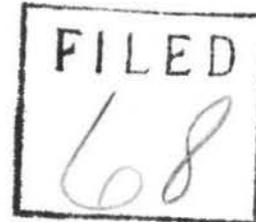


December 31, 1936.



Hon. Lee-Carl Overstreet,
University Attorney,
University of Missouri,
Columbia, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion under date of December 29th as follows:

"The Board of Curators of the University of Missouri requests an opinion from you on the following matter.

"From the standpoint of appointments, employees of the University of Missouri fall into two groups:

"1. Those who are on so called Tenure, who are not re-appointed each year, but who serve, during good behavior, without further appointment or re-appointment;

"2. Those who, by action of the Board of Curators, are appointed to serve, either for the calendar year or other twelve months periods, and who are re-appointed at the end of each such term of service.

"The question presented by the Board of Curators for your determination is whether or not the re-appointment of an employee of the University of Missouri of the second group named above, to the same position held by him under his former appointment, upon the expiration of that appointment, constitutes a new appointment, under the meaning of Section 9636 Revised Statutes of Missouri, 1929?"

Section 9636 R. S. Mo. 1929, provides that:

"No person who is related by blood or marriage to any member of the board of curators of the university shall be appointed to any position in the university as officer, member of any faculty or employe."

Ballentine's Law Dictionary defines the term "appointment" as "the selection of a person to some office or trust."

The second group as outlined in your letter are appointed by the Board of Curators to serve for a definite period and may at the end of such time be reappointed or displaced, subject to the pleasure of the Board .

Your request is limited only to the second group of employees, and it is only with this group that we confine our opinion.

Your question resolves itself to whether a person having served the period for which he was appointed, and now being subject to reappointment, has any special standing insofar as the prohibited relationship is concerned under Section 9636, supra.

In the case of Warrington v. Bobb, 56 S. W. (2d) (Mo. App.) 835, 1. c. 837, the court said:

"Of course our prime duty is to give effect to the legislative intent as expressed in the statute, and to that end there are many considerations to guide us. For instance, the object which the Legislature sought to attain by a statute, and the evil which it sought to remedy, may always be considered to ascertain its intent and purpose (Straughan v. Meyers, 268 Mo. 580, 187 S. W. 1159; Ross v. Ry. Co. 111 Mo. 18, 19 S. W. 541)."

We may, then, in ascertaining the meaning of Section 9636, supra, properly ask what was the evil which the Legislature sought to remedy?

The evil was clearly the appointment of individuals by the Board within the prohibited relationship. Is the evil removed by virtue of the fact that the employee has already served a term? In our opinion, the same evil exists for a person subject to reappointment stands in a natural position of preference or influence by virtue of the existing relationship.

It may be said, however, that the employee should not be penalized if, after proving satisfactory, he finds himself within the prohibited relationship.

The statute, however, makes no exceptions. It states in clear and unambiguous language that "no person" within the prohibited relationship shall be "appointed", and we are of the opinion that this prohibition remains whether same be termed a reappointment, new appointment or any other kind of appointment.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

MM:HR