

NEPOTISM:-Under Section 13 of Article 14 of the Constitution members of school board may supervise relief projects for improvement of school property, but have no right to withdraw money from incidental fund for such services.

November 3, 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 would like your opinion on the following matter:

"The school district here receives a federal fund for relief projects for improvement of school district property. School board members supervise this work and do work for the school district, for which they receive pay from the school district incidental fund.

"I would like to know whether or not this employment of school board members by the school board is legal, and whether or not it is a violation of the nepotism law."

You ask whether the above employment is in violation of the nepotism law. 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 of affinity, shall thereby forfeit his or her office or employment."

We do not believe that the matter set out

in your inquiry violates the nepotism provision of the Constitution. That provision prohibits any public officer of this State or any political subdivision thereof from appointing any person to render service to the State or any political subdivision thereof who is related, either by consanguinity or affinity, within the fourth degree. We do not believe that the constitutional provision could be construed so as to include a situation where members of the school board act as supervisors in administering federal funds. However, we are of the opinion that even though that provision of the Constitution does not apply, they have no right to pay themselves out of the school funds.

We find no statute which authorizes the withdrawal of money from the incidental fund for the purpose of paying for services of this character. Such being true, the members of the school board would not be entitled to any compensation. The general rule is that any public officer must be able to point out the statute whereby he claims compensation. The rule is aptly stated in *State ex rel. v. Adams*, 172 Mo. 1. c. 7, where it is said:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. (Citations omitted)."

We are, therefore, of the opinion that even though the employment may not be said to be in violation of Section 13 of Article XIV of the Constitution, yet we are of the opinion that the members of the school board have no right to withdraw money from the school district incidental fund for rendering the services involved, unless the statute expressly so provides. Not finding any statute authorizing such expenditure, we believe that to do so would be illegal.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.

ROY McKITTRICK,
Attorney General.