

SCHOOLS: School director voting for first cousin would forfeit
NEPOTISM: office; the fact that husband dies does not terminate
the relationship by affinity where there are children
living who were born of the marriage.

May 28, 1934



Mr. Charles F. Lamkin, Jr.
Assistant Prosecuting Attorney
Keytesville, Missouri

Dear Sir:

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

"A young woman is applying for a position
as teacher in a district school in this
county. Her husband, now deceased, was a
first cousin of one member of the board.
She has two children born of this union.
If she obtains the position it will be
necessary for the board member related
to her to vote for her.

I will appreciate it very much if your
office will give me an opinion as to
the legality of such employment, and
the effect on the tenure of office of
the director voting for her, in view of
the nepotism amendment, and in view of
the fact that the relationship by affi-
nity may have terminated by the death
of her husband.

It is my opinion that the death of the
husband does not terminate the relation-
ship, but there is some room for argu-
ment, and these people would be better
satisfied if we had an opinion from
your office."

Section 13 of Article XIV of the Constitution of
Missouri provides as follows:

"Any public officer or employee 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 politi-
cal 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 of Missouri, in construing the above constitutional provision, in the case of State ex inf. McKittrick v. Whittle, 63 S. W. (2d) 100, held that a school district was a political subdivision of the State within the above amendment and that a school director who votes for a first cousin by affinity for the position of teacher thereby forfeits his office. The court 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 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. 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 teacher is related by affinity to the director as first cousin. Persons related as first cousins are related within the fourth degree, as prohibited by the Constitution. If the director in question, therefore, should vote to elect this teacher the director would make himself liable to forfeiture of office, and the contract existing between the teacher and the board would be illegal. The fact that the husband is now dead does not, in our opinion, terminate the relationship. It is said in 2 C. J. 379 that:

"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."

We are therefore of the opinion that the relationship has not been terminated in this instance because there were children who are still living which were born of this marriage. Since the relationship of first cousin still obtains, it would be illegal and in violation of the

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- 3 -

May 28, 1934

Constitution for the related director to vote for her election. If he does so vote he would make himself liable to forfeit his office and the contract resulting from his illegal act would not be binding upon the district.

Very truly yours,

FRANK W. HAYES
Assistant Attorney General

APPROVED:

Attorney General

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