

NEPOTISM: Grandson of mother's half-brother not within fourth degree, using civil law method of computing relationship.

EMPLOYEES: Appropriation act permits employment of temporary help.

September 15, 1933.



Hon. W. Ed Jameson
President Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

This is to acknowledge your letter which reads as follows:

"In the long trips that I am compelled to make over the State of Missouri in connection with the eleemosynary institutions, the Commission for the Blind and the Children's Home at Carrollton, I have found it necessary to employ a driver, which I feel certain I am permitted to do. I do not use a regular chauffeur, but some few days per month on these long trips I have been employing a young man who is the grandson of my mother's half-brother. I have just been reading Section 13 R. S. Mo. 1929, Page 157, which may have some bearing on this question. Will that Section apply to employing a temporary laborer for this purpose, or does it only apply to regular appointive jobs under these institutions?"

The above inquiry requests an opinion solely on the question of whether or not the grandson of your mother's half-brother employed by you, to act as a chauffeur on trips necessary in the performance of your duties, and paid by the State, is within the provision of Section 13, Article XIV, Constitution of Missouri, referred to as the "Nepotism" section.

You assume that you are permitted to employ a chauffeur to drive you when such method of transportation is necessary in the performance of your duties. And, while not asking a ruling as to your right to employ a person to render the services mentioned in your letter, we deem it necessary to establish that fact as a premise to a determination of your question.

Laws of Missouri, 1933, page 132, show the appropriation to the Board of Managers of Eleemosynary Institutions, which issues follows:

"SECTION 1. TO PAY SALARIES, WAGES, AND PER DIEM OF OFFICERS AND EMPLOYEES.--There is hereby appropriated out of the state treasury, chargeable to the funds herein designated, the various amounts set out to pay the salaries, wages, and per diem of the officers and employees and other expenses of the eleemosynary board, state hospital No. 1, state hospital No. 2, state hospital No. 3, state hospital No. 4, the Missouri state school, and the Missouri State sanatorium for the years 1933 and 1934, as follows:

For the board of Managers of the eleemosynary institutions payable out of state revenue fund as follows:

A. Personal Service:

The salaries of the president of the board of managers, chief clerk, stenographer and filing clerk, janitor, and the per diem of the board of eleemosynary institutions; also temporary help, clerks and stenographers
. \$17,000
Etc."

^{It} ~~and method~~ ^{means} is true the State furnishes you an automobile as the mode of transportation. Now, if for any reason you are unable to drive the car, then it is our opinion you would have a right under your appropriation to employ temporary help to perform this necessary service.

Having, therefore, established your right to employ a person to render the service stated in your letter, we now pass to the question as to whether or not his relationship to you comes within the prohibited fourth degree by affinity or consanguinity. If it does, you have forfeited your office and the compensation paid to such person is illegal.

Section 13, Article XIV, page 157, Constitution of Missouri, reads as follows:

"NEPOTISM, BY ANY OFFICER OR EMPLOYEE,
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 employ-
ment, 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."

This section is self-explanatory and likewise self-enforcing. We have heretofore rendered opinions interpreting this constitutional provision and will not lengthen this opinion by citations sustaining the above conclusion. The matter simply resolves itself into what relationship the grandson of your mother's half-brother is to you. Using the civil law method of computing relationship, it will be readily ascertained that such person's degree of kinship is that of the fifth degree. Therefore, not being related to you by consanguinity within the prohibited fourth degree, you have not violated the nepotism provision of the Constitution, supra, and such is our opinion.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.