

NEPOTISM:-Second cousin not related within the Third Degree, as prohibited by Section 6529, R. S. Mo. 1929.

5-10  
May 7, 1934.



Mr. Kirby W. Patterson,  
City Attorney,  
Springfield, Missouri.

Dear Sir:

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

"Our recently elected Commissioner of Streets has requested that I write you for an opinion construing the nepotism provision in the Constitution, and in the Statute relative to cities of the second class, in connection with an appointment which he desires to make.

The person he had in mind for the appointment is the son of a first cousin to the wife of one of the city commissioners. I realize the great number of inquiries that come to your office regarding this subject, but as this is an appointment which the Commissioner desires to make immediately I would greatly appreciate it if you could give an immediate answer to this letter.

Due to the fact that the method of figuring relationship is so different under the civil law and the common law, and also due to the fact that any opinion I would give will be wholly without any authority, it is desirable that we have an opinion from your office on this subject. The section of the statutes relating to nepotism in cities of the second class is Section 6529, R. S. Mo. 1929."

Section 6529, R. S. Mo. 1929, provides as follows:

"It shall be unlawful for any officer of such city to vote for appointment or to appoint any person related to him or to

any member of the city council, by affinity or consanguinity within the third degree, to any clerkship, office, position, employment or duty in such city or in any of its departments; any violation of this section shall ipso facto render vacant the office of the person violating it; and no person appointed in violation of this section shall receive the compensation of the office to which he is so unlawfully appointed."

Under the foregoing section it is illegal for any officer of the city to vote for the appointment, or to appoint any person related to him or to any member of the city council, either by affinity or consanguinity, within the third degree. The question then arises under the section whether the Commissioner is related within the third degree to the son of a first cousin of his wife. The person seeking the appointment and the City Commissioner are related as second cousins.

Under the rule laid down in 12 C. J. 511, there are two methods of computing the degrees of relationship, as follows:

"One by the canon law, which has been adopted into the common law of descents in England, and the other by the civil law which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law is as follows: 'We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related.' By the civil law the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending."

We do not find that the courts of this State have laid down any rule as to how the relationship under the anti-nepotism provision of the Statute or Constitution shall be computed. In other states where anti-nepotism provisions are in force the courts have generally applied the civil rule. We believe that the courts of this State, when the matter is

presented for consideration, will adopt the civil rule and we have consequently applied that rule in computing the degree of relationship prohibited under the Constitution. Applying the civil rule we are of the opinion that a second cousin is not within the third degree, as prohibited by Section 6529, R. S. Mo. 1929, or within the fourth degree, as prohibited by Section 13 of Article XIV of the Constitution.

It is therefore the opinion of this Department that a second cousin is not related within the third degree, as prohibited under Section 6529, R. S. Mo. 1929, or within the fourth degree, as prohibited under Section 13 of Article XIV of the Constitution.

Very truly yours,

FRANK W. HAYES,  
Assistant Attorney General.

APPROVED:

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Attorney General.

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