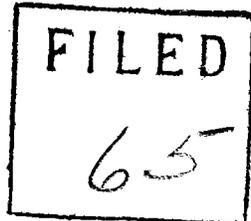


NEPOTISM: A ~~father~~ is not related to the ~~sister~~ of his son's wife by affinity, and the appointment by the father of such person as an official clerk does not violate Sec. 13, Article 14, of the Constitution.

July 25, 1941 <sup>7/25</sup>



Hon. Fred E. Mueller  
Associate Prosecuting Attorney  
St. Louis County  
Clayton, Missouri

Dear Sir:

We are in receipt of your letter of July 22nd wherein you ask for an opinion from this office upon the following statement of facts:

"C. Hillmann, a Justice of the Peace of Normandy Township, desires to appoint Dorothy Jordan as his clerk, under the provisions of Section 2774, R. S. 1939. Dorothy Jordan is a sister of Victoria Jordan Hillmann, who is the wife of Kenneth Hillmann, the son of C. Hillmann, the Justice of the Peace. Justice Hillmann asks the opinion of this office whether or not the appointment of the sister of his son's wife would be a violation of Section 13, article 14 of the Constitution of Missouri, which 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.'

"We advised him that we did not think that Dorothy Hillmann was related to him by affinity but we found no Missouri Case bearing on the situation. We did however, find that there are a number of cases which hold that the sister of a man's wife is not related by affinity to that man's blood relative. These cases we located in 'Words and Phrases' (Permanent edition) volume 2, pages 662, 664 and page 65 of 'Pocket Parts' and under the word Affinity, Kinsman of wife and of husband.

"Justice Hillmann is without a clerk at this time and desires to make an appointment as soon as possible. We would like to have your opinion in this matter at your earliest convenience."

Under the provisions of Section 13, Article 14, of the Constitution of Missouri, which is correctly set forth in your request for an opinion, persons related within the fourth degree, either by consanguinity or affinity, cannot be appointed to office.

We are of the opinion, however, that if the Justice of the Peace should appoint the sister of his son's wife, such act would not be in violation of the constitutional provision above referred to, because he is not related to such person by consanguinity or affinity in any degree as is prohibited by the said constitutional provision.

In 2 C. J. 378, it is said:

"Blood relations of the husband and blood relations of the wife are not related to each other by affinity. Nor does the term 'affinity' ordinarily include persons related to the spouse simply by affinity."

In Encyclopedia Brittanica, (11th Ed.) Vol. 1, page 301, the author has the following to say about affinity:

"The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. But the relation is only with the married parties themselves and does not bring those in affinity with them in affinity with each other; so a wife's sister has no affinity to her husband's brother."

In the case of Pemiscot Land & Cooperage Co. vs. Davis, 147 Mo. App. 194, l. c. 202, the court had this to say:

"The juror challenged stated that he was a second cousin to the wife of one of the defendants. That brought him within the degree of affinity, though not of consanguinity, prescribed by the statute. One is within the prescribed degree of affinity when the 'relationship is by marriage between a husband and his wife's blood relations, or between a wife and her husband's blood relations' (Webster's New International Dictionary, Ed. 1910)."

"There is no 'affinity' between blood relations of husband and blood relations of wife, within constitutional provision prohibiting judge from presiding on trial of any cause where the parties or either of them shall be connected with him by 'affinity' or 'consanguinity.' (See cases cited.) Words and Phrases, Vol. 2, (Pocket Part) page 65.

It will be noted from reading the above definitions and cases cited that the relationship by affinity comes into force through marriage, and upon the statement of facts before us it certainly could not be said that the father and the sister of the son's wife would be kin by affinity, for the sister would be kin only to the son because of the son's marriage to her sister, and it would be through this marriage that such affinity would arise.

July 25, 1941

CONCLUSION

We are of the opinion that a father is not kin to the sister of his son's wife either by consanguinity or affinity. Therefore, the Justice of the Peace referred to in your opinion request would have the right to appoint the sister of his son's wife, and such appointment would not be in violation of Section 13, Article 14, of the Constitution of Missouri.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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