

NEPOTISM: A school director may vote to employ his son-in-law's niece, being of no kin either by affinity or consanguinity.

July 15, 1942

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Hon. Hubert E. Lay
Assistant Prosecuting Attorney
Houston, Missouri

Dear Mr. Lay:

This is to acknowledge receipt of your letter of July 12, 1942, in which you request an official opinion from this department. Your letter, omitting caption and signature, is as follows:

"I would appreciate an opinion whether a school director can legally vote to employ as a teacher the niece of his son-in-law under the nepotism act."

Section 13, article 14, of the Constitution of Missouri, provides as follows:

"Any public officer or employee 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."

In 2 C. J. 378, it is said:

"Blood relations of the husband and blood relations of the wife are not

related to each other by affinity. Nor does the term 'affinity' ordinarily include persons related to the spouse simply by affinity."

In Encyclopedia Brittanica, (11th Ed.) Vol. 1, page 301, the author has the following to say about affinity:

"The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. But the relation is only with the married parties themselves and does not bring those in affinity with them in affinity with each other; so a wife's sister has no affinity to her husband's brother."

In the case of Pemiscot Land & Cooperage Co. v. Davis, 147 Mo. App. 194, l. c. 202, the court had this to say:

"The juror challenged stated that he was a second cousin to the wife of one of the defendants. That brought him within the degree of affinity, though not of consanguinity, prescribed by the statute. One is within the prescribed degree of affinity when the 'relationship is by marriage between a husband and his wife's blood relations, or between a wife and her husband's blood relations' (Webster's New International Dictionary, Ed. 1910)."

"There is no 'affinity' between blood relations of husband and blood relations of wife, within constitutional provision prohibiting judge from presiding on trial of any cause where the parties or either of them shall be connected with him by 'affinity' or 'consanguinity.'" (See cases cited.) W rds and Phrases, Vol. 2, (Pocket Part) page 65.

It will be noted from reading the above definitions and cases cited that the relationship by affinity comes into force through marriage, and upon the statement of the facts before us, it certainly could not be said that the school director in question and his son-in-law's niece would be kin by affinity.

CONCLUSION

From the foregoing, we are of the opinion that the school director could, under the nepotism law, vote to employ as a teacher the niece of his son-in-law, he being no kin to said niece, either by consanguinity or affinity.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
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