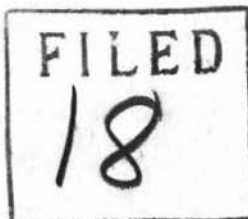


NEPOTISM: Circuit clerk may appoint as his deputy the first cousin of his father-in-law without  
CIRCUIT CLERK: violating the nepotism law in this state.

January 8, 1951

1-9-51

Honorable Joe W. Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion, which reads:

"Would you please give me an opinion on whether or not a circuit clerk can appoint as his deputy a person who is a first cousin to the father of the circuit clerk's wife, without violating Art. 14, Sec. 13 of our Missouri Constitution.

"Also how are the degrees of consanguinity and affinity counted under said article and section."

Section 6, Article VII of the Constitution of Missouri, 1945, is a constitutional amendment that is generally referred to as a nepotism law in this state 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."

Under the foregoing provision, your circuit clerk would forfeit his office if the first cousin to his father-in-law comes within the fourth degree by consanguinity or affinity.

The definition of "consanguinity" is found in Volume 12, Corpus Juris, page 510, and is as follows:

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

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same stock or common ancestor, vinculum personarum ab eodem stipite descendentiem, as distinguished from affinity, or relationship by marriage; the being of the same family and stock; the having the blood of some common ancestor; blood relationship; relationship by blood; the actual relationship of blood. \* \* \* "

and in Volume 2, Corpus Juris, page 378, is the following definition of "affinity":

" \* \* \* The term has been variously defined as the connection existing in consequence of marriage between each of the married persons and the kindred of the other; the connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same reciprocal connection with the relations of the husband. \* \* \* "

In Encyclopedia Britannica, 11th Edition, Volume I, 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."

Applying the foregoing definitions of affinity in this instance, it will be seen that the circuit clerk is related to his wife's blood relatives by affinity.

There are two well established methods of determining relationship, namely, the canon law and the civil law. These rules are clearly set out in Volume 12, Corpus Juris, page 511, and read:

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"There are two methods of computing the degrees of consanguinity: One by the canon law, which has been adopted into the common law of descents in England and the other by the civil law which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law . . . is as follows: "We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related. By the civil law, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending. By this mode the intestate is taken as the terminus a quo, and the propinquity to him of any collateral relative is determined by the sum of the degrees in both lines to the common ancestor." The clearest and most comprehensive exposition of the subject . . . is in 2 Coke Lit \*p. 158 (Thomas Ed., p. 129), as follows: "It is to be noted that in every line the person must be reckoned from whom the computation is made. And there is no difference between the canon and civil law in the ascending and descending line, but in the collateral line there is. 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. But the canonists do ever begin from the stock, namely, from the person from whom they do descend, of whose distance the question is. For example, if the question be, in

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what degree the sons of two brothers stand by the canon law, we must begin from the grandfather and descend to one son, that is one degree; then descend to his son, that is another degree: then descend from the grandfather to his other son, that is one degree; then descend to his son, that is a second degree: so in what degree either of them are distinct from the common stock, in the same degree they are distant between themselves; and if they be not equally distant, then we must observe another rule. In what degree the most remote is distant from the common stock, in the same degree they are distant between themselves: and so the most remote maketh the degree."'  
McDowell v. Addams, 45 Pa. 430, 432. (2)  
'In determining the degrees of relationship by consanguinity or affinity, like in determining the descent of property, we must proceed from a single, definite propositus. In the descent of property the propositus is the ancestor or person from whom the descent is reckoned. In consanguinity it is a single, definite person; and in affinity it is a single, definite marriage.' \* \* \* "

This office has on several occasions ruled that the civil law methods should be used in determining relationship for the purpose of enforcing the nepotism law in this state. Applying the civil law rule in determining the relationship between the circuit clerk and the first cousin of his father-in-law, the first degree of relationship would be to ascend to the father of the clerk's wife, the second degree to the grandfather of the clerk's wife, the third degree to the great-grandfather of the clerk's wife, the fourth degree descend to the great uncle and the fifth degree descend to the great uncle's son or first cousin of the father of the circuit clerk's wife, who is also the second cousin of the circuit clerk's wife, which places the first cousin of the father of the circuit clerk's wife within the fifth degree by affinity to the circuit clerk.

#### CONCLUSION

Therefore, it is the opinion of this department that under the civil law rule for determining relationship for the purpose


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of enforcing the nepotism law in this state, the first cousin of the father of the circuit clerk's wife comes within the fifth degree relationship by affinity and the circuit clerk may appoint said first cousin of his father-in-law as his deputy without violating the nepotism law in this state.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

ARH:VLM