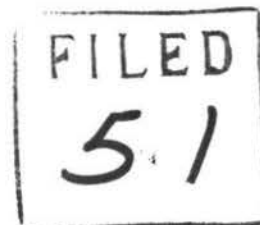


MAGISTRATES: Magistrate is not in violation of the nepotism  
NEPOTISM: law by the county court appointing his sister  
COUNTIES: to assist him under Section 21, page 241, Laws  
of Missouri, 1947.

March 12, 1948



Honorable J. Harry Latham  
Prosecuting Attorney  
Andrew County  
Savannah, Missouri

Dear Sir:

We are in receipt of your request for an official opinion which reads:

"A', a county in Missouri, has a population of 14,000. At the General Election 1946, B. was duly elected as Probate Judge and Ex-officio Magistrate thereof. Since January 1, 1947, he has been duly qualified and acting in such capacity.

"B. appointed his official clerk as provided by law. In addition, he requested the County Court of A. county to provide him with additional stenographic, clerical and secretarial help, without designating in writing or of record the name of the individual to be employed. The County Court of A. County entered upon its records an entry purporting to employ C. to supply such service to Mr. B. C. is the sister of B.

"May I have your opinion, based upon the above facts, to the following two questions.

"1. Has B. violated the anti-nepotism provisions and if so, to such an extent as to forfeit the office.

"2. Is the County Court, clerk and treasurer of A. county legally authorized, knowing C. to be B's sister, to pay compensation to her for work done in B's office."

Honorable J. Harry Latham

Section 6, Article VII of the Constitution of Missouri, 1945, supersedes Section 13, Article XIV of the Constitution of Missouri, 1875, and reads:

"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."

Section 21, page 241, Laws of Missouri, 1947, authorizes magistrates to appoint a clerk and as many deputies as necessary and fix their salaries. However, the amount fixed as salaries must not exceed that allowed for such services in the act under Section 22, page 775, Laws of Missouri, 1945. This provision further authorizes the county court, when the need exists, at the cost of the county to provide additional clerks, deputies and other employees who shall serve at the pleasure of the magistrate. Section 21, Laws of Missouri, 1947, reads in part as follows:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this act for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be required and to provide funds for the payment of salaries or parts of salaries of clerks, deputy clerks and other employees, in addition to the amounts payable by the state under this act. All such clerks, deputies and employees shall serve at the pleasure of the magistrate. \* \* \* "

In State vs. Becker, 81 S.W. (2d) 948, l.c. 949, 950, a vacancy arose for a commissioner of the St. Louis Court of Appeals. The commissioner to be appointed was related within the fourth degree by consanguinity to one of the judges of said court, who

Honorable J. Harry Latham

normally would participate in the selection of a commissioner of said court. The judge related to the candidate for office of commissioner refused to participate in the selection of a commissioner, and did not in any manner by connivance attempt to influence the remaining members of the court in the selection of a commissioner. The court held that the two remaining members of the court could appoint as commissioner the candidate related within the fourth degree to the judge who refused to participate in the selection, since they constituted a majority of the court, and in so holding said:

"We are of the opinion that the reason of decision, as it appears in the quotation given, and as stated in the provision itself, does not support relator's position. The essence of the provision and likewise of said decision is the power of appointment vested in one and the successful exercise thereof by him in accomplishing the appointment of his relative. Action, direct or indirect, not inaction is prohibited. \* \* \* "

#### CONCLUSION

Therefore, in view of the facts stated in your request and the foregoing decision, we are of the opinion that the magistrate, in this instance, has not violated the nepotism law of this state.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General