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is true regardless of the assessed valuation of any such township. Inasmuch as Washington Township of Pike County only has a population of 4,490, it is not eligible to have a separate township assessor regardless of the gross valuation of $5,145,465.

OFFICIAL OPINION NO. 14

February 23, 1962

Hon. Joe Cloud
State Representative
228 South 23rd Street
Richmond, Indiana

Dear Representative Cloud:

This is an answer to your recent request for an Official Opinion. In your initial request you stated, in part, as follows:

"Is the employment of an unemancipated minor by a municipal corporation, or by any of its departments or utilities, whenever the parent of said minor is either an elected, or appointed official or employee of said City, contrary to law, and specifically, is said employment in violation of Chapter 29, Section 46 of the Acts of 1905, Burns' Indiana Statutes, Annotated, Sec. 48-1247?"

Thereafter, in response to my request as to the exact factual circumstances concerning the positions of employment involved, you forwarded the following supplemental information:

"Pursuant to your request and suggestion, I am herein submitting two specific examples which prompted the inquiry contained in my said letter of November 20, 1961:

"Case I—The Parent is an appointed employee of the City of Richmond, Indiana, to-wit, the Secretary to the Mayor of the City of Richmond. Her salary is established by the Common Council of the City of Richmond. The unemancipated minor son of said employee is a student and has been employed as a part time employee..."
in the office of the City Engineer of the City of Richmond; his salary is established by the Common Council.

"Case II—The Parent is the Airport Manager of the Richmond Municipal Airport; he is directly responsible to the Board of Aviation Commissioners. The budget of the Aviation Department is finally approved by the Common Council. The unemancipated minor son of said Airport Manager is a student and has been employed as a part time employee to mow grass, sweep runways and general maintenance of the Airport facilities. The minor is employed at an hourly rate and paid from a budgeted item designated as extra help."

In answering your question I should like to point out that, as a general rule, a parent having the legal control and custody of his unemancipated minor child has a right to the child's services and earnings.

Manners v. State (1936), 210 Ind. 648, 5 N. E. (2d) 300;
Hahn et al. v. Moore (1956), 127 Ind. App. 149, 133 N. E. (2d) 900;

It therefore would appear that the parents referred to in your question have a direct pecuniary interest in a contract for their children's services.

However, I do not believe that the above rule of law is decisive in the specific situations which are presented by your question; rather it is necessary to examine two statutes of this state which prohibit certain public officers and employees from contracting with a unit of government. The first of these statutes, as noted in your question, is Acts of 1905, Ch. 129, Sec. 46, as amended and found in Burns' (1950 Repl.), Section 48-1247 which section reads, in part, as follows:

"No member of the common council or board of trustees, nor any officer, clerk, or deputy of such officer, or other employee of any city or incorporated town of this
state, shall, either directly or indirectly, be a party to, or in any manner interested in, any contract or agreement, either with such city or incorporated town, or with any officer, board, clerk, deputy or employee of such city or incorporated town for any matter, cause or thing by which any liability or indebtedness is in any way or manner created or passed upon, authorized or approved by such council or board of trustees or by any member thereof, or by any officer, board, clerk, deputy or employee of such city or incorporated town. Any contract in contravention of the foregoing provisions shall be absolutely void; * * *’ (Our emphasis)

The second statute is Acts of 1905, Ch. 169, Sec. 517 as found in Burns' (1956 Repl.), Section 10-3713 which is also a criminal statute and which prohibits certain public officers including the mayor of any city and his appointees or agents or any person holding any appointive power from being interested directly or indirectly in any contract with the unit of government in which they exercise any official jurisdiction while such persons occupy their office or hold such appointive power and discharge the duties thereof.

Both Burns' 48-1247, supra, and Burns’ 10-3713, supra, contain criminal penalties and are subject to the rule that the acts prohibited must fall within the letter as well as with the spirit of the law.

Colvin v. State (1932), 203 Ind. 417, 180 N. E. 479;


It is apparent that the secretary to the mayor of a city does not exercise any official jurisdiction within said city. An examination of the act creating the establishment of a department of aviation, which is Acts of 1945, Ch. 190, as amended, as found in Burns' (1950 Repl., 1961 Supp.), Sections 14-412 to 14-433, reveals that a board of aviation commissioners has full and exclusive power on behalf of such municipalities over such department including the power to employ an airport manager and all other employees the board may deem expedient, assign their respective duties and fix their compensation.
Thus the airport manager cannot be said to exercise official jurisdiction in the municipality but is merely an employee of a board of aviation commissioners. Therefore, I conclude that neither the secretary of the mayor nor the airport manager are employees within the prohibition of Burns’ 10-3713, supra.

In an Official Opinion of this office (1943 O. A. G., pages 340, 343), the legislative history and effect of Burns’ 48-1247, supra, was analyzed at length and it was concluded as follows:

"It is evident that by the amendment the Legislature intended the statute to apply to cases where a councilman, officer, clerk, deputy or employee of the city, in his official capacity, did an official act in creating, passing upon, authorizing or approving a contract or agreement with the city in which the councilman, officer, clerk, deputy or employee was directly or indirectly interested as a private individual. It sought to prevent an agent of the city from being on both sides of the same transaction, which would also make the contract or agreement illegal and against public policy at common law."

Thus the Opinion stated that Burns’ 48-1247, supra, did not prohibit a firm or corporation of which a member of the park board of a city was a member, stockholder or officer from entering into a contract with some other independent department of the city of which such person was not a member.

Applying the foregoing to both your examples, it is clear that neither the secretary to the mayor nor the airport manager has authority to create, pass upon, authorize or approve the employment of their children by the city and such employment would not be in violation of Burns’ 48-1247, supra.

While your formal request does not require my opinion on the subject of nepotism, which concerns the employment of close relatives by an office holder, I wish to call your attention to the fact that none of the Indiana statutes prohibiting nepotism make any reference or application to city government. It would therefore appear that our nepotism statutes, with the sole exception of eligibility for employment in county homes and county public welfare departments, apply exclusively to state government. While there may be existing local
ordinances at Richmond, Indiana, against nepotism, I am of the opinion that the following existing state nepotism statutes have no application to the specific questions presented by you for my consideration.

Acts of 1941, Ch. 16, Sec. 1, as amended and found in Burns’ (1961 Supp.), Section 49-302;

Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 31, as found in Burns’ (1951 Repl.), Section 52-1130;

Acts of 1879, Ch. 3, Sec. 9, as found in Burns’ (1950 Repl.), Section 22-116; and

Acts of 1955, Ch. 119, Sec. 17, as found in Burns’ (1961 Supp.), Section 22-4617.

In summary, it is my opinion that the employment by a city of the unemancipated minor children of the secretary to the mayor and the airport manager is not contrary to law for the reason that said secretary and airport manager do not exercise any official jurisdiction within said city and further have no authority to perform an official act such as creating, passing upon, authorizing or approving the employment of said children.

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OFFICIAL OPINION NO. 15

March 6, 1962

Mr. Edwin Steers, Sr., Member
State Election Board
108 East Washington Street
Indianapolis, Indiana

Dear Mr. Steers:

This is in answer to your recent letter wherein you request an Official Opinion, which is based on a letter from the Clerk of the Circuit Court of Jennings County, Indiana. The question is therein stated as follows:

“Is it permissible for elected officers or candidates for re-election or their deputies to register voters and be paid for registering them. The officers that I am