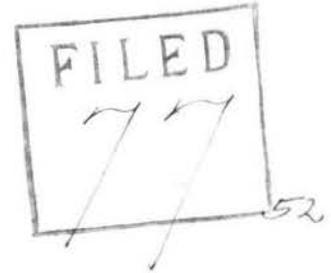


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NEPOTISM:--While appointments prohibited by Section 13 of Article XIV are illegal, members of the board voting for related teacher, until they resign or have been removed, may function as directors and their actions bind the district; board may not date contract back so as to reward teacher for services performed under illegal contract voted by related directors.

10-23
October 17, 1933.



Mr. Nat B. Rieger,
Prosecuting Attorney,
Kirksville, Missouri.

Dear Sir:

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

"Your opinion on the above subject issued under date of August 23, 1933, was by the County Superintendent of Schools sent to each school board member in the County and under it a question has arisen which the members of the board insist be certified to you.

In a six member board early after it was organized a teacher was elected that was related within the prohibited degree to three members of the board. Thereafter the board proceeded to elect other teachers. After the receipt of your opinion the three offending directors resigned and new members were appointed and the board reorganized. By the time the new board was organized the school had been conducted one month.

The new board, in view of your holding that the members of a school board are personally liable for moneys improperly paid to school teachers, are refusing to pay the teachers elected after the election of the related teacher, on the ground that if the board members voting for their relative did thereby forfeit their office that thereafter there was not a sufficient board to elect teachers and that after the illegal election of a related teacher the remaining acts of the offending directors were void.

The new board have re-elected the teacher that was related to the board members. She has taught one month. The board desire to pay her for the services rendered and to date back her contract but do not want to become personally liable therefor. Would the new board be so privileged?"

You state that there were six members on your board and that three of them were related within the prohibited degree to a teacher which was elected. These related members of the board afterwards

resigned and the remaining three directors appointed new members to take their places. Before their resignation they participated in the election of other teacher. The related teacher was afterwards re-elected by the non-related board. You inquire first, whether the election, by the original board, of the unrelated teacher made their election illegal, and second, whether the related teacher who was re-elected by the unrelated board one month later, can be paid for the services rendered while she served under the contract made by the related directors.

Section 13 of 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 provision of the Constitution, a director who votes for the election of a relative within the fourth degree, either by consanguinity or affinity, shall forfeit his office. Under that section of the Constitution, when the director has committed the prohibited act, he is subject to be removed in a proper legal proceedings brought for that purpose. He is entitled to his day in court and a hearing before a court of competent jurisdiction as to whether or not he has, as a matter of fact, committed acts which would cause him to forfeit his office. At such hearing he might show that the teacher for whom he voted was not related within the prohibited degree. In other words, he has the right to hold office until he has been convicted of violating Section 13 of Article XIV. The mere fact that he might have committed an act which would be cause for the forfeiture of his office does not mean that the committing of the act in itself automatically removes him from the board. It is always a question of fact as to whether or not such act has been committed and such accused director is entitled to a hearing on such question. Even though the director might have voted for a related teacher, he is still a member of that board until such time as he resigns or is removed therefrom.

(1). In answer to your first inquiry, therefore, it is our opinion that even though three of the members of the original board were related to a teacher which they elected, such action on their part made them liable for forfeiture of office, but that the act in itself did not automatically remove them so as to make their subsequent acts illegal. We are of the opinion that even though they had voted previously for the related teacher, that when they afterwards voted for the election of non-related teachers, that those non-related teachers were legally elected and are entitled to be paid for the services which they perform. At the time of the

October 17, 1933.

election of these non-related teachers, the three members of the board had not resigned and had not been removed. Their actions, therefore, as members of the board would bind the district on their contracts with the teachers.

(2). In answer to your second inquiry, we are of the opinion that the contract of the related teacher, which was entered into by the original board, was void because three members of the original board were related to the teacher. The contract being void, she would not be entitled to be paid for her services during such period of time, as she taught under the original contract. After the resignation of the three related members from the board, three new members were appointed which completed the organization of the board. This second board was legally constituted and they entered into a new contract with the teacher who was related to the three members of the original board. This contract became legal and enforceable from the date of its execution. You would have no authority to date this contract back to cover the months' service which she performed under the illegal contract. If such could be done, then the effect would be that so far as she is concerned, the first contract was not illegal and ^{was} enforceable. If the new board did date the present contract back, such action on their part would breathe new life into the old contract for all intents and purposes, and one of the evils sought to be corrected by this amendment would not be eliminated. We are of the opinion, therefore, that the new board has no right to date back the new contract to cover the period of time during which the teacher taught under the illegal contract.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S