Requests for Opinions
RQ-0274-KP
Requestor:
The Honorable Bob Hall
Chair, Committee on Agriculture
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068
Re: Whether a groundwater conservation district may define "agricultural crop" as "food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed" and utilize that definition to determine the applicable fee rate for "irrigating agricultural crops" (RQ-0274-KP)

RQ-0275-KP
Requestor:
The Honorable Russell D. Thomason
Eastland County Criminal District Attorney
100 West Main, Suite 204
Eastland, Texas 76448
Re: Whether the same individual may serve as city manager and as police chief in a home-rule municipality (RQ-0275-KP)

Briefs requested by March 25, 2019

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201900678
Ryan L. Banger
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 28, 2019

Opinions

Opinion No. KP-0239
The Honorable Dana Norris Young
Cherokee County Attorney

Post Office Box 320
Rusk, Texas 75785
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)

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.

Opinion No. KP-0239
The Honorable Matthew A. Mills
Hood County Attorney
1200 West Pearl Street
Granbury, Texas 76048
Re: Authority of a county to refund penalties and interest paid by taxpayers in certain circumstances (RQ-0244-KP)

SUMMARY
Subsections 33.011(a)(1), (a)(3), and (d) of the Tax Code permit a taxing unit under some circumstances to waive penalties and interest charged on delinquent taxes based on an act or omission of the taxing unit, or a formerly-correct address for payment, if certain requirements are met and the taxing unit receives a timely submitted written request for the waiver.

To the extent Hood County failed to mail a tax bill despite the County's possession of the taxpayer's mailing address, a court could conclude that the taxes are not yet delinquent, in which case the statutory deadline in subsection 33.011(d) for submitting the waiver request has not passed. To the extent Hood County mailed the tax bills in question such that a waiver of penalties and interest under section 33.011 is foreclosed, article III, subsection 52(a) of the Texas Constitution likely precludes the County from reimbursing taxpayers from its general fund for the amount of the penalties and interest.
Opinion No. KP-0240
The Honorable Natalie Cobb Koehler
Bosque County Attorney
Post Office Box 215
Meridian, Texas 76665
Re: Whether a commissioners court has a duty to maintain public roads (RQ-0245-KP)

SUMMARY
A court would likely conclude that a county has a duty to maintain a road, remove obstacles, and regulate gates only if the road has been laid out as a county road by law and has not been discontinued.

A court would also likely conclude that when a county is not a party to litigation between private landowners, fact findings recited in the judgment rendered in that litigation may affect private rights but do not establish a county duty to maintain a road or remove a gate from the litigated road.

Opinion No. KP-0241
The Honorable James White
Chair, Committee on Corrections
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910
Re: Standards courts apply when balancing the rights of the State against the fundamental rights of parents to raise their children free from government intrusion (RQ-0258-KP)

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 primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.

A court may not permanently and irrevocably terminate parental rights absent clear and convincing evidence of the allegations supporting the termination.

In evaluating parent-child relationships before making decisions about access to the child, courts presume that fit parents act in the best interests of their children and refrain from imposing their own judgments in lieu of a fit parent's decision regarding what is in the best interest of the child.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

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