

OLD AGE ASSISTANCE ACT:

County judge may not appoint relative to county old age assistance board.

12-3

November 29, 1935.



Miss Reba E. Choate,
Assistant Commissioner,
Old Age Assistance Division,
State Eleemosynary Institutions,
Jefferson City, Missouri.

Dear Miss Choate:

This department is in receipt of your request for an opinion as to the following:

"Is it lawful for a county judge to appoint a relative as a member of the county old age assistance board?"

Section 13, Article XIV of the Constitution of the State of Missouri provides:

"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."

308 provides:

Section 3, Laws of Missouri, 1935, page

"In every county there shall be established a County Old Age Assistance Board, to consist of three persons domiciled in the county, each of whom shall have been a resident taxpaying citizen of the county for a period of five years prior to his or her appointment at least one of whom shall be a woman, who shall be appointed by the county court for a term of four years, except that of the members first appointed, one shall be appointed for a term of two years and one for a term of three years. Vacancies shall be filled in the same way in which the original appointment was made. The members of the county board shall serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them."

* In the recent case of State ex inf. McKittrick v. Whittle, 333 Mo., page 705, Judge Gantt said:

"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."

CONCLUSION

In view of the foregoing, it is the opinion of this department that it would be in violation of Section 13, Article

Nov. 29, 1935.

XIV of the Constitution of the State of Missouri for a judge of a county court to vote for the appointment of a relative within the fourth degree, either by consanguinity or affinity, to the County Old Age Assistance Board.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:AH