

NEPOTISM: Relative of Member of County School Board
may be employed as school teacher.

PUBLIC OFFICERS:

SCHOOLS:

May 15, 1953



Honorable John H. Mittendorf
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Mr. Mittendorf:

Your letter of May 1, 1953, requested an official opinion as follows:

"I have been requested by a member of the County School Board to secure your opinion as to whether or not a relative of a member of the County School Board can be employed as a member of the teaching staff in any of the county schools. Further, if a relative of a teacher were elected to the County School Board, could such elected member of the County Board assume the duties of his office? It appears to me that there is nothing in the statutes to prohibit the relative of a County School Board member from teaching within the county. The only statute which I am able to find dealing with this matter is Section 163.080 RSMo 1949."

A County Board of Education is created in each county of Missouri by Section 165.657, RSMo 1949. The duties of the County Board of Education are set forth in Sections 165.660 through 165.693, RSMo 1949. Such Board does not employ teachers for schools within the county.

Nepotism is prohibited by Article VII, Section 6, Missouri Constitution, 1945, as follows:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office

Honorable John H. Mittendorf:

or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

The background and purpose of this particular provision is discussed by the Supreme Court of Missouri in *State ex inf McKittrick, Attorney General, vs. Whittle*, 63 S.W. (2d) 100, l.c. 101, 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, * * *."

In that case a School District Board of Education had employed as a teacher a first cousin of a Board member. Three members voted on the issue of whether to employ said teacher. One voted against employment and two, one of whom was kin to the teacher, voted in favor of such employment. The member kin to the teacher was ousted from his office, and the Court made this distinction as to whom the provision applied, l.c. 101-102:

"* * * The amendment is directed against officials who shall have (at the time of the selection) 'the right to name or ap-

Honorable John H. Mittendorf:

point' a person to office. Of course, a board acts through its official members, or a majority thereof. If at the time of the selection a member has the right (power), either by casting a deciding vote or otherwise, to name or appoint a person to office, and exercises said right (power) in favor of a relative within the prohibited degree, he violates the amendment. In this case it is admitted that respondent had such power at the time of the selection, and that he exercised it by naming and appointing his first cousin to the position of teacher of the school in said district."

It is thus apparent that the anti-nepotism provision of the Constitution is directed only against those persons who are in a position to cause a relative to be employed or appointed. Since the County Board of Education does not have the power to employ or appoint school teachers, the employment, by a School District Board of Education, of a relative of a member of the County Board of Education would not constitute nepotism. It must follow that a person, related to a teacher, may assume the office of member of the County Board of Education.

CONCLUSION

It is, therefore, the opinion of this office that a school teacher may be employed by a School District Board of Education even though such teacher is related to a member of the County Board of Education. And a person, related to a teacher, may assume the office of member of the County Board of Education.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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