

NEPOTISM:

Public officer receiving personal service from daughter does not violate Section 13, Article XIV, where daughter is not appointed to an official position.

October 4, 1933

Mr. Sam. M. McKay
Prosecuting Attorney
De Soto, Missouri



Dear Sir:

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

"Our Collector, W. C. Kerckhoff, has asked me for an opinion relative to the employment in the Collector's office of his daughters. In view of the recent decision of the Supreme Court, relative to the nepotism law, I would like to have an opinion from your office as to whether or not he is violating that law by permitting his daughters to work under the following conditions, to-wit:

His three daughters do all of the book and clerical work in the office. Two of them are single and live at home with him, and one was recently married and has a home of her own, although she continues to do some work in the office. None of the daughters are paid any salary nor do they sign the receipts, and Mr. Kerckhoff has no one who is a deputy, or authorized to give receipts as Deputy Collector. He, of course, supports the girls, buys all of their clothing, and furnishes them whatever spending money they require, but they are paid no fixed salary or wages.

I will appreciate an expression from your office in the form of an opinion, by which Mr. Kerckhoff can be governed, as he is law-abiding and does not want to violate the law, but, on the other hand, he feels that the nepotism law does not cover his case.

Of course, I take it that if the State would be liable for any salary or wages paid in the Collector's office, it might create a different situation, but since a Collector pays all salaries, if any are paid, out of his own commission, that seems to me to place a different construction on the law."

Section 13, 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."

Under the above Section of the Constitution, any public officer who names or appoints any person related 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 is that such person must be appointed to hold an official position or a public office existing under the laws of constitution of this State. The test is, as we understand it, whether or not the person is appointed to an official position and renders service to the State in such official capacity. We do not believe it was intended that a public officer might not avail himself of the personal service of the members of his family where they are not out of the public funds and where they are not rendering paid service to the State in an official capacity.

It is a familiar rule that the father as such is entitled to the services and earnings 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."

We do not understand that this constitutional provision has changed that well-recognized rule. The father, whether a public officer or not, is still entitled to the services of his unemancipated children. Where such services are performed for him, such relative is not rendering service to the State in an official capacity, as contemplated by said constitutional provision. Where the relative, however, holds an official position and renders service to the State in that official capacity, the appointing officer has violated the constitution.

According to your inquiry the Collector's daughters do some work in their father's office; none of them are paid any salary and none of the daughters hold any official capacity in the office. The services they furnish are personal services to their father as such. They are not, in an official capacity, rendering service to the State of Missouri.

Mr. Sam M. McKay

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It is therefore the opinion of this Department that the Collector of your county is not guilty of violating Section 13 of Article XIV by permitting his daughters to render to him personal service where the daughters are not holding an official position and are not, as officials, rendering service to the State.

Very truly yours,

FRANK W. HAYES
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

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