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Texas Attorney General's Office
Honorable Ken Paxton
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

To Whom it May Concern:

I am the county attorney for Stephens County, Texas. I have been requested by a citizen to ask for an opinion as it may apply to nepotism in our local county government involving our county judge and a candidate for the office of Sheriff who happened to be the brother of the county judge.

Background

Our county judge first ran for election in 2018, he won the election, and began his first term on January 1, 2019. Our current Sheriff, Will Holt was elected as Sheriff in 2016 and began his first term January 1, 2017. In January, 2017, Sheriff Holt hired a man with experience and background in the Stephens County Sheriff's Office to be Sheriff Holt's Chief Deputy. Sheriff Holt chose not to run for re-election in 2020, but the man who was his chief deputy filed to run for election as the sheriff on the Republican ticket. The County Judge and the man running for sheriff are biological brothers. Both have independently filed for their respective offices.

Questions:

- 1) Can the chief deputy run for sheriff if his biological brother is the current sitting county judge?
- 2) Can the county judge perform all of the acts required during the election process in the primaries as well as the general election if his biological brother is a candidate for sheriff?
- 3) Can the county judge perform his statutory duties as the chief budget officer if his biological brother holds an elected county office?
- 4) Can the county judge canvas votes and confirm the election if his biological brother is a candidate for sheriff?
- 5) Can the county judge participate in setting the salary of the sheriff if his biological brother is elected as sheriff?
- 6) Can the county judge simply abstain from voting on the sheriff's salary if his biological brother is elected as sheriff?
- 7) Can the county judge participate in making the budget for the sheriff's office if his biological brother is elected as sheriff?
- 8) Can the county judge simply abstain from participating and/or voting on the sheriff office's budget if his biological brother is elected as sheriff?

- 9) Can the other county commissioners canvass the votes and confirm the election if the county judge and candidate for sheriff are biological brothers?
- 10) Can the other county commissioners perform the duties related to the salary and budget of the sheriff and/or the sheriff's office if the elected sheriff is the county judge's biological brother?
- 11) Does the nepotism statute prohibit the other county commissioner's from confirming the election of the sheriff if one of the candidates is the biological brother of the current county judge?
- 12) Is the county judge and other county commissioners prohibited from canvassing precinct returns of any race involving the biological brother of the county judge?
- 13) Can the county judge and/or the other county commissioners perform their duties on the county election board if a candidate is the biological brother of the county judge?
- 14) Is the county judge prohibited from performing any of his duties on the election board if a candidate is his biological brother?

Statutes Related to the Questions

1) **Local Government Code Section 573.041.** PROHIBITION APPLICABLE TO PUBLIC OFFICIAL.

(a) A candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Section [573.002](#):

(1) an employee of the office to which the candidate seeks election; or

(2) an employee or another officer of the governmental body to which the candidate seeks election, if the office the candidate seeks is one office of a multimember governmental body.

(b) The prohibition imposed by this section does not apply to a candidate's actions taken regarding a bona fide class or category of employees or prospective employees.

2) **Local Government Code Section 67.002.** CANVASS OF PRECINCT RETURNS.

(a) Except as otherwise provided by law, the precinct election returns for each election shall be canvassed by the following authority:

(1) for an election ordered by the governor or by a county authority, the commissioners court of each county in which the election is held; and

(2) for an election ordered by an authority of a political subdivision other than a county, the political subdivision's governing body.

(b) The canvass of precinct returns shall be conducted in accordance with this chapter except as otherwise provided by this code.

3) **Election Code Section 51.002.** COUNTY ELECTION BOARD

(a) A county election board is established in each county for the general election for state and county officers, a special election for an officer regularly elected at the general election, and any other election ordered by a county authority or held at county expense.

(b) For the general election for state and county officers and for a special election for an officer regularly elected at the general election, the county election board consists of the county judge, county clerk, voter registrar, sheriff, and county chair of each political party required to nominate candidates by primary election. For other elections, the board consists of the county judge, county clerk, voter registrar, and sheriff.

(c) The county clerk is the chair of the county election board.

4) **Local Government Code 111.002. COUNTY JUDGE AS BUDGET OFFICER.** The county judge serves as the budget officer for the commissioners court of the county.

5) **Local Government Code Sec. 111.003. ANNUAL BUDGET REQUIRED.**

(a) During the 7th or the 10th month of the fiscal year, as determined by the commissioners court, the county judge, assisted by the county auditor or county clerk, shall prepare a budget to cover all proposed expenditures of the county government for the succeeding fiscal year.

(b) A proposed budget that will require raising more revenue from property taxes than in the previous year must contain a cover page with the following statement in 18-point or larger type: "This budget will raise more total property taxes than last year's budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year."

6) **Local Government Code Sec. 111.005. INFORMATION FURNISHED BY COUNTY OFFICERS.**

(a) In preparing the budget, the county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget.

(b) If a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order:

- (1) directing the county officer to produce the required information; and
- (2) prescribing the form in which the county officer must produce the information.

Possible Relevant Texas Attorney General Opinions

- 1) Opinion No. KP-0045
- 2) Opinion No. JM-636
- 3) Opinion No. H-993
- 4) Opinion No. O-875
- 5) Opinion No. O-6406
- 6) Opinion No. O-7516
- 7) Opinion No. O-1408
- 8) Opinion No. GA-121
- 9) Opinion No. GA-0328
- 10) Opinion No. GA-0214
- 11) Opinion No. GA-0840
- 12) Opinion No. LO-93-005
- 13) Opinion No. LO-96-004
- 14) Opinion No. MW-286
- 15) Opinion No. V-184
- 16) Opinion No. JC-0184

Possible Relevant Case Law

- 1) Pena v. Rio Grande v City Consol. Indep. Sch. Dist., 616 S.W.2d 658
- 2) Aldine Indep. Sch. Dist. V Stanley, 280 S.W.2d 578
- 3) Thomas v Abernathy County Line Indep. Sch. Dist., 290 S.W. 152

Thank you for your time and consideration. Should you have any questions, do not hesitate to contact my office.

Yours truly,

Gary D. Trammel

GDT/cs