

NEPOTISM: Appointment of collateral relative due to marriage along the line of descent or ascent does not violate the Missouri Constitution on Nepotism.

October 15, 1934.



Honorable Charles F. Lamkin, Jr.
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Sir:

Your request for an opinion dated August 31, 1934, is as follows:

"In a certain school district in this county, a member of the Board of Directors and the teacher who was employed for the coming year are related in the following manner: The mother of the director is a sister-in-law of a sister of the grandmother of the teacher.

"I will appreciate an opinion from your office stating whether or not the director and the teacher in this case are related within the degree of relationship forbidden by the Constitution."

Article XIV, Section 13, Missouri Constitution provides as follows:

"Any public officer or employe of this State or 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."

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The matter presented by the facts set out in your letter do not state any blood relationship between the school director and the school teacher, hence there is no question of consanguinity in your query.

The only problem presented by your query is a problem of affinity as prohibited by the Missouri Constitution on nepotism.

If a school director who appoints a school teacher, and said school teacher's grandmother's sister is a sister-in-law to the director's mother, and if this relationship, when calculated, is within the fourth degree by affinity between the director and the school teacher, then the director is guilty of nepotism. If there is no affinity in such a relationship, or if there be affinity but it be beyond the fourth degree, then there is no violation of the Missouri Constitution on nepotism.

Let us first figure the degrees of relationship through the common ancestor. From the school teacher up to her mother, within the first degree. From the mother up to the grandmother, within the second degree. From grandmother up to great grandmother, within third degree. From great grandmother down to grandmother's sister, who is a sister-in-law of the school director's mother, within the fourth degree. From school director's mother down to director, within fifth degree. Thus we see that if there be any relationship by affinity at all, it is at best only within the fifth degree.

On the other hand we do not believe that the school director is related to the teacher at all, even by affinity, for Encyclopedia Britannica, 11th Ed. Vol. 1, page 301, has the following to say about affinity:

"The marriage having made them one person, (husband and wife); the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. But the relationship is only with the married parties themselves, and does not bring those in affinity with them in affinity with each other; so a wife's sister has no affinity to her husband's brother."

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In the case at bar we do not believe that the school director has any affinity with the school teacher upon a showing that his mother is a sister-in-law with the great aunt of the school teacher. The affinity relationship is only with the married parties, that is to say, it is only with the school director's mother and her husband, or is only with the teacher's great aunt and her husband, and this affinity does not bring those in affinity with them in affinity with each other.

In the case of North Arkansas and Western Railway Company v. Cole, 70 S. W. 312, 1. c. 313, the Court said:

"Affinity is the tie which arises from marriage between the husband and the blood relations of the wife and between the wife and the blood relations of the husband. There is no affinity between the blood relatives of the husband and the blood relations of the wife."

There is no Mo. authority directly in point, but all the authority from foreign jurisdictions is in line with the reasoning of the Arkansas case, supra.

CONCLUSION.

It is the opinion of this office that there is no nepotism presented by your query, for the director is, in our opinion not related either by affinity or consanguinity to the school teacher. The appointment of the teacher is not unconstitutional and in violation of the Missouri Constitution on Nepotism.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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