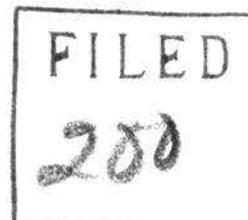


COUNTY COURT:
COUNTY EMPLOYEES:

If only the presiding judge and one other judge of the County Court are present, the presiding judge may proceed to hire an employee for the county although the other judge votes against such hiring. When all judges are present, and one judge is disqualified to act by reason of his relationship to a prospective employee, the presiding judge may hire said employee although the other judge may vote against said hiring.

May 20, 1969

OPINION NO. 200



Honorable William C. Batson, Jr.
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri 63901

Dear Mr. Batson:

This is in answer to your request for a formal opinion concerning the following questions:

"1. If only the presiding judge and one other judge of the County Court is present, may the presiding Judge under Section 49.070 RSMo 1959, proceed to hire an employee for the county if the other Judge votes against such hiring?"

"2. Where all three judges are present, and one judge abstained from voting on the hiring of an employee due to close kinship of the said employee, could the presiding judge hire said proposed employee under Section 49.070 RSMo 1959, if the other judge voted against hiring said proposed employee?"

In answer to question number one, it is apparent that if only two judges are present, the decision of the presiding judge shall stand as the decision of the court. The section of the statutes under consideration is clear and precise on this point and states as follows:

". . . when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge shall stand as the decision of the court."

An employment contract would be treated as any other matter to be considered by the court, and the presiding judge could under the circumstances outlined in question one, proceed to hire an employee for the county though the other judge votes against such hiring.

In answer to question two, the interested judge, being related to the prospective employee is under an obligation to disqualify himself. *Weston Benefit Assessment, Etc., v. Weston Special Benefit Assessment Road District of Platte County*, 294 SW2d 353 (KCCA 1956); *State ex rel Morrison v. Staton*,

Honorable William C. Batson, Jr.

138 SW 337 (Mo. 1911). The term disqualify as pertains to judges and administrative decision makers, means simply to divest or deprive of qualifications; to incapacitate; to render ineligible or unfit. Carroll v. Green, 47 N.E. 223 (Ind 1897); Coats v. Benton 194 P 198, 200 (Okla 1921); 19 ALR 1038.

Upon the disqualification of the related judge, the court would have but two judges sitting to decide the issue before the court, to wit: The employment contract. The statutory language defining the procedure when but two judges are sitting would come into effect and the decision of the presiding judge would then be the decision of the court.

In the event majority of the judges should be interested in any cause before them, the same should then be certified to the Circuit Court to judge and determine the matter, in accordance with 49.220 RSMo 1959.

CONCLUSION

If only the presiding judge and one other judge of the County Court are present, the presiding judge may proceed to hire an employee for the county although the other judge votes against such hiring.

When all judges are present, and one judge is disqualified to act by reason of his relationship to a prospective employee, the presiding judge may hire said employee although the other judge may vote against said hiring.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jack O. Edwards.

Yours very truly,



JOHN C. DANFORTH
Attorney General