

NEPOTISM:— Member of Board who does not exercise his right to vote in favor of prohibited relative will not forfeit office in the absence of fraud or collusion.

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April 12, 1934.

Mr. Charles Farrington,  
Assistant Prosecuting Attorney,  
Springfield, Missouri.

Dear Sir:

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

"Inquiry has been made into our office as to whether or not it would be in violation of our constitutional nepotism law for a member of a rural school board comprised of three members to be on the Board at a time when a first cousin of his was appointed as a teacher for the Board.

He says he will not vote for the man, and is personally against him and wants to know if it would remove him from the Board for the other two members to so vote."

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 Supreme Court in construing the above constitutional provision in the case of State ex inf. McKittrick v. Whittle, 63 S. W. (2d) 100, says at page 101:

"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 other-

wise, 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. In this case it is admitted that respondent had such power at the time of the selection, and that he exercised it by naming and appointing his first cousin to the position of teacher of the school in said district."

The constitutional provision makes it illegal for a member of a board to vote in favor of a relative within the prohibited degree. In the Whittle case above the Supreme Court declares that it is the exercising of his right to name or appoint that is in violation of the Constitution. If, as you state in your inquiry, the board member does not vote for his cousin, and, as a matter of fact, votes against him, then he is not guilty of violating the above constitutional provision because he has not exercised his right to vote in favor of the relative. To hold otherwise would make it possible for the other members of the board to elect the relative of an unfavored member of the board and thereby cause him, over his objection and protest, to forfeit his office. We do not believe that this was the intention of the constitutional provision.

However, if the related member of the board should, by collusion or fraud with other members, bring about the election of the relative while ostensibly taking the position of being opposed to him, then we believe that upon a showing of such fact the director might forfeit his office. We assume, however, the director about which you inquire is acting in good faith, and if so, the mere fact that a relative of his is elected by the other members when he does not participate in the election would not cause him to forfeit his office.

It is therefore the opinion of this Department that where a director, who is related within the prohibited degree to a teacher who is employed by a board of which he is a member, does not participate in the selection of that teacher, he will not forfeit his office because the other members of the board vote to employ the teacher.

Very truly yours,

FRANK W. HAYES,  
Assistant Attorney General.

APPROVED:

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Attorney General.

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