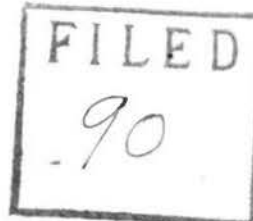


NEPOTISM:

Applies to officials and employes
of cities of all classes in the
State of Missouri.

April 26, 1933



Honorable Joseph T. Tate
Prosecuting Attorney
Owensville, Missouri

Dear Mr. Tate:

This Department acknowledges receipt of your
letter dated April 21, 1933, as follows:

"I will appreciate it very much if you
will give me an opinion regarding the
application of the nepotism law as
relating to cities of the 4th class."

Section 13 of Article XIV of the Constitution
of the State of Missouri reads:

"Any public officer or employe of this
State or of any political subdivision
thereof who shall, by virtue of said
office of 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 of employment".

Putting it in plain words the above section
of the Constitution prohibits any public officer of the
State or of any political subdivision thereof, whether
elected or appointed, from exercising his right to name
or appoint any person to render service to the state or
to any political subdivision of the state who is related
within the fourth degree, either by consanguinity or
affinity to such public officer when such public officer
shall have the right to name or appoint any person to

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render such service by virtue of the office held by such public officer. The public officer violating this provision of the Constitution subjects himself to having the office so held by him forfeited.

The above section further prohibits an employe of this State or an employe of any political subdivision of the State, when by virtue of the employment so held such employe has the right to name or appoint any person to render service to the State or to any political subdivision thereof, from naming any person who is related within the fourth degree, either by consanguinity or affinity to such employe. The penalty for such prohibited act being that the employment of such employe may be forfeited.

Therefore if the elected or appointed officials of a city of any class in this State are public officials or if a city of any class in this state is a political subdivision of the State, then such officers of a city of any class in the state, whether elected or appointed, and the employes of a city of any class in this state, when such employe has the right of appointment as above outlined, fall within the meaning and prohibitions of Section 13 of Article XIV of the Constitution of the State of Missouri. An answer to either of the above questions will answer your question.

In attempting to arrive at the meaning of the above quoted provision of the Constitution and in a construction thereof, the mischief intended to be eliminated and the evils sought to be eradicated should be kept in mind in order to determine the scope of the provision that was intended by the writers of such constitutional amendment. As to the rules of construction to be applied to constitutional provisions the Supreme Court of this state in *State ex rel Carthage v. Hackmann*, 287 Mo., 184, 190, 191, said,

"There are certain well-understood rules laid down by the courts for the construction of constitutional provisions, and they are the same as those governing legislative enactments.

It was said in State ex rel. v. McGowan 138 Mo. 1. c. 192, in discussing the general rules of construction of constitutional provisions that: "The organic law is subject to the same general rules of construction as other laws, due regard being had to the broader objects and scope of the former, as a charter of popular government. The intent of such an instrument is the prime object to be attained in construing it".

In 12 Corpus Juris, 700, it is said: "The Court, therefore, should constantly keep in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied",

And also in 12 Corpus Juris, 702, it is said: "If a literal interpretation of the language used in a constitutional provision would give it an effect in contravention of the real purpose and intent of the instrument as deduced from a consideration of all its parts, such intent must prevail over the literal meaning". "

A public office and public officer is defined in State ex rel Zevely v. Hackmann, 300 Mo., 59, 67, in language as follows:

"In the most general and comprehensive sense a "public office is an agency for the State and a person whose duty it is to perform this agency is a "public officer". Stated more definitely a "public office" is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of sovereign power, whether great or small. A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law. (State ex rel. Smith v. Theus, 38 So. 870-72, 114 La. 1098; cited in State ex rel. v. Maroney, 191 Mo. 1. c. 545)."

To the same effect see *Hasting v. Jasper County*, 314 Mo., 144, 149.

