

NEPOTISM - Right of Sheriff to appoint nephew

January 10, 1933.



Hon. Eugene A. Farris,
Prosecuting Attorney Ray Co.,
Richmond, Missouri.

Dear Mr. Farris:

This office is in receipt of your letter dated January 6, 1933 in which you make the following inquiry:

"May a sheriff appoint his nephew as his deputy and not violate the law against nepotism.

You understand the sheriff is on a fee basis and the deputy would only receive a salary from the sheriff. He would not collect or receive any money from the state or county."

Sec. 13 of Art. 14 of the Constitution of the State of Missouri provides as follows:

Nepotism, by any officer or employe, forbidden - forfeits office.

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. (Adopted Feb. 26, 1924.)

The above provision of the Constitution has been construed by the Supreme Court in State ex inf. Norman vs. Ellis, Circuit Clerk, 28 S.W. 2d, 363.

You do not say in your letter whether the person desired to be appointed is a nephew by affinity or consanguinity, but it would not matter, as the sheriff is prohibited from appointing his nephew to the office

(Hon. Eugene A. Farris)

of deputy sheriff in any event, and would subject himself to forfeiture of his office in so doing.

You will observe that the constitutional provision above quoted does not make the same applicable only where fees are to be received, but that would make no difference, as the Constitution evidently intends to prohibit the appointment to office of a relative in the degree therein specified.

Very truly yours,

APPROVED:

GILBERT LAMB,
Ass't. Attorney General

Attorney General

GL:AH