

NEPOTISM:--Road Districts are political subdivisions under Section 13 of Article XIV; Commissioners have no right to contract for own benefit with the District.

2-1

January 29, 1934.



Mr. Ted Frossard,
Prosecuting Attorney,
Cassville, Missouri.

Dear Sir:

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

"I would like to have the opinion of your office on the following question regarding an interpretation of the Nepotism amendment.

Is it a violation of the amendment for commissioners of special road districts, or districts organized under Article 10, page 2267, R. S. 1929, to employ relatives within the prohibited degree to do work on the roads?

Are commissioners permitted, under Sec. 8065, to hire themselves to do road work?

May road overseers in any district employ relatives within the prohibited degree to do road work?

Your opinion on these questions will be very highly appreciated."

I

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."

Under the foregoing constitutional provision, any public officer or employe of the State or any political subdivision thereof, who appoints a person to render service to the State or any political subdivision thereof, when such person is related within the fourth degree, is guilty of nepotism.

In our opinion the Commissioners of special road districts come within the prohibition of that constitutional provision. In *State ex rel. v. Harper*, 256 S. W. 489, the Court holds that a special road district is a public corporation, saying:

"Special road districts are public corporations, and the Legislature can create them the same as any other public or municipal corporation with such powers of taxation, not exceeding the constitutional limits, and in such manner, as it deems necessary or expedient."

Since the special road district is a political subdivision of the State, any officer or employe of such road district who appoints a relative within the prohibited degree to render service to such road district violates the above constitutional provision.

It is therefore our opinion that road districts are included within the above prohibition as political subdivisions, and that the Commissioners of road districts are public officers or employes of political subdivisions; that the Constitution would be violated if a road overseer should employ relatives within the prohibited degree to work upon the roads.

II

Section 8076, R. S. Mo. 1929, among other things, provides:

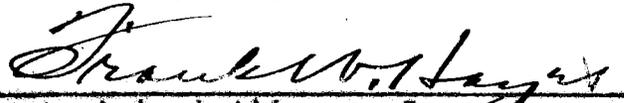
****"Said Commissioners may advertise for bids for such contract in any manner they may choose; and the contract shall in no case be let to any commissioner, nor shall any commissioner, directly or indirectly, have any pecuniary interest therein other than the performance of his official duties as herein required."* * * *

As we interpret the foregoing section of the statute, it prohibits commissioners of road districts from having any interest in any contract to which the road district is a party. While work by commissioners for the road district might not be evidenced by a formal written contract, yet at

the same time when they work for the road district they are entering into a contractual relation with the district, and are directly interested in such contract.

We are therefore of the opinion that commissioners of road districts cannot, in view of the above section, enter into any kind of contract, whether written or verbal, for the performance of any labor or services with the district. They are representatives of the district itself and cannot at the same time enter into a contract for their own benefit with the district.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S