

NEPOTISM ... Right of State Finance Commissioner
to appoint cousin as deputy commissioner. ✓✓

March 20, 1933

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28

Hon. O. H. Meberly
Commissioner of Finance
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your letter dated March 18, 1933, in which you state and inquire as follows:

"Confirming our conversation in the corridor this morning, in the case of the Bank of Lucerne, Lucerne, Missouri, which bank voluntarily closed a month or more ago, the only applicant for the position of Special Deputy Commissioner to liquidate the institution is an own cousin of mine, who presented with his application a petition signed by a number of the depositors of the bank.

The question is whether I can make this appointment without violating the provisions of the Nepotism Act. Since the salary of Special Deputy Commissioner is paid by the bank and not by the State, it may be that this appointment would not come under the Act referred to.

I shall be pleased to have your written opinion on this matter at your earliest opportunity, as we desire to place a liquidator in charge of this bank immediately."

Section 5282, R.S.Mo.1929, creates the State Department of Finance in which it is provided the same shall be under the management and control of a chief officer who shall be called the "Commissioner of Finance". You have qualified for and are now acting in the capacity of Commissioner of Finance of the State of Missouri.

Section 5323, R.S.Mo.1929, among other things provides:

"The Commissioner may, by certificate, under his hand and official seal, appoint one or more special deputy commissioners as agent or agents to assist him (the Commissioner) in liquidating the business and affairs of any corporation or private banker in his possession",

and further in the same section:

"He (the Commissioner) may, from time to time delegate such special deputy commissioner to perform such duties connected with such liquidation as he may deem proper."

Section 13 of Article 14 of the Constitution of Missouri provides:

"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."

Undoubtedly, you are a public officer of the State and since the special deputy commissioner you are entitled to appoint is to assist you in carrying out the duties and obligations of your office, one of which is to liquidate insolvent banks, then the service which the special deputy commissioner would render would be a service to the State in the same manner and sense as you serve the State in the discharge of your duties.

While it is true that the special deputy commissioner would be paid out of the assets of the closed institution, yet that makes no difference because the prohibition of the Constitution is against the appointment of a relative within the prohibited degree of blood or consanguinity.

You do not say whether the applicant for special deputy commissioner is related to you by blood or marriage, but that would make no difference as the appointment is prohibited by the Constitution and you would subject yourself to having your office forfeited should you make the appointment.

Yours very truly,

GILBERT LAMB,
Assistant Attorney General

APPROVED:

Attorney-General