

ROAD DISTRICTS;--COMMISSIONERS OF ROAD DISTRICTS WOULD BE PERSONALLY
liable for paying out money of district upon con-
tract entered into in violation of Section 13
of Article XIV of the Constitution of Missouri.

6/5

May 26, 1934.



Mr. Henry C. Salveter,
Prosecuting Attorney,
Sedalia, Missouri.

Dear Sir:

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

"I would much appreciate an interpreta-
tion from your office with reference to
the following question:

Can the road commissioners of a special
road district, organized under Article
9, Chapter 42, of the Revised Statutes
of Missouri for 1929, appoint and hire
a son of one of the commissioners to
perform services on the roads of the
district?

If such employment is in violation of
Section 13 of Article 14 of the Constitu-
tion of Missouri, would the commissioners,
or any of them, be personally liable to
reimburse money thus paid out to the road
district, assuming that the relative
employed did perform bonified services
during the course of his employment?

This question has frequently been
called to my attention by road commis-
sioners, as well as citizens of the
County. It is my personal opinion that
such employment is in violation of Sec-
tion 13, Article 14 of the Constitution
of Missouri. However, if the relative
employed renders bonified services and
assuming that the pay is fair and reason-
able for the services performed, I am
anxious to know whether or not any mem-
bers of the road district would never-
theless be responsible to reimburse the
district."

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."

The Supreme Court in the case of *State ex inf. McKittrick v. Whittle*, 63 S. W. (2d) 100, held that a school director who votes to employ a relative related within the prohibited degree subjects himself to forfeiture of office, the Court saying at page 101:

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

The road district is a political subdivision of the State so as to come within the limits of the above section of the Constitution. It is said in *State ex rel. v. Thompson*, 285 S. W. 57, 61:

"The district when organized is a municipal corporation, not in the limited sense applied to certain cities, but in the general sense in that it exercised governmental functions. It is a political subdivision of the State. *State ex rel. Kinder v. Little River Drainage District*, 238 S. W. 848."

It will be seen from the foregoing, therefore, that a road commissioner who votes to appoint or hire his

son to perform services for the district has violated the above constitutional provision, and has made himself liable to have his office forfeited.

You next inquire whether the commissioners would make themselves personally liable if they paid the son for the services performed. We believe that the contract entered into where the commissioner appoints his son is an illegal contract. The intention in the adoption of Section 13 of Article XIV is evident in every word. The ouster of the director is the correction of only one-half of the evil. To permit the related employe to retain the benefits of the vicious contract would be to defeat the purposes of the amendment. The appointed person, in our opinion, would not be able to enforce the illegal contract against the district. Since the contract is illegal, as being made in direct conflict with the provisions of the Constitution, the commissioners would have no legal right to pay out the funds of the district upon the illegal contract. If they do pay out money illegally they make themselves personally liable. In the case of Knox County v. Hunolt, 110 Mo. 67, it was held that the Judges of the County Court were liable to the county for the diversion of the county school fund for other than county school purposes, even though the diversion was by mistake and the county received the benefit of the money misapplied. the Court said at page 75:

"The use of the fund for the payment of ordinary county debts was an act in direct violation of the Constitution and laws creating that fund, and was, therefore, nothing short of malfeasance. That the judges would be liable in a private suit to persons especially injured for such a violation of law is clear, and we can see no reason why they are not liable to the county."

Applying the rule announced in the above case to your inquiry it must logically follow that if the county court would be personally liable for a diversion of funds where it was done by mistake, certainly they would be personally liable for money paid out upon a contract which was executed in direct violation of the State Constitution.

It is therefore the opinion of this Department that if a road commissioner votes to elect or appoint his son to render service to the district, the contract entered into between the district and the son is illegal and unenforcible, and if the district pays, out of the district treasury, funds upon the illegal contract, the road commis-

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-4-

May 26, 1934.

sioners would be personally liable to refund that money into the treasury, regardless of whether the services were performed or the amount paid was reasonable.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S