

NEPOTISM:- Under Section 13 of Article XIV, election of
SCHOOL DISTRICTS:-teacher is legal where related director does
not participate in teacher's election and does
not, by collusion or fraud, bring about her
election.

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July 19, 1934.



Mr. Minor C. Livesay,
Prosecuting Attorney,
Versailles, Missouri.

Dear Sir:

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

"I have been requested to secure an
opinion from your office on the fol-
lowing question.

"One member of the School Board is
related to an applicant for the
position of teacher. May the other
two directors employ this applicant
to teach the school?"

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 ren-
der 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 consanguin-
ity or affinity, shall thereby forfeit
his or her office or employment."

Under the foregoing Constitutional provision
any officer or employe of the State or any political sub-
division thereof, who exercises his right to name or
appoint in favor of a person related within the fourth
degree makes himself liable to forfeiture of office.
A school district is a political subdivision of the State
and the school board would be officers of such political
subdivision. The Supreme Court of this State in the case
of State ex inf. McKittrick v. Whittle, 63 S. W. (2d) 100,
in construing the above constitutional provision as appli-

cable to school districts, says as follows:

"The amendment is directed against officials who shall have (at the time of the selection) 'the right to name of 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."

As we interpret the constitutional provision and the foregoing decision the director must participate in the election of the related teacher. If he does not participate in her election and her election is brought about by the remaining members of the board, we do not believe that her election would be illegal, unless the related director, by fraud or collusion, circumvented the provision of the Constitution.

We are therefore of the opinion that if the related director did not participate in the election of the teacher and did not, by fraud or collusion, bring about her election, her election would be legal.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.