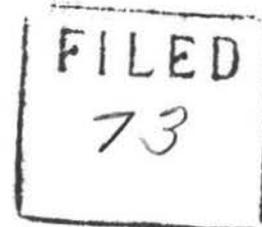


ASSESSOR: (1) A county assessor who retains  
COUNTIES: as an employee a relative within  
COUNTY EMPLOYEES: the fourth degree, by  
NEPOTISM: consanguinity or affinity, which  
relative was employed by the prior  
county assessor, does not violate Article VII, Section 6 of the  
Missouri Constitution, the nepotism provision, and (2) pay  
increases or increases in other benefits incidental to the  
original employment do not result in the county assessor  
violating the nepotism provision.

March 27, 1989

OPINION NO. 73-89

Jim Elliott  
Maries County Prosecuting Attorney  
Post Office Box 212  
Vienna, Missouri 65582



Dear Mr. Elliott:

This opinion is in response to your questions asking:

Whether or not an elected county  
officeholder, to-wit, county assessor, is  
guilty of nepotism under Article VII,  
Section 6 of the Missouri Constitution if at  
the time of her election and during part or  
all of her term of office has a relative  
within the fourth degree of consanguinity or  
affinity working as an assistant in the  
assessor's office, which relative was  
employed by the outgoing county assessor  
prior to the time that the subject county  
assessor was elected to office.

Would a pay increase, promotion, salary  
increase, or increase of any other benefits  
given to the relative after the subject  
county assessor took office have any effect  
on your opinion?

Article VII, Section 6 of the Missouri Constitution  
provides:

Section 6. Penalty for nepotism. Any  
public officer or employee in this state  
who by virtue of his office or employment

Jim Elliott

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 Missouri Attorney General Opinion Letter No. 254, Hazel, 1975, a copy of which is enclosed, this office concluded that a member of the board of trustees of a third class county hospital was not guilty of nepotism if at the time of his election and during part or all of his term there was employed by the county hospital a relative within the fourth degree, by consanguinity or affinity, who was employed prior to the time that the board member was elected to office. The basis for this conclusion was that the board member did not participate in the hiring of the relative. In that opinion, this office further concluded that where the employee, who was hired before the board member came into office, received pay increases, such pay increases were merely incidental to the original employment which took place prior to the time the board member was elected to office. Therefore, the granting of pay increases would not violate the nepotism provision. The reasoning in Opinion Letter No. 254, Hazel, 1975, is applicable to the situation about which you are concerned.

Based on Opinion Letter No. 254, Hazel, 1975, we conclude that the newly-elected county assessor is not guilty of nepotism under Article VII, Section 6 of the Missouri Constitution if at the time of her election and during part or all of her term she has a relative within the fourth degree, by consanguinity or affinity, working as an assistant, which relative was employed by the outgoing county assessor prior to the time the newly-elected county assessor was elected to office. Consistent with our prior opinion, pay increases or increases in other benefits incidental to the original employment do not result in the newly-elected county assessor violating the nepotism provision. However, if the newly-elected county assessor were to appoint her relative to a distinctly different position, the nepotism provision of the Missouri Constitution would be violated.

#### CONCLUSION

It is the opinion of this office that (1) a county assessor who retains as an employee a relative within the fourth degree, by consanguinity or affinity, which relative was employed by the prior county assessor, does not violate Article VII, Section 6 of the Missouri Constitution, the nepotism provision, and (2) pay increases or increases in other benefits incidental to the

Jim Elliott

original employment do not result in the county assessor violating the nepotism provision.

Very truly yours,

  
WILLIAM L. WEBSTER  
Attorney General

Enclosure:

Opinion Letter No. 254, Hazel, 1975