

NEPOTISM:-Death of wife of director terminates the relation-
SCHOOL ship by affinity, unless there are children of
DISTRICTS: the marriage now living.

12-27
December 19, 1934.



Hon. Clarence Cannon,
Member of Congress,
House Office Building,
Washington, D. C.

Dear Mr. Cannon:

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

"One of my constituents who is a school director in a country district school desires to vote for one of the candidates for appointment as teacher in the school but write to know if under the inhibition prohibiting directors from voting for relatives by 'consanguinity of affinity' he can vote for a relative of his first wife now deceased. He has married the second time and wishes to know if the relatives of his deceased wife come within the prohibition proposed by the law.

Shall appreciate it if you can advise me in response to his inquiry."

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."

The foregoing constitutional provision makes no provision regarding the death of the spouse as to whether or not the relationship by consanguinity or affinity is terminated. We find no decisions in this State dealing

with the subject. However, the rule as laid down in 3 C. J. is as follows:

"Death of the spouse terminates the relationship by affinity. If, however, the marriage has resulted in issue who are still living, the relationship by affinity continues."

The decisions are not harmonious regarding this question. Some of the decisions hold that while the relationship by consanguinity is in its nature incapable of dissolution, that the relationship by affinity ceases with the dissolution of the marriage which produced it. Kirby v. State, 89 Ala. 63; Blodget v. Brinsmaid, 9 Vt. 37. On the other hand some decisions are to the effect that the relationship by affinity is not dissolved where there are issue of the marriage who are still living. Dearmond v. Dearmond, 10 Ind. 191; Bigelow v. Sprague, 140 Mass. 425.

Not having any decision on the question in this State and not being able to reconcile all the decisions of other jurisdictions, we have followed the rule, in interpreting Section 13 of Article XIV, that the death of the spouse does terminate the relationship by affinity unless there are children of the marriage still living. The reasonable rule would seem to be that death should terminate the relation by affinity because it terminates the marriage from which the relationship of affinity exists. However, as a matter of public policy, where there are children of the marriage still living, then it would seem that the relationship should continue even though one of the spouses has passed away.

It is our view, therefore, that the death of the wife of the director would terminate the relationship by affinity unless there are children of the marriage now living.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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