

NEPOTISM: Under the Civil Rule, the degree of relationship of a third cousin is not such as is prohibited by Section 13, Article XIV, Const. of Missouri.

December 3, 1938

17-5  
FILED  
60

Honorable Emory C. Medlin  
Prosecuting Attorney  
Barry County  
Cassville, Missouri

Dear Sir:

This Department is in receipt of your letter of November 30th, in which you request an opinion based on the following facts:

"Mr. W. E. Hankins was elected Probate Judge November 8. He is a first cousin of W. S. Hankins who is the grandparent of Elaine Dodson. She is the present clerk of the Probate Court under Judge D. B. Meador.

"She is very efficient and has made an excellent clerk, however, that office in our county does not provide a salary for the clerk, it is just paid by the probate judge out of his own salary.

"I would like to know what is her relation to W. E. Hankins and can she serve as clerk under Judge Hankins who was elected Probate Judge at the November Term of Court or will the nepotism law prevent her from serving?"

Probate Judge elect, Mr. Hankins, being a first cousin of W. S. Hankins, the Grandfather of Elaine Dodson, if we are correct in determining blood relationship,

is a third cousin of the said Elaine Dodson.

Section 13 of Article XIV, Missouri Constitution, 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 question arises as to whether or not the clause, "or appoint to such service any relative within the fourth degree," would prevent Elaine Dodson from serving as Clerk of the Probate Court by appointment by W. E. Hankins, the parties being related to each other as third cousins.

There appear to be two methods of computing the degrees of relationship: One, the Cannon Law; the other by the Civil Law. We are enclosing an opinion rendered by this Department on October 31, 1933, to Miss Marjorie Neff Hoy, Superintendent of Schools, Marshall, Missouri, in which the rules are explained. You will note that it was the conclusion of this Department that we determined that the Civil rule should be applied to the Nepotism Act in the State of Missouri. Under the Civil rule the prohibited relationship does not extend below first cousins.

Hon. Emory C. Medlin

-3-

Dec. 3, 1938

Miss Dodson, being a third cousin to Mr. Hankins, who has the appointive power, we are of the opinion that the degree of relationship is not such as is prohibited by Section 13, Article XIV, supra.

Yours very truly,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney-General

OWN:EG  
Enc.