to keep his or her job under the prior continuous employment exception.<sup>40</sup> The public official who is a relative of the employee generally may not participate in any deliberation or voting on the city employee's status or compensation.<sup>41</sup> Nonetheless, the nepotism laws would not prevent a city official from voting on a class or category of employees.<sup>42</sup> For example, a city official may participate in a decision to give all city employees a cost-of-living raise even though a city official's close relative was a city employee.<sup>43</sup>

**32. Do nepotism laws apply to hiring close relatives of a former city official or of a city official who resigned?**

The nepotism laws may apply to the hiring of close relatives of a former city official or of a city 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 city.<sup>44</sup> However, once the city has filled the former officer's position and has qualified and sworn this person into office, the city may then hire a close relative of the former official.

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

In certain situations, the nepotism law will prevent the city from hiring close relatives of a city 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 city from hiring persons who are close relatives of the city official's ex-wife or ex-husband. Divorce does not end a nepotism relationship if a child of that marriage is still living.<sup>45</sup>

**34. 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?**

Public officials may not trade nepotistic appointments.<sup>46</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.

**35. May a home rule city provide more restrictive nepotism limitations?**

A home rule city may provide restrictive nepotism limitations, with one exception. The mere fact that the state legislature has enacted a law addressing a subject does not completely remove the subject matter from regulation of a home rule city.<sup>47</sup> Thus, a home rule city could enact stricter nepotism limitations.<sup>48</sup> However, a city ordinance cannot conflict with state law.<sup>49</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>50</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>51</sup>

**36. 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>52</sup> No court or attorney general opinion has discussed this question.

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

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>53</sup>

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

The nepotism law addresses the hiring of an individual person by 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>54</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 renew the individual's contract.<sup>55</sup> In the absence of a valid contract for a specified period of employment, or 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>56</sup> The above discussion assumes that the individual does not qualify for the continuous employment exception.

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

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>57</sup>

**40. Must a city official or city employee be removed from office if he or she has violated the nepotism laws?**

A city official must be removed immediately from office if he or she is convicted of violating the nepotism laws and the conviction becomes final.<sup>58</sup> State law provides “the removal from the position shall be made immediately and summarily by the original appointing authority” if a criminal conviction becomes final.<sup>59</sup> If the city 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>60</sup>

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

Nepotism laws do apply to board members of a municipal utility district (MUD).<sup>61</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>62</sup> A MUD is a political subdivision created under Texas Constitution article XVI, section 59.<sup>63</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>64</sup>

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

A city council member does not violate chapter 573 of the Government Code when appointing a close relative to the board of an economic development corporation (EDC).<sup>65</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 (blood) or within the second degree by affinity (marriage).<sup>66</sup> However, the Development Corporation Act of 1979 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>67</sup> The statutory reimbursement for member’s actual expenses incurred are not considered compensation for section 573.041.<sup>68</sup> Thus, the nepotism law will not apply.

**43. How does the disqualification of a city council member because of nepotism affect a super-majority vote?**

The effect of the disqualification of a city council member because of nepotism on a

supermajority vote depends on the wording of the statute that requires such a vote. If the statute states that the vote is a certain fraction of “all the members of the legislative body” or “the members of the whole council,” then the disqualification will be treated as a vacancy when determining the number of members of the council.<sup>69</sup> For example, a city council of five members can grant a zoning change that has already been denied by the zoning commission if three-fourths of all the members of the council approve. If one member is disqualified because of having a substantial interest, the council would need only three of the remaining four members to have the needed votes to pass the zoning change.<sup>70</sup> However, if the statute states that the vote is a certain fraction of “the *elected* members of the body,” then the disqualification will count towards determining the super-majority.<sup>71</sup> “Elected” means that the required number of council members is irreducible for any cause.<sup>72</sup> For example, a “no confidence” resolution can be properly adopted with the vote of two-thirds of the elected aldermen. If the city has eight elected aldermen and one alderman abstains from voting because of nepotism, the council would still need six votes to pass the resolution.<sup>73</sup>

