

NEPOTISM:-Where relative is not appointed to hold an official position, relative may assist office-holder without being a violation of Section 13 of Article XIV of the Constitution of Missouri.

3-5
February 26, 1934.



Mr. E. L. Hirst,
County Treasurer,
Greenfield, Missouri.

Dear Sir:

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

"I am County Treasurer and Ex-officio Collector of this County. As you know, there is no provision for hiring extra help and whatever I have must be hired by me and paid for out of my regular earnings. This being the case, would I be allowed to hire a relative?"

Again, I have a son who is a student in the Oklahoma College of Agriculture. During vacation, which begins on the 24th of May, he would be glad to assist me without pay as he is anxious to learn the business of the office. Is this permissible?"

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."

As we construe the above section of the Constitution, any public officer who names or appoints any person related within the fourth degree to some official position makes himself liable to forfeiture of office. The test is, as we interpret it, whether or not the person is appointed to an official position and renders service to the State in such official capacity. We do not believe that it was intended that a public officer might not avail himself of personal

service of the members of his family where they are not paid out of the public funds and where they are not rendering service to the State in an official capacity.

In the first instance about which you inquire, you intend to hire some extra help. This extra help would not be paid out of State funds, but would be paid out of your own earnings. So long as such person is not appointed to an official position created by statute, then we believe that you may employ a relative.

We do not believe it would be a violation of the constitutional provision for you to permit your son, while on vacation, to assist you in your office without pay. He is not being appointed to an official position and he is not being paid out of State funds, and we conclude that this would not be an act of nepotism.

It is the familiar rule that the father, as such, is entitled to the services and earnings of his unemancipated children. That well-recognized rule is expressed in 29 Cyc. 1623, where it is said:

"The father is the head of the family. He is entitled to the services and earnings of the children so long as the latter are legally under his custody or control and unemancipated."

We do not understand that this constitutional provision has changed that well-recognized rule. The father, whether a public officer or not, is still entitled to the services of his unemancipated children. Where such services are performed for him, such relative is not rendering service to the State in an official capacity, as contemplated by said constitutional provision.

It is therefore our opinion that so long as the relative, son or otherwise, has not been appointed to an official position and is not serving the State in an official capacity, it would not be in violation of the nepotism provision for you to employ such person to assist you in the office.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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