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NEPOTISM:

The fact that teacher not related to director at time of appointment afterwards becomes related within the fourth degree, will not work a forfeiture of office.

October 5, 1933.

Mr. G.W. VanNess,
District Clerk,
Jonesburg, Missouri.

10-7



Dear Sir:

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

"I am writing you for a decision on a condition that exists in our Public School. Sometime after we had hired our teachers for 1933-34 one of the teachers married a half - sister to one of the school directors of our district. We at once wrote to State Superintendent Lee for a decision, which you will find enclosed. Since then the Editor of our home paper who is not on friendly terms with some of the directors, has published statements, seemingly with the intention of placing us in a bad light before the public. Now, of course, we want to comply with the law in every way, and will appreciate a letter from you that we may know where we stand."

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, if any public officer names or appoints anyone within the fourth degree, either by consanguinity or affinity, he shall forfeit his office. The constitution means that the right to name or appoint shall not be exercised in favor of any person who is related to a director at the time of the naming or appointing. As we construe the constitution, the test as to whether or not a director shall forfeit his office depends on whether

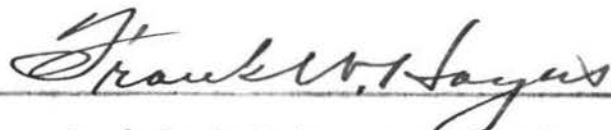
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or not the director and the appointed teacher are related within the prohibited degree at the time he exercises the right to name or appoint such teacher.

The proper construction of the constitution, in our opinion, is that the officer may, by his own wrongful act, forfeit his office. We do not understand that it was intended a director should be made to forfeit his office by acts or circumstances for which he was not liable and which were not under his control. To hold that a director could be made to forfeit his office because the appointed teacher, after her appointment, married someone related within the fourth degree to a member of the board, would put it within the power of such teacher to cause a forfeiture of the director's office when the director himself had done nothing to violate the constitution. Such is not within the letter or the spirit of the constitution. It is no violation of the constitution for the director to appoint or name a person who is not related within the fourth degree. If, after a bona fide and legal appointment of a teacher, she afterwards becomes related to a member of the board through the ordinary vicissitudes of life, such act upon her part should not and will not work a forfeiture of the director's office.

It is therefore the opinion of this Department that the test under the constitution is whether or not at the time of the naming or appointing the teacher is related within the fourth degree to a director who votes for her appointment. If such teacher was not related within the fourth degree at the time of her naming or appointment, then the fact that she may afterwards become related to a member of the board will not cause the forfeiture of that director's office.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S