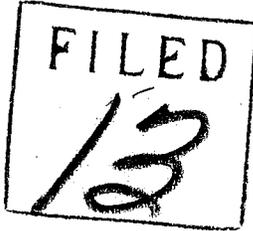


NEPOTISM:
PUBLIC OFFICER:

Receiving personal service from wife does not violate Section 6, Article VII Constitution of Missouri 1945, where the wife does not occupy an official position nor render service to the State.



May 15, 1953

Honorable Charles B. Butler
Prosecuting Attorney of
Ripley County
Doniphan, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"Under the nepotism act does the County Collector have the authority to employ his wife in the office, even if not paid a salary?"

This office has held on numerous occasions that a public officer receiving personal service from his wife or other relative in the discharge of his official duties did not violate Section 13 of Article XIV of the 1875 Constitution, where the wife was not appointed to an official position. Typical of such opinion was one directed to Mr. W. D. Ross, October 4, 1933, wherein it was stated:

"We believe, however, that the proper construction to be placed upon the constitutional provision is that such persons must be appointed to hold an official position existing under the laws or constitution of this State. We can see a distinction between a person rendering service to the State in an official capacity and rendering service to an individual official because of their

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relationship. The test, as we understand it, is whether or not the person is appointed to fill an official position and as such to render service to the State. Where a public officer has in his office a member of his family who does not occupy an official position; nor as such render service to the State, but whose services are rendered personally, without expense to the State, to the officer by reason of the family relationship, we do not believe that such situation comes within the provision of Section 13 of Article XIV."

Section 13 of Article XIV of the Constitution of Missouri 1875 provided 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."

Section 6 of Article VII of the Constitution of Missouri 1945 provides:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

While the provision of the 1945 Constitution differs somewhat in terminology from the provisions found in the Constitution of 1875, we believe that in substance it remains the same. By virtue of this fact, we adopt as our view the statement of this office in the prior opinion noted. In addition thereto, we wish to state in reference to the term "employment" as found in the present Constitution that the mere fact that a relative within

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the prohibited degree is assisting an officer in his official duties does not place such person in the employ of the State (or political subdivision) as we comprehend the use of the term. Likewise, the fact that the wife receives no compensation from the State, would not of itself prevent her from being in the employ of the State, since an employer-employee relationship may be obtained in the absence of compensation.

You do not state in your request, and therefore we must assume for the purpose of this opinion, that the person to whom you refer is not to be employed as a statutory clerk or deputy in any sense. We assume that such person will merely be assisting the officer personally; that she will not take an oath of office or perform, either in her own name or in the name of the officer, any of the duties of a statutory clerk or deputy. In view of the foregoing, it is our opinion that the provisions of Section 6 of Article VII of the Constitution of Missouri 1945, are not violated by a public officer who has in his office a member of his family who does not occupy an official position nor render service to the State in an employer-employee relationship, but who by virtue of such relationship renders service personally to the officer and at no expense to the State.

CONCLUSION

It is therefore the opinion of this office that a county collector is not guilty of violating Section 6 of Article VII, Constitution of Missouri 1945, by permitting his wife to render to him personal service where the wife is not holding an official position nor rendering service to the State.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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