

NEPOTISM:

Persons related as first cousins or more closely come within the fourth degree; second cousins do not come within the prohibition of the Constitution.

13-16

November 10, 1934.



Mr. Owen C. Rawlings,
Prosecuting Attorney,
Marshall, Missouri.

Dear Sir:

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

"A question has arisen in my county which may call for an application of the anti-nepotism provision of our constitution. Your office can assist me by advising me as to just what degree of relationship exists between first cousins, also second cousins, or is each of these within the prohibited degree of relationship?"

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 or affinity, shall thereby forfeit his or her office or employment."

Under the foregoing constitutional provision the prohibitive relationship is that of fourth degree or closer. In 13 C. J. 511, the methods of computing the degrees of consanguinity are 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 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 Section 13 of Article XIV is to 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 in computing the degree of relationship under Section 13 of Article XIV.

By applying the above rule this Department has repeatedly held that persons who are related as first cousins or more closely come within the fourth degree. Persons who are related as second cousins or less closely do not come within the prohibition of the Constitution. Persons related by marriage, of course, are related by affinity and the same rule applies in computing the relationship.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

FWH:S