

NEPOTISM:

Where Board votes unanimously in favor of teacher, director who is first cousin of teacher violates Section 13 of Article XIV of the Constitution of Missouri.

October 12, 1933.

FILED

Mr. B. C. Wilde,
Argyle, Missouri.

Dear Sir:

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

"At the last school meeting I was elected school director for three years. Later we organized and employed the following teachers, Josepha Schrader, Ida Brunnert and Alice Hartman.

Since the last Supreme Court opinion it was brought out that Miss Ida Brunnert, who has been teaching in this district for the last twelve years, is a first cousin to my wife.

At the employment of teachers there was no deciding vote cast, nor was there any agreement or collusion before the meeting, in fact there was no votes cast, only all directors agreed to hire Miss Brunnert for another year. Relationship was to my knowledge not even thought of.

According to my understanding of the opinion I think I am entirely within the law as we all acted in good faith and relationship was not considered, all three directors being satisfied, as Miss Brunnert has given good service for twelve years or more.

Kindly let me know by return mail, whether you think that I am right in holding the directorship as I think I am. Many thanks."

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."

You state that at the last meeting of your Board of three members that it was agreed among the directors to hire Miss Brunnert for another year, and that Miss Brunnert is a first cousin to your wife.

In 2 C. J. 378, it is said, in discussing affinity:

"The connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same reciprocal connection with the relations of the husband."

The degree of relationship under Section 13 of Article XIV we believe is to be determined by the application of the civil rule. In 12 C. J. 511, the civil rule is announced as follows:

"By the civil law, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending."

Under the application of the civil rule, your wife is related to her first cousin by consanguinity within the fourth degree, as prohibited by the Constitution. Such being true, by application of the rule announced above as to "affinity," you are related by affinity to your wife's first cousin in the same degree as she is related to her by consanguinity, and such relationship would be within the fourth degree, as prohibited by the Constitution.

You state that there was no deciding vote cast and that the directors unanimously agreed to elect Miss Brunnert. When the three members of the Board, by their unanimous action, elected this teacher, each of them exercised his right to "name or appoint" in favor of that teacher. The Supreme Court in the case of State ex rel. v. Whittle (not yet reported), in which they ousted a director for voting in favor of a related teacher, said:

"Respondent also argues that the amendment is only directed against officials who have all the right (power) to appoint. We do not think so. The question must be determined upon the construction of the amendment. It is not so written therein. The amendment is directed against officials who shall have (at the time of the selection) the right to name or appoint a person to office. Of course, a Board acts through its official members, or a majority thereof. If, at the time of the selection, a member has the right (power), either by casting a deciding vote or otherwise, to name or appoint a person to office, and exercises said right (power) in favor of a relative

within the prohibited degree, he violates the amendment."

The Supreme Court says that if the director who has the right, either by casting a deciding vote or otherwise, to name or appoint a person to office and exercises that right in favor of a relative, he violates the amendment. When the three members, who make up the entire Board, vote or consent to the election of a teacher, each member of the Board has exercised the right he had to "name or appoint" in favor of the relative. We believe that the Supreme Court meant that whenever a director votes in favor of a relative within the prohibited degree and such relative is elected to office, he violates the constitutional provision.

We believe that there is a great misunderstanding among the directors as to what is meant by a deciding vote or otherwise. Take for example, a Board consists of three members and two are necessary to elect. Assume that director No. 1 is related to the teacher and that directors Nos. 2 and 3 are not. Assume that director No. 2 votes first for the teacher and director No. 3 votes against her. Then, if director No. 1 votes for the related teacher such director certainly has cast a deciding vote for her election and has violated the constitution. However, assume that the order of voting was such that director No. 1 voted first and voted in favor of his relative; that director No. 2 voted against the relative and that director No. 3, who voted last, voted with director No. 1, thereby electing the teacher to office. In both instances director No. 1 exercised all the right he had to name or appoint in favor of the relative. If it be said that in the first instance director No. 1 violated the Constitution because he voted last and in the second example did not violate the Constitution because he voted first, then whether or not the Constitution was violated would depend upon the order in which the directors voted. We do not believe that the constitutional provision is to be nullified by the directors adopting any particular method of ^{order} voting, or by juggling their votes. We believe the Constitution means, as interpreted by the Supreme Court, that whenever any director exercises his right to name or appoint a teacher in favor of a relative within the prohibited degree, he has violated the constitutional amendment.

According to the facts stated in your letter, the Board unanimously, without a dissenting vote, selected the related teacher. It is not necessary to a violation of this amendment that a formal vote, either orally or written, be taken. When the Board unanimously consented to her selection, the Board unanimously voted in her favor. Every member of the Board, under such circumstances, must legally be deemed to have cast his vote in favor of the teacher and to have exercised his right to "name or appoint" in favor of the teacher so selected. The question of good faith does not enter into this proposition. The test is not whether the director voted for the relative with any particular intention; the test is whether or not he exercised his right to "name or appoint"

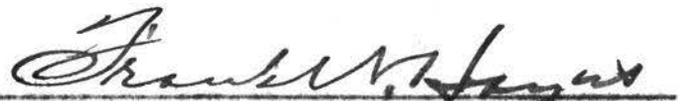
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in favor of the teacher. When a director does exercise his right to "name or appoint," or votes in favor of a related teacher and such teacher is elected, then we believe that he has violated Section 13 of Article XIV.

It may be, in the enforcement of this provision of the Constitution, that teachers who heretofore have rendered service loyally and efficiently may be prohibited from continuing to teach in schools where their relatives are on the Board. Its enforcement may also result in the removal or retirement from the Board of members who have rendered long and efficient service. It is our duty, however, to construe this amendment as interpreted by the Court and according to the spirit and intention of the people when they adopted it. The intention of the people was that directors of Boards should not exercise their right to vote in favor of a relative. When a director does so exercise his right to vote in favor of the related teacher and she is elected thereby, regardless of the good faith of either party the director has violated the constitutional provision.

It is therefore the opinion of this department that when you, as a member of this School Board, consented and voted in favor of this related teacher, you violated Section 13 of Article XIV of the Constitution and thereby made yourself liable to forfeiture of your office.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S