

NEPOTISM--Section 13 of Article XIV of the Constitution of Missouri does not prohibit the appointing by a public officer of a second cousin. It prohibits the appointment of first cousin and those more closely related, and the civil rule is to be used in computing the relationship.

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Mr. J. B. McGuffin
Prosecuting Attorney
Mt. Vernon, Missouri



Dear Sir:

We are acknowledging receipt of your letter in which you enclose an inquiry from Mr. Harry Moore, Superintendent of Schools at Mt. Vernon, Missouri. His inquiry is as follows:

"On the Mt. Vernon school board are two members who are in questionable relationship to one of the teachers. The teacher is a daughter of a first cousin of the two members of the board.

It will soon be time to pay the teachers. The other members of the board fear they may be held liable for the salaries if the warrants are ordered drawn.

I am asking that you get an opinion from the Attorney General of the state defining the relationships that fall within the fourth degree. An attorney General has stated in an opinion given on page 270 School Laws of Missouri, 1931, that the rule of the civil law should be used. While, as you know, Sec. 645, Revised Statutes of Missouri, commits Missouri to the use of the common law.

If board members are to obey the law it is necessary they know who falls within the fourth degree. If this matter can be cleared, it will be appreciated by the school boards of the county, and, perhaps of the entire state."

Section 13 of Article XIV of the Constitution of Missouri provides as follows:

"Any public officer or employee of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

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Under the foregoing constitutional provision, the appointment by a public officer, of a relative related within the fourth degree, either by consanguinity or affinity, is prohibited. You inquire what relationship falls within the fourth degree and particularly whether or not the members can appoint a daughter of their first cousin, which is their second cousin. Affinity is defined in 2 C. J. 378, as follows:

"The connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands towards them, and gives to the wife the same reciprocal connection with the relations of the husband."

Consanguinity is defined in 12 C. J. 510 as follows:

"Consanguinity or kindred is the connection or relation of persons descended from the same stock or common ancestor."

Under the rule laid down in 12 C. J. 511, there are two methods in computing the degrees of consanguinity, as follows:

"One by the canon law, which has been adopted into the common law of descents in England, and the other by the civil law, which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law is as follows: 'We begin at the common ancestor, and reckon downwards, and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related.' By the civil law the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending."

We do not find that the courts of this State have laid down any rule as to how the relationship under Section 13 of Article XIV is to be computed. In other states, where anti-nepotism provisions are in force, courts have generally followed the civil rule. The civil rule, as stated in the above quotation, is generally followed both here and in England in determining who is entitled to administer personalty of a decedent. We believe that the courts of this State, when the matter is presented for consideration, will adopt the civil rule in computing the degree of relationship under Section 13 of Article XIV. Under the civil rule, any relationship as close as first cousin or closer would be prohibited under the Constitution. A public officer may appoint a second cousin without violating the above provision of the Constitution. It is therefore the opinion of this Department that the two members of the board who voted to elect the daughter of their first cousin did not violate Section 13 of Article XIV. Since her

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election was legal under the Constitution, she would be entitled to be paid for the services performed.

Very truly yours,

/s/ Frank W. Hayes

Assistant Attorney General.

APPROVED:

ATTORNEY GENERAL