

NEPOTISM: School director voting to appoint one to fill vacancy on board of which he is a member; appointee being step-son of director's wife's uncle; there is no relationship between director and appointee within fourth degree either by consanguinity or affinity and director does not violate nepotism provision of Art. 7, Sect. 6, Constitution of Missouri 1945, and does not forfeit office.

August 27, 1956

Filed: #93

Honorable Wayne W. Waldo
Prosecuting Attorney
Pulaski County
Waynesville, Missouri



Dear Mr. Waldo:

This department is in receipt of your recent request for a legal opinion which reads as follows:

"The opinion of the Attorney General is respectfully requested on the following situation which has arisen in Pulaski County. Laquey Reorganized School District R-5 has a board of Directors composed of six men. One of these men resigned. Four of the five remaining Directors were present at the meeting at which a new man was appointed to take the place of the man who resigned. One of the four men present at the meeting was related to the man who was appointed in the following manner. The board member, whom we shall designate by the letter A is married to a woman whom we shall designate by the letter W, the mother of wife W has a brother whom we shall designate by the letter B. The man who was appointed to the School Board is the step-son of this brother B, since brother B married the mother of the step-son (designated by the letter S) who was appointed to the School Board.

"The following questions are posed.

1. Does such an appointment come within the provisions of Section 163.080, MRS 1949?
2. Does such an appointment come within the provisions of Article VII, Section 6, of the Missouri Constitution?

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3. Is the Board Member A related to the new Board Member S within the fourth degree, either by consanguinity or affinity?
4. If such an appointment is illegal because of nepotism, does Board Member A forfeit his office, and what is the proper procedure to enforce the forfeiture of his office?
5. If such an appointment is illegal, does the new Board Member S forfeit his office, was his appointment proper, and what is his present status as a Board Member?

"Any assistance you can render to this office in this situation will be greatly appreciated."

From the facts given in the opinion request, and supplemental information pertaining to same, it appears that the Board of Directors of Laquey Reorganized School District R-5 of Pulaski County was composed of six members until a vacancy was created when one of them resigned. Thereafter, at a meeting of the board, four of the five remaining members were present, and a successor was chosen to fill the vacancy. All four directors present, including A, voted for S, who was appointed to fill said vacancy. Director A's wife is referred to as W. W's mother has a brother B, and B is married to the mother of S. B's stepson S, is the newly appointed board member. These facts have given rise to the six questions presented in the opinion request. The first question inquires if the appointment (of S) comes within the provisions of Section 163.080, RSMo 1949.

Section 163.080, RSMo 1949, empowers the board, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for the district and specifies what such contract shall contain and by whom it shall be executed. The provisions of the section also prohibit the board from employing one of its members as a teacher, or the employment of a teacher related to any board member within the fourth degree either by consanguinity or affinity where the vote of the board member is necessary to the selection of such teacher.

We take it that the first question inquires whether or not that portion of Section 163.080, RSMo 1949, containing the prohibition against a board member voting to employ a teacher related to him within the fourth degree either by consanguinity or affinity applies to the facts stated in the opinion request.

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Our answer to the first question is in the negative, since the nepotism provision of the section prohibits the board from employing teachers related to board members within the prohibited degree, and has no reference to the appointment of new members to fill vacancies on the board, and the relationship of the board members to appointees, within the fourth degree either by consanguinity or affinity.

The second inquiry reads as follows:

"2. Does such an appointment come within provisions of Article VII, Section 6, of the Missouri Constitution?"

In an opinion of this department rendered to Honorable James T. Riley, Prosecuting Attorney of Cole County, Missouri, it was held that a school director was a public officer within the meaning of the constitutional provision. Said opinion is believed to fully answer the inquiry, and a copy of same is enclosed for your consideration.

The third inquiry of the opinion request reads as follows:

"Is the Board Member A related to the new Board Member S within the fourth degree, either by consanguinity or affinity?"

The facts presented in your letter do not state any blood relationship between Director A and new Director S and if any relationship exists at all between the parties, it is by affinity.

The following definition of the term affinity was given in the case of State vs. Ellis, 28 SW2d 363, at l.c. 366:

"Affinity is defined as a legal relationship which arises as the result of marriage ' * * * between each spouse and the consanguinal relatives of the other.'

"That is, the husband is related by affinity to his wife's relatives in the same way that she is related to them by blood, and she is related to his relatives by affinity in the same way that he is related to them by blood."

It was held in this case that when a circuit clerk and a county clerk appointed their wives as deputies, they forfeited their offices, since the wives were related to their husbands by affinity within the meaning of nepotism as defined in Art. 14, Sect. 13 of the Constitution.

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Again in the criminal case of State vs. Thomas, 174 SW2d 337, one of the assignments of error briefed and argued in the appellate court was that the prosecutrix was related to a juror by affinity within the degree prohibited by statute, since the juror stated his sister was the wife of a brother of the prosecutrix's husband, or a brother-in-law of a brother-in-law of prosecutrix. The Court overruled appellant's contention and at l.c. 338 said:

"1. But the statute does not specify how the prosecutrix and the juror must be related: Whether by consanguinity or affinity. He was not related by consanguinity. Was he, by affinity? In State v. Carter, 345 Mo. 74, 77(3), 131 S.W. 2d 546, 548(4), a female cousin of the juror's wife had married a brother of the defendant. The case ruled this did not constitute a relationship forbidden by the statute. The same ruling must be made here. A kinship by affinity--arising through marriage--exists only between each spouse and the blood relatives of the other spouse. Here, juror Burns was not blood kin of the prosecutrix' husband, and therefore was not related to her by affinity. It results that he was not of kin to her at all, and the assignment must be overruled."

Looking at the facts, it is readily seen that while B is W's uncle (by blood), the relationship between B and B's wife's son by a former marriage is that of stepfather and stepson and is only by affinity. W's mother is a sister-in-law to her brother B's wife, but B's wife or her son are not related to W since the relationship would be by affinity on affinity, and the rule does not recognize relationship of this kind. Since W is not related in any degree to S, it must and does follow that W's husband A is also not related in any degree to S.

Therefore in answer to the third inquiry it is our thought that board member A is not related to new board member S within the fourth degree either by consanguinity or affinity. By voting for the appointment of S to fill the vacancy on the board, A did not violate the nepotism provisions of Art. 7, Sect. 6 of the Missouri Constitution of 1945, and his action in that respect was proper.

Apparently inquiries 4 and 5 were meant to be answered only if the answer to inquiry 3 was in the affirmative. Since the answer to that inquiry was in the negative, it is believed to be unnecessary to discuss or answer inquiries 4 and 5.

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CONCLUSION

It is therefore the opinion of this department that a school director voting to appoint one to fill a vacancy on the board of which he is a member, when said appointee is the stepson of the director's wife's uncle, there is no relationship between the director and such appointee within the fourth degree, either by consanguinity or affinity, and the director does not violate the nepotism provisions of Article 7, Section 6, Constitution of Missouri, 1945, and does not forfeit his office.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton
Attorney General

PNC:gm

Enclosure