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NEPOTISM: The relationship between the Mayor of a
PUBLIC OFFICERS: third class city and an employee who is
AFFINITY: the husband of the Mayor's sister, is a
CONSTITUTIONAL LAW: relation within the fourth degree, by
affinity, within the meaning of Article
VII, Section 6, Missouri Constitution 1945 and hence this appointment
violates Article VII, Section 6, Constitution of Missouri 1945.

OPINION NO. 261

July 6, 1967

Honorable Stanley Braton
Prosecuting Attorney
Johnson County
Courthouse
Warrensburg, Missouri 64093

FILED
261

Dear Mr. Braton:

You have requested an official opinion of this office on the question whether the nepotism provision of the Constitution is violated when a Mayor of a third class city appoints to public employ the husband of the Mayor's sister.

The constitutional provision you refer to is Article VII, Section 6, Constitution of Missouri 1945. This section prohibits a public officer from appointing to public office or employment any relative within the fourth degree by consanguinity or affinity.

The Mayor of a third class city has been held to be a public officer within the nepotism provision of the Constitution, State ex rel Ellis et al v. Ferguson, 65 S.W.2d 97.

Affinity "has been defined as being the tie which arises from marriage between husband and blood relations of wife and between wife and blood relations of husband", 2 C.J.S. 992. Affinity has been further defined as meaning "a relationship by marriage, and a kinship by affinity arises through marriage and exists only between each spouse and blood relatives of the other spouse". "Words and Phrases". 2 A. 23 (Supp). Relation by consanguinity means relation by blood.

The relationship of the appointee to the Mayor is that of brother-in-law, said appointee being married to the Mayor's sister.

If the situation here were reversed and the sister's husband was the appointing official, admittedly he could not appoint his wife's brother to a public office. There the relationship by affinity would be quite apparent and prohibited by the constitutional provisions against nepotism.

In the existing case the relationship is still present, the Mayor appointing his sister's husband who is his brother-in-law to public office constitutes a violation of the prohibition against nepotism.

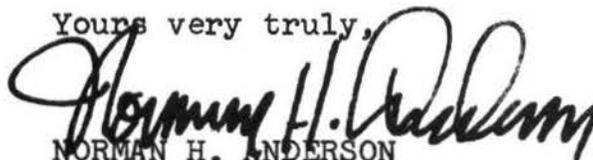
The courts of Missouri support this decision. In the case of State vs. Thomas, 174 S.W.2d 337 (Mo. Sup.) the court held that the appellant was related by affinity to a juror, said juror being the husband of the daughter of appellant's first cousin. Under the reasoning in the Thomas case, it is apparent that the Mayor in this case is related to his sister's husband by affinity.

CONCLUSION

It is the opinion of this office that the relationship between the Mayor of a third class city and an employee who is the husband of the Mayor's sister is a relationship within the fourth degree, by affinity, within the meaning of Article VII, Section 6, Missouri Constitution of 1945 and an appointment by the Mayor to such an employee is in violation of the aforesaid nepotism provision.

The foregoing opinion which I hereby approve was prepared by my assistant, O. Hampton Stevens.

Yours very truly,



NORMAN H. ANDERSON
Attorney General