

**PRESENTED AT**

**35th Annual UT law School Law Conference**

February 20-21, 2020

Austin, TX

## **Attorney General Update**

**Andrew Tatgenhorst**

Author Contact Information:

Andrew Tatgenhorst

Underwood Law Firm

Austin, Texas

[act@uwlaw.com](mailto:act@uwlaw.com)

512.591.1888

## **2019 Attorney General Opinions**

This paper offers summaries of Opinions issued by the Texas Attorney General in 2019. Of the 53 Attorney General opinions issued in 2019, 10 potentially relate to issues Texas School Districts may face. This paper is current as of January 16, 2020.

### **Tex. Att’y Gen. Op. KP-0228 (Jan. 7, 2019)**

Whether a member of an independent school district board of trustees may simultaneously serve as the county judge.

#### **Opinion Summary**

A person may not serve as Jim Hogg County Judge while simultaneously serving as a member of the Jim Hogg County Independent School District board of trustees.

#### **Analysis**

Article XVI, Section 40 of the Texas Constitution prohibits a person from simultaneously holding more than one “office on emolument.” Tex. Const. art. XVI, § 40(a). In order to qualify as an office of emolument, the positions must be entitled to some “pecuniary profit, gain, or advantage.” *State ex rel. Hill v Pirtle*, 887 S.W.2d 921, 931 (Tex. Crim. App. 1994). Because school District trustees do not receive compensation, the office is not an “office of emolument.” Therefore, the article XVI does not prohibit one person from simultaneously holding the office of county judge and school board trustee.

The doctrine of common law incompatibility prohibits a person holding two offices that are incompatible due to one of three components: self-appointment, self-employment, and conflicting loyalties. Self-appointment and self-employment are not at play, since neither office appoints or employs the other. However, the doctrine of conflicting loyalties merits consideration.

The Attorney General noted that where the boundaries of the entities at issue overlap, “the potential for conflicting loyalties increases because the duties of the two offices are more likely to conflict.” Tex. Att’y Gen. Op. No. KP-0023 (2015) at 2. Further, the Attorney General noted that the office previously opined that when “two districts with overlapping geographical jurisdictions each have the power of taxation, ... the potential for conflict is insurmountable.” *Id.*

Here, the jurisdictions of both Jim Hogg County and the Jim Hogg County Independent School District overlap significantly, if not identically. Further, both entities have taxing authority within their respective boundaries.

### **Tex. Att’y Gen. Op. KP-0238 (Feb. 22, 2019)**

Application of Government Code section 573.062, the nepotism continuous-employment exception, to a tax assessor-collector’s sister-in-law.

#### **Opinion Summary**

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.

### Analysis

Chapter 573 of the Texas Government Code prohibits a public official from appointing a person who is related to the public official within the specified degree of consanguinity or affinity ("Nepotism Prohibition"). Tex. Gov't Code § 573.041. A sister-in-law is within the prohibited degree of affinity. Tex. Gov't Code §§ 573.023, .024(a)(2), .025(a).

Section 573.062 carves out an exception from the application of the Nepotism Prohibition, permitting persons who have been continuously employed for specified periods of time before the appointment of the public official to whom the person is related to the prohibited degree. In the instant case of the tax assessor-collector, the time period is one year. Tex. Gov't Code §§ 573.062(a)(1), (a)(2)(C).

For purposes of calculating the period of continuous employment, the first day the employee is employed in her current position is the start date. Tex. Att'y Gen. Op. Nos. GA-1024 (2013). The ending date is the date the individual appointed as tax assessor-collector assumes office. *See Bean v. State*, 691 S.W.2d 773 (Tex. App. – El Paso 1985).

### **Tex. Att'y Gen. Op. KP-0241 (Feb. 22, 2019)**

The standards courts apply when balancing the rights of the state against the fundamental rights of parents to raise their children free from government intrusion.

### Opinion Summary

The Due Process Clause of the Fourteenth Amendment protects certain fundamental parental rights, including the right of parents to make decisions concerning the care, custody, and control of their children, to direct the upbringing and education of their children, the right to make medical decisions on behalf of their children, and, in conjunction with the First Amendment, to guide the religious future and education of their children.

Courts review governmental infringements on fundamental rights protected by the Due Process Clause under strict scrutiny, requiring that the statute serve a compelling state interest and be narrowly tailored to achieve that interest.

In addressing child custody disputes between parents or in instances of abuse and neglect of a child, the Legislature has established the standard by which courts must resolve those disputes. Pursuant to section 153.002 of the Family Code, the best interest of the child shall always be the

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Attorney General Update

Also available as part of the eCourse

[State Updates in School Law](#)

First appeared as part of the conference materials for the  
35<sup>th</sup> Annual School Law Conference session

"Office of the Attorney General Update"