

NEPOTISM: Appointment of deputy whose great-grandfather was also sheriff's great-grandfather and whose grandfather was brother of sheriff's grandfather, not in violation of nepotism provision.

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March 11, 1947

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Honorable Wilson D. Hill
Prosecuting Attorney
Ray County
Richmond, Missouri

Dear Sir:

This will acknowledge receipt of your letter of March 6, 1947, requesting an opinion from this department, which reads as follows:

"May the Sheriff of a 3rd class county appoint as deputy sheriff a person who is related to him in this wise: their great-grandfather was one and the same person, and their grandfathers were brothers?"

Your attention is directed to Section 6 of Article VII of the 1945 Constitution of Missouri, relative to the practice of nepotism in public office in Missouri. It is 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."

The relationship involved here is that of consanguinity as both parties descend from the same ancestor. The definition is set out in 12 C. J., at page 510:

"Consanguinity or kindred is the connection or relation of persons descended

from the same stock or common ancestor, * * *"

There are two methods of computing the degrees of consanguinity, one by the canon law and the other by the civil law. In our opinion to Marjorie Neff Hoy, County Superintendent of schools, Marshall, Missouri, under date of October 31, 1933, this department adopted the civil law rule of computing the degrees of consanguinity. This rule is found in 12 C. J., footnote (c), page 511, as follows:

"Methods of computing the degrees of consanguinity.--" * * * * *
By the civil law, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relations ip is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending. * * *"

A reference is made in the above footnote to 2 Coke Lit p. 158 (Thomas Md., p. 129) in which an example of the civil law method is found:

"* * *Therefore, if we will know in what degree two of kindred do stand according to the civil law, we must begin our reckoning from one by ascending to the person from whom both are branched, and then by descending to the other to whom we do count, and it will appear in what degree they are. For example, in brothers' and sisters' sons, take one of them and ascend to his father, there is one degree; from the father to the grandfather, that is the second degree; then descend from the grandfather to his son, that is the third degree; then from his son to his son, that is the fourth. * * *"

Therefore, by using the civil law method, the degree of relationship by consanguinity between the two persons under consideration here, is as follows:

Ascending from the sheriff to his father is one degree; from his father to his grandfather, that is the second degree; from his grandfather to his great-grandfather, that is the third degree; then descending from his great-grandfather to the great-grandfather's other son, that is the fourth degree; from the great-grandfather's son to his son, that is the fifth degree; and then to the son in question here, that is the sixth degree. The degree of relationship by consanguinity between the two persons under consideration here, is in the sixth degree, and since the degree of relationship is more distant than the fourth degree, it is not within the prohibition against nepotism which is set forth in the Missouri Constitution.

Conclusion

Therefore, it is the opinion of this department that the appointment by a sheriff of a person as his deputy whose great-grandfather was also the sheriff's great-grandfather and whose grandfather was the brother of the sheriff's grandfather, is not in violation of Section 6 of Article VII of the 1945 Constitution of Missouri.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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