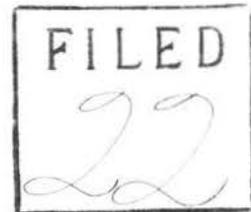


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NEPOTISM; Director who is grandfather by marriage to teacher and director who is uncle of teacher are within prohibition of Section 13 of Article XIV; the appointment of director's wife's brother's wife, or second cousin, is not within the prohibited degree.



October 17, 1933.

10-23
Mr. Gordon P. Dorris,
Prosecuting Attorney,
Alton, Missouri.

Dear Sir:

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

"We are in need of an opinion from your office in regard to relationship of certain parties, under the state anti-nepotism laws, and would like to know if the following persons are within the prohibited degree:

Example one: A director is the step-father of the teacher's mother.

Example two: A director is the half-brother of the teacher's mother.

Example three: A director's wife's brother's wife is teacher.

Example four: A director who is a first cousin of the teacher's father.

Trusting you will advise us promptly on these questions, we remain."

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."

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 towards them, and gives to the wife the same 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 under 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. Under the civil rule, it would be illegal for an official to appoint his first cousin or anyone more closely related. The official, however, may appoint a second cousin without violating the rule.

In 2 C. J. 376, 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 Brittanica, 11th Ed. Vol I, page 301 the author has the following to say about affinity:

"That 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 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."

In applying the above rules to the questions contained in your inquiry, we advise you as follows:

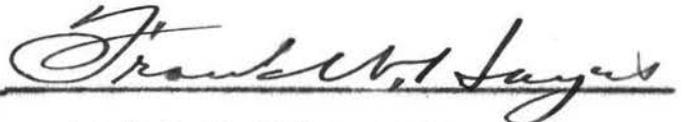
One: You inquire if a director who is a step-father of the teacher's mother may appoint the teacher. The director is the husband of the teacher's grandmother. By affinity the husband of the grandmother is the grandfather of the teacher. Such relationship is within the fourth degree as prohibited by the Constitution and would be in violation thereof.

Second: You inquire whether a director who is a half-brother of the teacher's mother is within the prohibited degree. The half-brother is the uncle of the teacher. The fact that the director is a half-brother of the teacher's mother does not prevent him from being the uncle of the teacher. The director being an uncle of the teacher, such relationship is within the fourth degree, and the appointment of such teacher by such director would be in violation of said provision of the Constitution.

Third: You inquire whether a director's wife's brother's wife is related to the director within the prohibited degree. There is no relationship of consanguinity between the director and the teacher. The director is related by affinity to the wife. The wife of the director is related by affinity to the teacher, who is the wife of her brother. There is no relationship by affinity under the above rules between the director and the director's wife's brother's wife, and such election would not be in violation of the constitutional provision.

Fourth: You inquire whether a director who is a first cousin of the teacher's father is within the prohibited degree. The director would be related by consanguinity to the teacher as a second cousin. A second cousin, according to the application of the civil rule, would not be within the fourth degree, as prohibited by the Constitution. The director, therefore, may vote to elect his second cousin without violating the above constitutional provision.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S