



Conflicts of Interest: Nepotism¹

Under Texas law, a public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds if the individual is related to the public official or another member of the board by blood (*consanguinity*) within the third degree or by marriage (*affinity*) within the second degree. Community college officials, such as trustees, who have the power to appoint or employ these persons are subject to the nepotism law. Tex. Gov't Code §§ 573.002, .041; Tex. Att'y Gen. LO-92-43 (1992).

General Information and Definitions

1. Which relatives by blood or consanguinity are affected by the nepotism prohibition?

Relatives within the third degree. An individual is related to the public official by blood, referred to as *consanguinity*, within the third degree if the public official is the individual's:

1. parent or child (first degree);
2. grandparent, grandchild, sister, or brother (second degree); or
3. great-grandparent, great-grandchild, aunt, uncle, niece, or nephew (third degree).

Tex. Gov't Code §§ 573.022, .023(c).

The nepotism provisions apply equally to half-blood and full-blood relations. Similarly, an adopted child is considered the adopted parent's child for purposes of the statutory analysis. Tex. Gov't Code § 573.022; Tex. Att'y. Gen. LO-90-30 (1990).

2. Which relatives by marriage or affinity are affected by the nepotism prohibition?

The public official's spouse and relatives of the public official within the second degree through marriage. The marriage, or *affinity*, prohibition applies if the public official's spouse is the prospective employee (first degree), or if the public official's spouse is the prospective employee's or the prospective employee's spouse is the public official's:

1. parent or child (first degree); or

¹ An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-conflicts-of-interest-nepotism.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-conflicts-of-interest-nepotism.pdf.

2. grandparent, grandchild, sister, or brother (second degree).

Tex. Gov't Code §§ 573.024-.025.

A relationship by marriage extends only to blood relatives of a board member's spouse and the spouses of a board member's blood relatives. It does not include a relative-in-law of a board member's spouse. If the relevant marriage relationship ends by death or divorce, the affinity relationship continues only if any child of the relationship is alive. Tex. Gov't Code § 573.024.

3. Does the nepotism prohibition apply to the hiring of an independent contractor?

The nepotism law governs the hiring of any individual, whether the individual is hired as an employee or as an independent contractor. Tex. Att'y. Gen. Op. DM-76 (1992).

4. What are the consequences of violating the nepotism prohibition?

An intentional or knowing violation of the nepotism statute is a misdemeanor punishable by a fine not less than \$100 or more than \$1000. In addition, an individual who violates the nepotism law may be removed from office, and no compensation may be paid to an ineligible employee-relative. Tex. Gov't Code §§ 573.081-.084.

Public Officials

1. Who is considered a public official under the nepotism prohibition?

For nepotism purposes, a *public official* is an officer or board member of a political subdivision of Texas, which includes public community colleges. Tex. Gov't Code § 573.001(3).

2. When is a trustee a public official for the purposes of the nepotism prohibition?

A trustee is always considered a public official for nepotism purposes. Therefore, the community college where a trustee serves may not hire a trustee's relative within a prohibited degree of relationship. Tex. Att'y Gen. Op. No. GA-415 (2006); Tex. Att'y Gen. LO-92-43 (1992).

Even in cases where the trustees have delegated some or all of the community college's hiring authority to another individual, such as a chancellor or president, the board of trustees is still subject to the nepotism law. Tex. Att'y Gen. Op. No. GA-415 (2006); Tex. Att'y Gen. LO-92-43 (1992).

3. When is the college chancellor or president considered a public official for the purposes of the nepotism prohibition?

A court has yet to consider this question. In an opinion addressing the question of whether the nepotism provisions apply to a community college board of trustees that has delegated final hiring authority to the college president, the Texas attorney general concluded that the nepotism prohibition applies only to officials with final statutory authority over employment decisions. The attorney general concluded that Texas Education Code section 130.082(d) grants statutory authority for employment decisions to the board of trustees and that a community college chancellor or president is an employee or agent of the board, not a public official under the nepotism statute. Tex. Att’y Gen. Op. No. GA-415 (2006); *but see*, Tex. Att’y Gen. LA-156 (1978) (concluding that the nepotism prohibitions apply to a community college chancellor or president because Section 130.082(d) grants the chancellor or president and the board of trustees joint control over hiring and other employment decisions).

A community college may weigh the legal authority on this question and related practical concerns and determine the most conservative approach is to apply the nepotism prohibition to the college chancellor or president or other administrator granted what the college considers final hiring authority. TASB Community College Services recommends that a community college consult the college’s attorney before hiring a relative of one of those individuals.

Exceptions and Special Circumstances

1. Are there any employment situations in which the nepotism prohibition is not applicable?

Yes. The Texas Government Code sets forth several exceptions to the nepotism rules, including exceptions for continuous employment and persons in a position that the public official does not exercise hiring authority over. Tex. Gov’t Code § 573.061.

