

NEPOTISM:

Public officer appointing child in office who is not appointed to an official position and who is not rendering service in an official capacity, does not violate Section 13, Article 14 by having son render personal service to him.

October 3, 1933.

Mr. John H. Keith,
Prosecuting Attorney,
Ironton, Missouri.



Dear Sir:

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

"I am informed that according to some newspaper item which I did not see, you have ruled that the county collector comes under the Nepotism provision of the State Constitution.

The Collector in my county has his son employed in his office, or at least his son works in the office, but under the law if he pays him he does it out of his own money, as the law allows him no deputy and therefore the deputy could not be paid out of public funds.

It has been my opinion that in a case like this the officer would not be violating the Nepotism provision of the Constitution.

In my own case: I am as you know Prosecuting Attorney of this county. My son is my stenographer, is single, lives with me and I pay him out of my own money, not being allowed anything out of county funds for such purpose. I do not understand I would be violating the law. Will you please let me have your opinion with reference to the Collector and my office under those facts?"

Section 13, Article 14 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."

Under the above Section of the Constitution, any officer who names or appoints any person within the fourth degree to render service to the State makes himself liable to forfeiture of office. We believe, however, that the proper construction to be placed upon the constitutional provision means that such person must be appointed to hold an official position existing under the laws or Constitution of this State. We do not believe that the test is whether or not the appointing officer be on a salary basis or a fee basis. The test, as we understand it, is whether or not the person is appointed to fill an official position and as such to render service to the State in such official capacity. Where a public officer has in his office a member of his family who does not occupy an official position, nor as such render service to the State, but whose services are rendered personally to the officer by reason of the family relationship, we do not believe that such situation comes within the provision of Section 13, Article 14.

The father, as such, is entitled to the services of his unemancipated children. That well recognized rule is expressed in 29 Cyc. 1623, where it is said:

"The father is the head of the family. He is entitled to the services and earnings of the children so long as the latter are legally under his custody or control and unemancipated."

A child, therefore, performing service for his parent is performing service to which the father is legally entitled. So long, therefore, as the child is performing service for the parent and is not performing service in an official capacity to the State of Missouri, it is our opinion that such situation does not cause a violation of Section 13, Article 14.

It is therefore the opinion of this Department that if the collector of your county has his son working for him personally and not as an official and pays him out of his personal funds, the collector has not violated the said constitutional provision because said son is not rendering service to the State in an official capacity, but is rendering service to his father personally.

The same answer applies to the inquiry respecting your office. The fact that you use your son in your office as your stenographer and pay him out of your personal funds is not in violation of Section 13, Article 14 because the son is not appointed to an official position and is not

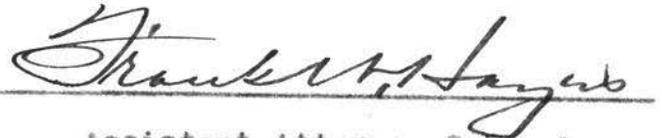
Mr. John H. Keith,

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rendering service to the State of Missouri in an official capacity, but is rendering service to you personally to which service you are legally entitled.

Very truly yours,

A handwritten signature in cursive script, reading "Frank W. Hayes", written over a horizontal line.

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S