**44. 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 that is within the third degree of consanguinity (blood) or second degree of affinity (marriage) may not be employed in a position that the public official may appoint.<sup>74</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>75</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>76</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>77</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>78</sup>

## Nepotism Endnotes

1. TEX. GOV'T CODE ANN. Chapter 573 (Vernon 1994 & Supp. 2004).
2. TEX. GOV'T CODE ANN. § 573.041.
3. TEX. GOV'T CODE ANN. § 573.002.
4. TEX. GOV'T CODE ANN. § 573.041.
5. *Pena v. Rio Grande City Consol. Indep. Sch. Dist*, 616 S.W.2d 658, 659 (Tex. Civ. App.-Eastland 1981, no writ); Att'y Gen. Ops. GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.
6. TEX. GOV'T CODE ANN. § 573.041.
7. TEX. GOV'T CODE ANN. § 573.022.
8. TEX. GOV'T CODE ANN. § 573.023(c)(1), (2) & (3).
9. TEX. GOV'T CODE ANN. § 573.022(b).
10. TEX. GOV'T CODE ANN. § 573.002.
11. TEX. GOV'T CODE ANN. § 573.025.
12. *See* Att'y Gen. Ops. O-119 (1939); O-7424 (1946); & Att'y Gen. LO. No. 88-121 (1988).
13. Att'y Gen. LO No. 88-121 (1988).
14. TEX. GOV'T CODE ANN. § 573.041; *see* Att'y Gen. Op. JC-184 (2000) at 2 (noting 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).
15. TEX. GOV'T CODE ANN. § 573.041.
16. TEX GOV'T CODE ANN. § 573.061 (7).
17. TEX GOV'T CODE ANN. § 573.041; *see* Att'y Gen. LO No. 96-10 (1996).
18. TEX. GOV'T CODE ANN. § 573.041.
19. TEX GOV'T CODE ANN. § 573.062 (b) (“If ... 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, re-employment, 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”); *see also* Att'y Gen. Op. JC-558 (2002) at 3 (“We conclude that section 573.062(b) prohibits a city commissioner from participating in a deliberation regarding a merit



salary increase for his sibling; and if the city commissioner participates in such a deliberation, he may be found to have violated the statute”).

20. Att’y Gen. Op. JC-184 (2000).

21. TEX. LOC. GOV’T CODE ANN. § 171.005(a) (Vernon 2003).

22. *Pena v. Rio Grande City Consol. Indep. Sch. Dist*, 616 S.W.2d 658, 659 (Tex. Civ. App.-Eastland 1981, no writ); Att’y Gen. Ops. GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.

23. DM-2 (1991) at 1.

24. *Id.*

25. *Id.*

26. *Id.* 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. Att’y Gen. Op. JC-336 (2001).

27. Att’y Gen. Op. O-5274 (1943). However, if the city charter reserves a role for the city council such as consultation, the nepotism restrictions still apply. Att’y Gen. Op. GA-226 (2004) at 3. For additional discussion of the delegation issue, see Att’y Gen. Ops. GA-123 (2003) & GA-177 (2004).

28. Att’y Gen. Op. DM-2 (1991).

29. *See* Att’y Gen. LO No. 88-44 (1988).

30. TEX. GOV’T CODE ANN. § 573.001(2).

31. TEX. GOV’T CODE ANN. § 573.041.

32. TEX. GOV’T CODE ANN. § 573.001(2).

33. TEX. GOV’T CODE ANN. § 573.041.

34. TEX. GOV’T CODE ANN. § 573.062(a)(1)&(2)(A).

35. TEX. GOV’T CODE ANN. § 573.062(a)(1)&(2)(B).

36. TEX. GOV’T CODE ANN. § 573.062; *see* Att’y Gen. Op. JM-861 (1988) (holding service as a substitute teacher did not constitute continuous employment under the nepotism laws, a holding overruled by subsequent enactment of Government Code Section 573.061(6)).

37. *Bean v. State*, 691 S.W.2d 773, 775 (Tex. App. – El Paso 1985, pet. ref’d).

