

NEPOTISM: Under Section 13 of Article XIV of the Constitution,
SCHOOLS: director who appoints relative related within the
fourth degree forfeits office and teacher so elected
cannot enforce contract against the district.

September 21, 1934



Mr. John A. Eversole
Prosecuting Attorney
Potosi, Missouri

Dear Sir:

We are acknowledging receipt of your letter in
which you inquire as follows:

"Will your office please furnish me with
an opinion relative to the provision of
Section 13 of Article XIV of the Constitu-
tion of Missouri, pertaining to the appoint-
ment of a school teacher within the fourth
degree of relationship to the school di-
rector who makes the appointment.

"I desire to know whether or not a school
teacher who has been employed by the school
director, who is within the fourth degree
of relationship can collect her salary as
such teacher, or is the appointment void as
a penalty for violation for part of the Con-
stitution as well as that provision making
the school director who makes such appoint-
ments to forfeit his office. That part of
the Constitution in connection with Section
6529 of the Revised Statutes of 1929 makes
this inquiry necessary. You will please
furnish me with an opinion upon this ques-
tion at your first convenience."

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

"Any public officer or employe 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."

The Supreme Court in the case of State ex inf. McKittrick v. Whittle, 63 S.W. (2nd) 100, held that a director of a school district who violates the above constitutional provision forfeits his office; the court saying:

"The amendment is directed against officials who shall have (at the time of the selection) 'the right to name or appoint' a person to office. Of course, a board acts through its official members, or a majority thereof. If at the time of the selection a member has the right (power), either by casting a deciding vote or otherwise to name or appoint a person to office, and exercises said right (power) in favor of a relative within the prohibited degree, he violates the amendment. In this case it is admitted that respondent had such power at the time of the selection and that he exercised it by naming and appointing his first cousin to the position of teacher of the school in said district."

To hold that the director forfeits his office and that the related appointee could take advantage of the illegal act of the director and receive the benefits therefrom would only correct half of the evil sought to be corrected by the people when they adopted the above constitutional provision. If the director could, by forfeiting his office, place upon the payroll a prohibited relative, then it would be possible to defeat the very purpose of the amendment by fraud and collusion. In many instances prior to the adoption of the amendment people sought to be directors simply for the purpose of placing their relatives in the schools as teachers and if the contract entered into between the board and the teacher could be enforced it would still be possible for directors to place their relatives upon the payroll of the district, even though they forfeited their office in so doing.

We, therefore, in construing the above constitutional provision and keeping in mind the evils sought to be remedied by

that provision, have steadfastly ruled that the contract entered into as a result of an illegal act of a director is void and unenforceable. Although this particular proposition has not, in connection with this constitutional provision, been decided by our courts, yet the law generally, in dealing with prohibitive provisions, upholds our view. In 13 C. J. 421, Section 352, it is said:

"Frequently a statute imposes a penalty for the doing of an act without either prohibiting it or expressly declaring it illegal or void. In cases of this kind the decisions of the courts are not in harmony. The generally announced rule is that an agreement founded on or for the doing of such a penalized act is void. In accordance with the view of Lord Holt in an old case; 'Every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself does not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition, tho there are no prohibitory words in the statute.' * * * And it would seem that in all cases the true rule is one of legislative intent, and that the courts will look to the language of the statute, the subject matter of it, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment; * * *."

Judge Napton quoted Lord Holt as above quoted in 13 Corpus Juris, and held as follows:

"The penalty inflicted by the act concerning Plats of Towns and Villages implies a prohibition against the sale of lots before the requisitions of the act are complied with, and the courts will not enforce a contract entered into against the spirit and policy of the statute."

In the case of Haggerty v. Ice Manufacturing and Storage Company, 143 Mo. 238, the Court says at page 247:

"Recurring to the petition, it shows on its face that plaintiffs contracted with defendant

corporation for the commission of a misdemeanor. * * * The law will not stultify itself by promoting on the one hand what it prohibits on the other, and will for this reason leave the parties to this suit where it finds them, unsanctioned by its favor and unaided by its process."

Section 6529, R. S. Mo. 1929, which you mention in your letter does not apply in this situation, as it applies to cities of the second class. While that section specifically provides that the person unlawfully appointed shall not draw any compensation, we believe that the same law applies regarding the interpretation of the constitutional provision, even though it does not expressly so provide.

It is therefore the opinion of this Department that where a director, in violation of Section 13 of Article XIV of the Constitution, appoints a relative related within the prohibited degree, he forfeits his office, and that the teacher so appointed cannot enforce her contract against the district, nor is she entitled to receive any compensation under the contract.

Very truly yours,

FRANK W. HAYES
Assistant Attorney General

APPROVED:

 (Acting) Attorney General