

NEPOTISM:

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

October 4, 1933. 10/7

Mr. W. D. Ross,
Circuit Clerk,
Buffalo, Missouri.



Dear Sir:

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

"As Circuit Clerk of Dallas County, I have a deputy-- Mr. C. W. Smithpeter--who executed and signs all official documents for the office, when I am 'out of pocket,' which is very rare. I pay him out of my own pocket for said services.

And, in order to save the tax payers of Dallas County the cost of deputy hire, I have my wife to write record for this office. This, of course, is done without cost to the tax payers. If I did not handle the work of this office as above outlined, I would be obliged to have much more deputy service, which would be a further burden on the tax payers of the county.

As you are aware, mine is a salaried office; so, the plan above outlined is not to save me a dollar, but to save the county some burden--and the county is deeply in debt. You are aware, further, that I am entitled to deputy hire.

Your predecessor in office gave his written opinion that the plan above outlined was no violation of the anti-nepotism law. Is that your opinion, Mr. McKittrick?"

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."

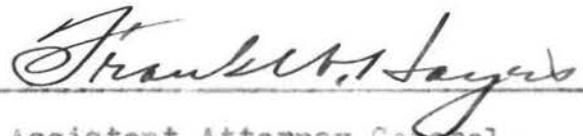
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Under the above section of the constitution, any public officer who names or appoints any person within the fourth degree, either by consanguinity or affinity, to render service to the State makes himself liable to forfeiture of office. We believe, however, that the proper construction to be placed upon the constitutional provision is that such persons must be appointed to hold an official position existing under the laws or constitution of this State. We can see a distinction between a person rendering service to the State in an official capacity and rendering service to an individual official because of their relationship. 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. 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, without expense to the State, to the officer by reason of the family relationship, we do not believe that such situation comes within the provision of Section 13 of Article XIV.

You state that your wife is not a Deputy and does not render service to the State as such, but that she writes records for your office without cost to the tax payers. The service she renders is a personal service to you by reason of your relationship.

It is therefore the opinion of this Department that under such circumstances you are not violating the constitution by permitting your wife to render to you such personal service as you outlined in your letter.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWM:S