38. Att’y Gen. Op. JC-0442 (2001).
39. *See* Att’y Gen. Op. DM-132 (1992).
40. Att’y Gen. Ops. DM-132 (1992) and JM-1188 (1990).
41. TEX. GOV’T CODE ANN. § 573.062(b).
42. TEX. GOV’T CODE ANN. § 573.062(b). *See* Att’y Gen. Ops. JC-193 (2000) at 2-3; JC-336 (2001) at 3; JC-442 (2001) at 2; JC-546 (2002); and JC-558 (2002) (concluding 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).
43. Att’y Gen. Op. DM-46 (1991).
44. Att’y Gen. Ops. JM-636 (1987) & DM-2 (1991).
45. TEX. GOV’T CODE ANN. § 573.024(b).
46. TEX. GOV’T CODE ANN. § 573.044.
47. *City of Richardson v. Responsible Dog Owners of Texas*, 794 S.W.2d 17, 19 (Tex. 1990).
48. Att’y Gen. LO 93-30 (1993).
49. TEX. CONST. art. XI, § 5.
50. TEX GOV’T CODE ANN. § 573.062(a).
51. Att’y Gen. Op. JC-546 (2002).
52. TEX. LOC. GOV’T CODE ANN. § 51.012 (Vernon 1999).
53. *See generally* TEX. GOV’T CODE ANN. §§ 415.114 & 465.013 (h); TEX. HEALTH & SAFETY CODE ANN. §§ 534.0065(e)(5) & 534.0115; TEX. TAX CODE ANN. § 6.05 (f); TEX. TRANSP. CODE ANN. § 68.038 (c); & TEX. WATER CODE ANN. §§ 49.059 (a)(1) & 57.262.
54. *See* Att’y Gen. Ops MW-286 (1980); V-785 (1949); & 0-1408 (1939).
55. *See Bean v. State*, 691 S.W.2d 773, 775 (Tex. App. – El Paso 1985, pet. ref’d).
56. *See* Att’y Gen. Ops. MW-286 (1980); V-785 (1949); & 0-1408 (1939).
57. TEX. GOV’T CODE ANN. § 573.084.
58. TEX. GOV’T CODE ANN. § 573.081.
59. TEX. GOV’T CODE ANN. § 573.081 (b).

60. TEX. GOV'T CODE ANN. §§ 573.081 (a) & 573.082.
61. Att'y Gen. Op. JC-184 (2000).
62. TEX. GOV'T CODE ANN. § 573.001(3)(B).
63. Att'y Gen. Op. JC-184 (2000).
64. TEX. GOV'T CODE ANN. §§ 573.002 & 573.041.
65. Att'y Gen. LO 96-10 (1996).
66. TEX. GOV'T CODE ANN. § 573.041.
67. TEX. REV. CIV STAT. ANN. art 5190.6, § 11(a) (Vernon Supp. 2004).
68. Att'y Gen. LO 96-10 (1996). *See* Att'y Gen. Op. JM-195 (1984).
69. *Johnson v. City of Dublin*, 46 S.W.3d 401, 407 (Tex.App. – Eastland 2001, pet. den'd). *See City of Alamo City v. Gerety*, 264 S.W.2d 778 (Tex.Civ.App. – San Antonio 1954, writ ref'd n.r.e.).
70. *Gerety*.
71. *Johnson*.
72. *Johnson*; *see Gerety*.
73. *Johnson v City of Dublin, supra*.
74. TEX. GOV'T CODE ANN. § § 573.002 & 573.041; *see* Att'y Gen. Ops. JC-193 (2000) & JC-336 (2001).
75. TEX. GOV'T CODE ANN. § 573.062(a).
76. TEX. GOV'T CODE ANN. § 573.062(b).
77. Att'y Gen. Op. DM-46 (1991); *see* Att'y Gen. Ops. JC-193 (2000) & JC-336 (2001).
78. Att'y Gen. Ops. JC-193 (2000) & JC-336 (2001).