

PROSECUTING ATTORNEY: Duty to enforce anti-nepotism  
section of the Constitution

Sec. 1618 R.S. Mo. 1929

7-4  
June 21, 1933.



Hon. Herbert M. Braden,  
Prosecuting Attorney,  
Chillicothe, Missouri.

Dear Sir:

We are in receipt of your letter dated June 10, 1933,  
the first paragraph of which is as follows:

"I am writing you for an opinion  
as to whether or not it is the duty of  
a prosecuting attorney to bring ouster  
proceedings against a member of a school  
board who appoints a member of his fam-  
ily as a judge of a school election,  
under section 13 of article 14 of the  
Constitution of the State of Mo."

In answer to the above interrogatory, it is the opin-  
ion of this department that the Prosecuting Attorney may, in  
the exercise of his discretion, bring ouster proceedings for  
a violation of the anti-nepotism section of the Constitution  
where the office which has been forfeited is within the county.  
In other words, if the anti-nepotism section of the Constitu-  
tion applies to school boards, then if a director violates  
same within your county, you have ample authority under the  
statutes of the state, as will be hereinafter disclosed, to  
bring Quo Warranto proceedings against him in the Circuit Court  
of your county.

Sec. 1618 R.S. of Mo. 1929 provides:

"In case any person shall usurp,  
intrude into or unlawfully hold or  
execute any office or franchise, the  
attorney-general of the state, or any  
circuit or prosecuting attorney of the  
county in which the action is commenced,  
shall exhibit to the circuit court, or  
other court having concurrent jurisdic-  
tion therewith in civil cases, an informa-  
tion in the nature of quo warranto,

at the relation of any person desiring  
to prosecute the same. \*\*\*\*\*

Under the above section of the Constitution, in view of the case of State ex inf. Norman v. Ellis, 325 Mo. 154, l.c. 159, it is the opinion of this department that either the Prosecuting Attorney may, in his capacity as Prosecuting Attorney, file such proceeding, or a private individual in the name of the Prosecuting Attorney may do so.

Since this section has been adequately discussed in the above decision at the page there mentioned, we will not copy the same here but refer you to said opinion, as well as the annotations found in the official statute book under Sec. 1618 hereinabove referred to.

For your convenience, we are inclosing you herewith a copy of a Quo Warranto Petition which we have filed in the Supreme Court relating to a matter concerning a school board. This form may be used also in the Circuit Court.

As to the second paragraph of your letter and the question therein included, this department, in view of the case of State of Missouri v. Whittle, which has recently been filed in the Supreme Court and which will be decided before August 15, is rendering no opinion as to whether or not a school director is such an officer falling within the contemplation of the anti-nepotism section of the Constitution so as to make said section applicable to him.

When the above case is decided by the Supreme Court, which we understand will be shortly, we will forward to your office a memorandum as to the court's ruling.

Trusting that the above sufficiently answers your inquiries of said date, we are

Yours very truly,

POWELL B. McHANEY,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General