

NEPOTISM: One is guilty of violation of nepotism section when relationship exists between father and son, even when the appointee is to receive compensation from sheriff.

September 26, 1945



Honorable Ray R. Pryer
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Dear Sir:

Reference is made to your letter dated September 14, 1945, requesting an official opinion of this office and reading as follows:

"In the construction of Sec. 13, Article 14 (page 166c) of the old Constitution of Missouri it, apparently, would preclude a county officer, whether on a salary or a fee basis, from appointing a near relative to public office or employment.

"Under Sec. 6, Article 7 of the new Constitution a very similar provision is found.

"The decisions, so far as I have found, have interpreted this clause only with reference to salaried officials, and make no reference to officials paid entirely by fee from their office.

"The Sheriff of Henry County is paid entirely by fees resulting from the performance of the duties involved in the conduct of his office. Could he, legally, appoint his son to be a Deputy Sheriff to

serve under him? It being understood that the Deputy's remuneration will come entirely from the funds of the Sheriff."

The applicable provision of the Constitution of 1945, relating to your inquiry, is Section 6 of Article VII, which reads as follows:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

Your inquiry resolves itself into two component parts:

1. Is a sheriff a public officer within the meaning of the term as used in the above constitutional provision?
2. Is the son related to the father within the prohibited degree, either by affinity or consanguinity?

In the determination of the first question, we have resorted to the following definition of "public officer," as found in State ex rel. Pickett v. Truman, 64 S.W. (2d) 105, 1.c. 106:

"In Mechem on Public Officers, pp. 1 and 2, Sec. 1, it is said: 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' We have approved this definition in State ex rel. Walker v. Bus, 135 Mo. 325, 331, 332, 36 S. W. 636, 35 L. R. A. 616, State ex rel. v. Hackmann, 300 Mo. 59, 254 S.W. 53, 55, and Hasting v. Jasper County, 314 Mo. 144, 232 S.W. 700, 701; * * * * *"

Applying this definition to the office of sheriff, we come to the conclusion that such officer is a public officer within the meaning of the term as used in the Constitution of 1945.

In consideration of the second question, we have resorted to the definition of "consanguinity," as found in Volume 8 of Words and Phrases, page 611, reading as follows:

"'Consanguinity' means the connection or relation of persons descended from the same stock or common ancestor, and is either lineal or collateral. Lineal is that which subsists between persons of whom one is descended in a direct line from the other. Collateral kindred descends from the same stock, but differ from the lineal in that they do not descend one from the other. State v. De Hart, 33 So. 605, 606, 109 La. 570."

"Affinity" is defined in Volume 2 of Words and Phrases, page 661, and reads as follows:

"'An affinity is the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other, and the degrees of affinity are computed in the same way as those of consanguinity or kindred. A husband is related by "affinity" to all blood relatives of his wife, and the wife is related by "affinity" to all blood relatives of the husband.'
* * * * *"

With these definitions in mind it is apparent that no relationship exists between father and son by affinity, but that there is a relationship by consanguinity.

In your request you state that a sheriff who only receives compensation by fees intends to appoint his son as deputy. Under the applicable section of the Constitution of 1945, it is not necessary that the relative who is

September 26, 1945

appointed receive compensation in any manner. The section is violated by the appointment and not by the fact that he is to receive compensation.

Without going into lengthy discussion, I think it is apparent and obvious that the relationship between father and son is such as to fall within the prohibited degree stated in the Constitution of 1945.

Conclusion.

We are of the opinion that a sheriff is a public officer within the meaning of that term as used in Section 6 of Article VII of the Constitution of 1945; and that the son of such public officer is within the fourth degree relationship to such public officer, and cannot be appointed deputy sheriff without subjecting such officer to forfeiture of office. The fact that the sheriff is paid entirely by fees resulting from the performance of his duties, and that the deputy would be paid by the sheriff, does not alter the situation.

Respectfully submitted,

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APPROVED:

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RFT:ML