

NEPOTISM:

County official permitting relative to render personal service to him does not violate Section 13 of Article XIV where relative fills no official position and does not render service to the State in such capacity.

October 4, 1933.

Mr. Elliott M. Dampf,  
Prosecuting Attorney,  
Jefferson City, Missouri.

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Dear Sir:

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

"Will you kindly advise me if it is a violation of the Anti-Nepotism Law, for a county official to allow a member of his family to aid him in the duties of his office. This official has not the authority to appoint anyone in his office, and the county court does not make any allowance for this clerk's hire, and due to the family relation, her work is of a gratuitous nature."

Section 13 of Article XIV 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 above Section of the constitution, any officer who names or appoints any person related within the fourth degree to render service to the State shall forfeit his office. We believe, however, the proper construction to be placed upon that constitutional provision is that such person must be appointed to hold an official position existing under the laws or constitution of this State, and must render service to the State as such. We believe that there is a distinction between rendering service to the State in an official capacity and in rendering personal service to a member of the family who is a public officer. The test, as we understand it, is whether or not the person is appointed to fill an official position and whether he renders service to the State in such official capacity. Where a public officer has in his office a member of his family who does not occupy an official position nor render service to

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the State in such capacity, but whose services are rendered personally and gratuitously to the officer by reason of the family relationship, we do not believe that such situation comes within the provision of Section 13 of Article XIV.

You state that the county official permits members of his family to aid him personally in the duties of his office; that such person does not hold an official position, and that her work is of a gratuitous nature.

It is therefore the opinion of this Department that the county official in permitting a member of his family to aid him personally in the duties of his office does not violate the provisions of Section 13 of Article XIV, such relative not holding an official position and not rendering service to the State in such capacity.

Very truly yours,



Assistant Attorney General.

APPROVED:

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Attorney General.

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