

NEPOTISM: ✓

Official appointing step-father of his wife does not violate Section 13, Article 14 of the Constitution because they are not related either by consanguinity or affinity.

September 26, 1933.

FILED

Mr. C. Arthur Anderson,  
Prosecuting Attorney,  
Clayton, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"We would like an opinion from your office on the Anti-Nepotism section of the constitution of the State of Missouri, particularly Article 14, Section 13. The facts are as follows:

A Judge of the County Court employs the step-father of his wife, or causes the employment of him in the County Hospital in the County of St. Louis, and we desire an opinion from your office as to whether or not this constitutes a violation of the anti-nepotism laws of the State of Missouri."

Section 13, Article 14 of the Constitution of Missouri provides as follows:

"Any public officer or employe of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

Under the foregoing constitutional provision the officer appointing a relative within the fourth degree, either by consanguinity or by affinity, shall forfeit his office. The question arises in your inquiry as to whether or not an official appointing the step-father of his wife comes within the prohibition of the Constitution.

In 2 C. J. 378, it is said:

"Blood relations of the husband and blood relations of the wife are not related to each other by affinity.

Nor does the term 'affinity' ordinarily include persons related to the spouse simply by affinity."

In Encyclopedia Britannica, 11th Ed. Vol. 1, page 301, the author has the following to say about affinity:

"The marriage having made them one person (husband and wife), the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. But the relationship is only with the married parties themselves and does not bring those in affinity with them in affinity with each other; so a wife's sister has no affinity to her husband's brother."

The Judge is related to the wife by affinity and is also related to the wife's mother by affinity. The wife is related to the mother by consanguinity and the wife is related to the step-father by affinity. Under the foregoing rules, however, we are of the opinion that the step-father of the wife's ~~mother~~ is not related by affinity to the Judge of the County Court. Under the above rule the marriage of the Judge of the County Court to the wife would not bring into relationship by affinity the step-father who is related to the wife only by affinity.

It is therefore the opinion of this Department that the Judge of the County Court would not be guilty of violating Section 13 of Article 14 by appointing the step-father of his wife for the reason that said step-father of his wife is not related to him either by consanguinity or by affinity.

Very truly yours,

  
Assistant Attorney General.

APPROVED:

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Attorney General.

FWH:S