

NEPOTISM: School director causing appointment of relative within certain degree as teacher
PUBLIC OFFICERS: or bus driver forfeits office. Purchase contracts between school director and board of education prohibited.
SCHOOLS:

May 15, 1953



Honorable James T. Riley
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Mr. Riley:

In your letter of May 1, 1953, you requested an official opinion on the following questions:

"Our County Superintendent of schools has asked me to obtain an opinion from office pertaining to the authority of a six member Board of Education of the Reorganized School District, on the following questions:

"(1) May such a Board of Education employe a relative of one of its members as a teacher or bus driver for the district.

"(2) May such a Board of Education purchase supplies and equipment from one of its members.

"(3) Does a member of such Board of Education forfeit his office if the Board employes one of his relatives as above stated, or if the Board purchases supplies or equipment from such member.

"If we assume that such action is prohibited either by statute or the Constitution, can such prohibition be circumvented by the interested member refraining from voting on the question of such employment or purchases."

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The matters about which you inquire will be discussed separately i.e., nepotism will be treated first and then the matter of purchasing supplies will be discussed.

Nepotism is prohibited by Article VII, Section 6, Missouri Constitution of 1945, as follows:

"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."

In addition, the Board of Education is prohibited by Section 163.080, RSMo 1949, from employing a teacher who is related to a board member in the following circumstances: "* * * nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of such board member is necessary to the selection of such person; * * *."

The "anti-nepotism" provision of the Constitution was construed by the Supreme Court of Missouri in *State ex inf. McKittrick, Attorney General, vs. Whittle*, 63 S.W. (2d) 100. The Board of Directors of a common school district of Miller County had employed a first cousin of a member of the board as a school teacher. Three members of the board voted on whether the cousin should be employed. One director voted against the employment and the other two voted in favor of employing him. One of the members voting in the affirmative was the first cousin of the teacher. Quo warranto proceedings were brought to oust from office the school director who voted to employ his own first cousin, and he was ousted. The Court discussed the background and purpose of the anti-nepotism provision in the Constitution, l.c. 101, as follows:

"It is a matter of common knowledge that at the time of the Constitutional Convention in 1922-1923, and for a long time prior thereto, many officials appointed relatives to positions, and thereby placed the names of said relatives upon the public pay rolls. The power was abused by individual officials

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and by members of official boards, bureaus, commissions and committees, with whom was lodged the power to appoint persons to official positions. It also was abused by officials with whom was lodged the power to appoint persons to official positions, subject to the approval of courts and other functionaries of the state and its political subdivisions.

"It also is a matter of common knowledge that many of the relatives were inefficient, and some of them rendered no service to the public. To remedy this widespread evil, the convention proposed to the people an amendment to the Constitution, * * *."

The Court based its decision that the ousted director had violated the anti-nepotism provision because his vote was necessary to the appointment, l.c. 101, 102:

"* * * 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."

The same type of situation was considered in State ex rel. McKittrick, Attorney General, vs. Becker, et al., 81 S.W. (2d) 948. That case involved the reappointment of a commissioner to the St. Louis Court of Appeals. The Court consisted of three Judges. Two of them reappointed a first cousin of the third Judge as a commissioner. The third Judge declined to vote for the reappointment because of his relationship with the commissioner. The Court decided this was not nepotism, since the reappointment was

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made by the two Judges who were not kin to the commissioner, saying, l.c. 950:

"* * * The essence of the provision and likewise of said decision is the power of appointment vested in one and the successful exercise thereof by him in accomplishing the appointment of his relative. Action, direct or indirect, not inaction is prohibited. * * *."

It is thus clear that a school director who casts a necessary or deciding vote to employ a relative within the prohibited degree forfeits his office. However, if the appointment is made without action by the director related to the proposed employee, the appointment is valid, and the school director does not forfeit his office.

In answer to your inquiry as to whether a school director can enter into contracts with the Board of Education to furnish supplies and equipment, I am enclosing an opinion of this office rendered to the Honorable Fred C. Bollow, Prosecuting Attorney of Shelby County, on June 30, 1948, and an opinion to the Honorable Homer L. Swenson, Prosecuting Attorney of Wright County, dated July 17, 1950. It is believed that these two opinions answer your questions concerning pecuniary relationship between a school director and the school board except as to whether a director selling supplies and equipment to his Board forfeits his office.

Selling of supplies by a director to the school board with knowledge of the illegality thereof, may be considered "willful misconduct or misdemeanor in office," prohibited by Section 558.160, RSMo 1949:

"Every officer or person holding any trust or appointment, who shall be convicted of any willfull misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the punishment of such misdemeanor, misconduct or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

(Underscoring ours.)

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An officer convicted of any official misconduct or misdemeanor in office forfeits his office, and may be summarily removed by the Court in which convicted:

"558.130. Conviction, effect of.--Every person who shall be convicted of any of the offenses mentioned in sections 558.010 to 558.120 shall be forever disqualified from holding any office of honor, trust or profit under the constitution and laws of this state, and from voting at any election; and every officer who shall be convicted of any official misdemeanor or misconduct in office, or of any offense which is by this or any other statute punishable by disqualification to hold office, shall, in addition to the other punishment prescribed for such offenses, forfeit his office."

(Underscoring ours.)

Thus, in State vs. Lawrence, 45 Mo. 492, the trial court (St. Louis Court of Criminal Corrections) upon conviction of a justice of peace for misdemeanor in office, as part of the sentence, deprived the defendant of his office. The Appellate Court declared that forfeiture of office could be declared as punishment, even though in this case the particular trial court exceeded their jurisdiction (later given them by legislative enactment.)

Public policy against such relationship between a Board and a Board Member, as expressed by the Courts, is so strong as to prohibit such contracts by the Board, even though the interested Member abstains from any proceedings in relation to such sales.

CONCLUSION

It is, therefore, the opinion of this office that:

1) A director of a Board of Education who names or appoints or casts a necessary or deciding vote in favor of naming or appointing to public office, or employment, any relative within the fourth degree, by consanguinity or affinity, forfeits his office; and,

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2) A director selling supplies and equipment to the Board of Education on which he serves may be guilty of misconduct or misdemeanor in office, and upon conviction therefor may be removed from office. Contracts between the director and board are void, even though the interested member abstains from voting.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General