

NEPOTISM: School director cannot appoint daughter of the half-brother of his father-in-law.

May 12, 1942

Hon. Thomas G. Woolsey
Prosecuting Attorney
Cooper County
Boonville, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"The County Superintendent of school for Cooper County has requested me to construe Section 13 of Article 14 of the Constitution of Missouri as appears on page 166c of Volume I, R. S. Mo. 1939, in the light of this set of facts:

"Mr. A. was the father of B by his first wife and C by his second wife, making B and C brothers of half blood. B is the father of a daughter, E, who is a school teacher; C is also the father of a daughter, D, who married Mr. X. X is a member of a certain school board in Cooper County, which Board desires to employ E as a school teacher for the school year of 1942-43.

"Since X married D who is already a half first cousin to E would X, in voting to employ as teacher in the school of which he is a board member, forfeit his office as held in State ex inf. v. Whittle, 333 Mo. 705?

"I take the position that although B and C have the common parent A, their children would not be first cousins, but rather half first cousins which would remove them from the provisions in the Whittle case and for that reason X would not be penalized for employing E.

"I shall appreciate your construction of this Section at your earliest convenience."

Section 13 of Article XIV 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."

(Underlining ours.)

Our Supreme Court in State ex inf. Norman v. Ellis, 28 S. W. (2d) 363, 325 Mo. 154, held this provision to be self-enforcing. The purpose for this amendment was given in State ex inf. McKittrick v. Whittle, 63 S. W. (2d) 100, 333 Mo. 705, as follows:

"It is a matter of common knowledge that at the time of the constitutional convention in 1922-1923, and for a long

time prior thereto, many officials appointed relatives to positions, and thereby placed the names of said relatives upon the public pay rolls. The power was abused by individual officials and by members of official boards, bureaus, commissions, and committees, with whom was lodged the power to appoint persons to official positions. It also was abused by officials with whom was lodged the power to appoint persons to official positions, subject to the approval of courts and other functionaries of the state and its political subdivisions.

"It also is a matter of common knowledge that many of the relatives were inefficient, and some of them rendered no service to the public. To remedy this widespread evil, the convention proposed to the people an amendment to the Constitution, designated therein section 13, art. 14, * * * * *."

Affinity is defined in *State ex inf. Norman v. Ellis*, supra, as "a legal relationship which arises as the result of marriage * * * between each spouse and the consanguinal relatives of the other." That is, the husband is related by affinity to his wife's relatives in the same way that she is related to them by blood, and she is related to his relatives by affinity in the same way that he is related to them by blood."

Therefore, under the above rule X stands in the same degree of relationship to E as does his wife D. While there are two modes of computing the degree of relationship, that is, the common law rule and the civil law rule, it has always been the view of this department that Missouri, in common with the overwhelming majority of the other states, follows the civil law rule. In 26 C. J. S. 1028, this rule is given as follows:

"* * * the civil law rule is to begin with the intestate, and ascend from him to a common ancestor, and descend from that ancestor to claimant, reckoning a degree each generation, as well in the ascending as in the descending line. * * * * *"

(Underlining ours.)

In 16 Am. Jur. 826, it is said:

"The civil law does not begin, as does common law, and reckon from the common ancestor downward to each of the persons related or to the remotest of them, but it reckons from the person in question upward to the common stock and then downward to the other party related.

"Every generation in lineal, direct consanguinity constitutes a different degree, reckoning either upward or downward. The difference in the method of the common and civil law in the computation of degrees exists only in relation to collateral consanguinity."

(Underlining ours.)

In 56 Am. Decisions 294, the law is given as follows:

"The method of computing those degrees by the civil law was to commence at either of the persons whose relationship was to be determined, and count up to the common ancestor and then downward again, counting each person a degree, to the other person. For example, Titius and his brother are related in the second degree, for from Titius up to his father, who is their

common ancestor, is one degree, and then down to Titius' brother is another. Titius and his nephew are related in the third degree, for from Titius up to his father is one degree, and from the father down to the nephew is two degrees: 1 Broom & Had. Com. 646; 2 Kerr's Bla. Com. 457; 3 Redfield on Wills, 84; McDowell v. Addams, 45 Pa. St. 432; Paddock v. Wells, 2 Barb. Ch. 331; Spear v. Robinson, 29 Me. 543; Swezey v. Willis, 1 Bradf. 495; Bingham on Descents, 298; 4 Kent's Com. 412; Co. Lit. 23 b."

(Underlining ours.)

In all of the above quotations it will be seen that in determining the degree of relationship that one has to reckon up to the "common ancestor" and then down to the person whose relationship is sought to be determined. Under this rule the fact that a man was married twice and had a child by each wife does not in any way change the method of computation, because the father is the "common ancestor" in determining the relationship of his descendants. In the instant case, X, since he stands in the same position as his wife D, is related to C by one degree, to A by two degrees, to B by three degrees and to E by four degrees, thereby bringing such relationship within the prohibition of Section 13 of Article XIV.

CONCLUSION

It is, therefore, the opinion of this department that, under Article XIV, Section 13, of the Constitution of Missouri, a school director may not vote to employ as a teacher the child of a half brother of his father-in-law.

Respectfully submitted,

AO'K:CP

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APPROVED:

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