The duties of the various city officials and employes as provided in Chapter 38 of the Revised Statutes of Missouri, 1929, are similar in most respects. The statutory provisions applying to cities of the different classes unless the city is operating under a special charter, is the charter and contains the powers, duties and authority of the respective officials and employes of the cities of each particular class. Referring particularly to Article VIII, of Chapter 38 Revised Statutes Missouri, 1929, which is the charter of cities of the fourth class, we find that a general election shall be held for the election of certain specified elective officers. Many duties are imposed on the mayor, board of aldermen and appointive officers. The mayor has the power to appoint certain officers of the city, with the consent and approval of a majority of the members of the board of aldermen. Unless a police judge is provided for the mayor sits as a quasi court in the trial of the cases for the violation of city ordinances. The mayor may cast a vote on any proposition before the board when a vote among the members of the board results in a tie. The mayor may approve or veto ordinances enacted by the board of aldermen for the government of the city. Section 7018 Revised Statutes Missouri, 1929, provides as follows:

"The mayor and board of aldermen of each city governed by this article shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

Then follows various sections authorizing the board of aldermen to enact ordinances for the regulation of peace and order in the city, to secure the general health of the inhabitants thereof and to cause certain street and sidewalk improvements to be made, sewer districts to be established and sewers constructed and many other like powers and duties are given the mayor and board of aldermen. All of the foregoing to be carried into effect by the mayor, board of aldermen, officials and employes of the city.

There is a line of cases in this state, commencing with *Kansas City v. Neal*, 122 Mo. 232, holding that municipal corporations, not including the city of St. Louis, in this state are not political subdivisions within the meaning of Article VI, of Section 12 of the Constitution of the State of Missouri, with reference to the appellate jurisdiction of the Supreme Court, but in all of those cases the writers of the opinions have been careful to point out that the holding that the city was not a political subdivision of the state was only within the meaning of the constitutional provisions last referred to.

That a city may be considered a political subdivision of a state in some instances is held in other cases. In *Jefferson City Gas Light Company v. Clark*, 95 U. S. 644, 654, 24 L. Ed. 522, the Supreme Court of the United States said:

"A city is only a political subdivision of the State, if made for the convenient administration of the government. It is an instrumentality, with powers more or less enlarged, according to the requirements of the public and which may be increased or repealed at the will of the Legislature".

And in *Ford v. Delta and Pine Land Company*, 164 U. S. 662, 41 L. Ed. 594, the Supreme Court of the United States again said:

"A city is a municipal corporation, a political subdivision of the state, charged with certain specified duties of government within its territorial limits, and for the full discharge of those duties it is authorized to levy taxes".

The Supreme Court of this state in *Morrison v. Morey*, 146 Mo., 543, held that a levee district constituted a political subdivision of the state within the meaning of the provisions of the constitutional limitation as to the extent to which a political subdivision of the state may become indebted.

At page 561 of the opinion the court said:

"It is a public political subdivision of the state which the state has the power to create, under its police powers, and as such subdivision it exercises the prescribed functions of government in the district".

In reasoning out the question as to whether or not a levee district was a political subdivision of the state, the court in the last named case at page 562 of the opinion said:

"The power to construct drains and sewers, to open and improve streets, to regulate the uses of private property so as to prevent nuisances, to establish fire limits in large and populous cities, to establish quarantine, to remove and isolate persons affected with smallpox and other contagious diseases in order to stop the spread of disease, in all dependent upon the police power of the State, exercised for the benefit of the health and well being of the people. In every case there must be the impress of a public purpose upon the law to make it constitutional. It is not enough that private interests will be subserved, or that private property will be enhanced in value. There must be a public interest applicable to a community of persons to be benefited. The health of the people is the substrata upon which the prosperity of the State rests, and laws conducive to health have always been upheld".

Many of the powers of a levee district and the effects of its organization given as a reason for the holding that a levee district is a political subdivision of the state applies with equal force to the powers and duties of officials and employes of the respective cities of this state as well as the effects of the chartering of such cities and the results of the discharge of the duties of the officials and employes thereof.

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The case of Sorenson v. The Superior Court, 254 Pacific 230, defining the characteristics of a political subdivision, at page 231 of the opinion quoted with approval the following:

"These distinctive marks are, I think, that they embrace a certain territory and its inhabitants, organized for the public advantage, and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions, and that to the electors residing within each is, to some extent, committed the power of local government, to be wielded either mediately or immediately, within their territory, for the peculiar benefit of the people there residing. Bodies so constituted are not merely creatures of the state, but parts of it, exerting the powers with which it is vested for the promotion of those leading purposes which it was intended to accomplish, and according to the spirit which actuates our Republican system".

From the foregoing definitions of a "political subdivision" of a state in the light of the duties and authority of the officers and employes of the respective classes of cities in Missouri, we reach the conclusion that the officers of the cities of all classes in this state are public officers and that the employes of such cities are employes of a political subdivision of the state, within the meaning and intendant of Section 13 of Article XIV of the Constitution of the State of Missouri, when such officials or employes have the authority to name or appoint, as provided in such section.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.
GL:LC