

NEPOTISM:

Daughter of director's cousin not within prohibited degree; wife of director's brother-in-law not within prohibited degree.

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Mr. Gordon P. Dorris,
Prosecuting Attorney,
Alton, Missouri



Dear Sir:

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

"Your opinion of August 25th, relating to the Nepotism amendment received and for which we thank you.

Will you please give us your opinion as to who are included as relatives within the fourth degree, either by consanguinity or affinity. If you do not have opinion prepared on that can you give us example from which we may determine the relationship. As an example, is the wife of a director's brother-in-law within the prohibited degree? Is the daughter of a director's cousin within the prohibited degree?"

Section 13 of Article XIV of the Constitution of Missouri provides as follows:

"Any public officer or employee 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 that amendment a director who appoints anyone within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office. Affinity is defined in 2 C. J. 378, as follows:

"The connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same

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reciprocal connection with the relations of the husband."

Consanguinity is defined in 12 C. J. 510 as follows:

"Consanguinity or kindred is the connection or relation of persons descended from the same stock or common ancestor."

Under the rule laid down in 12 C. J. 511, there are two methods of computing the degrees of consanguinity as follows:

"One by the canon law, which has been adopted into the common law of descents in England and the other by the civil law which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law is as follows: 'We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related. By the civil law, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending.'"

We do not find that the courts of this state have laid down any rule as to how the relationship of Section 13 of Article XIV is to be computed. In other states, where anti-nepotism provisions are in force, courts have generally applied the civil rule. We believe that the courts of this state, when the matter is presented for consideration, will adopt the civil rule in computing the degree of relationship under Section 13 of Article XIV. The civil rule denotes that any relationship closer than second cousin would be prohibited under the Constitution. In other words, the official may appoint a second cousin without violating the rule, but the appointing of anyone related to such official as a first cousin or a closer relationship, either by blood or marriage, would be a violation of the Section.

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:

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"The marriage having made them one person, 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 relation 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."

You inquire whether or not the wife of a director's brother-in-law is within the prohibited degree. The brother of the director's wife is by affinity the brother-in-law of the director. When the brother-in-law of the director married, his wife became by affinity a sister-in-law of the director's wife, but under the rule announced above there is no relationship between the wife of the director's brother-in-law and the director.

It is therefore our opinion that under Section 13 of Article XIV of the Constitution, relationship shall be computed under the civil rule, and that in applying that rule, persons who are related as first cousins, or in a closer relationship, would come within the prohibition of the Constitution. It is also our opinion that the wife of the director's brother-in-law is not related to the director within the prohibited degree, as the term "affinity" does not include persons related to the spouse simply by affinity.

Very truly yours,

/s/ Frank W. Hayes
Assistant Attorney General.

APPROVED:

Attorney General