2. What is the continuous employment exception?

The continuous employment exception provides that the nepotism prohibition does not apply to a related individual who was employed for a specified time before the election or appointment of the public official. The relative’s prior employment must be continuous for at least:

1. thirty days if the public official is appointed, or
2. six months if the public official is elected.

Tex. Gov't Code § 573.062(a)(1)-(2); *see* Tex. Att'y Gen. Op. No. DM-2 (1991) (concluding that the 30-day prior continuous employment requirement applies when an officer is appointed to an elective office); *but see* Tex. Att'y Gen. Op. No. KP-238 (2019) (interpreting the relevant continuous employment period to be determined by whether the office is elective or appointive).

The Texas attorney general has interpreted the continuous employment exception to apply only to employment uninterrupted in time, connected, and unbroken. Any separation from employment will break the chain of continuity and make the exception inapplicable. For example, if a college instructor who is related to a board member retires, the college cannot rehire that instructor. *See, e.g.,* Tex. Att'y Gen. Op. No. JC-442 (2001) (finding that a teacher who has retired from a position at a school district has broken employment and does not qualify for the continuous employment exception); Tex. Att'y Gen. Op. No. JC-185 (2000).

The continuous employment exception applies based on when the official is first appointed or elected. The application of the exception does not change if the elected official is re-elected during the time in which the related individual is employed. For example, the attorney general has advised that Texas's nepotism statute is still violated if the related individual was hired after the initial election of the public official but more than six months before the public official's re-election. Tex. Att'y Gen. LO-92-43 (1992).

In general, the requisite period of employment for the continuous employment exception will be calculated using the date when the individual is initially employed as a starting point and the date the public official assumes office as an ending point. For example, for a board member's spouse who is continuously employed by the community college, the continuous employment period begins on the first day the board member's spouse is employed by the college and ends on the date the board member is sworn into office. Tex. Att'y Gen. Op. No. GA-1024 (2013); *see, e.g.,* Tex. Att'y Gen. Op. No. GA-1016 (2013) (stating that the continuous employment period for a school district employee begins the first day they are employed by the school district and ends on the date that the public official to whom the employee is related assumes office).

If a related individual works for the college under the continuous employment exception, the related public official must abstain from participating in any deliberations or voting on actions that affect only the official's relative. The requirement to abstain does not apply to decisions by the public official involving a class or category of employees to which the public official's relative belongs. Tex. Gov't Code § 573.062(b).

3. Does the nepotism prohibition apply to a trustee's relative employed by a private corporation?

No. If a private corporation doing business with a community college is responsible for the appointment, supervision, and payment of individual employees placed within the college, the nepotism statute does not prohibit a relative of a board member within a prohibited degree from seeking employment with the corporation. *See, e.g.,* Tex. Att'y Gen. LO-95-80 (1995) (concluding that nepotism statute did not prohibit the spouse of a school board member from being employed by a private corporation that provided speech pathology services to the district).

If a board member is related to an individual at a separate corporation, the college would be permitted to contract with that corporation. In addition, if a member of the board of trustees of a community college is an officer or director of a separate corporation with its own employees, the nepotism statute does not prevent the college from contracting with that corporation. Note, however, that other conflict provisions, such as substantial interest in a business entity or in real property under Texas Local Government Code section 171.002, will still apply. *Tex. Att'y Gen. LO-92-52 (1992); see, e.g.,* Tex. Att'y Gen. LO-88-44 (1988) (allowing a contract between a corporation and the university, where the president of the corporation was the brother-in-law of the chairman of the board of regents).

4. If a trustee resigns, may the board hire the trustee's relative?

A former trustee's relative can be hired only if the trustee's successor has been sworn into office. The holdover doctrine provides that all public officers continue to perform the duties of their offices until their successors are duly qualified (i.e., sworn in). Until the vacancy created by the trustee's resignation is filled by a successor, either by appointment or election, the trustee legally continues to serve and have the duties and powers of office. Therefore, a community college board still may not employ the trustee's relative until the trustee's position is filled. *Tex. Const. art. XVI, Sec. 17; Tex. Att'y Gen. Op. No. JM-636 (1987).*

Additional Resources

1. What TASB policies apply to nepotism and community colleges?

For more information on nepotism and general conflicts of interest, please see TASB Policies DBD(LEGAL), (LOCAL), and (EXHIBIT) and DBE(LEGAL) and (EXHIBIT).

2. Where can I get more information regarding nepotism and conflicts of interest?

Community college representatives who have questions about these or other legal issues may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB College eLaw online at colleges.tasb.org/elaw.

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