

NEPOTISM: School director causing appointment of  
PUBLIC OFFICERS: relative violates constitutional nepotism  
SCHOOLS: provision. Violator forfeits his office,  
but may not be prosecuted.

May 31, 1966

OPINION NO. 177

Honorable Don E. Burrell  
Prosecuting Attorney  
Greene County  
Springfield, Missouri



Dear Mr. Burrell:

We are in receipt of your opinion request of February 7, 1966. Your request is as follows:

"Please be so kind as to give me the opinion of your office construing Sections 168.101 and 162.091, found in the 1965 supplement of the Missouri statutes.

"I have a situation where the Chairman of a school Board has employed a school bus driver who, is related to him in a 'one-half' relationship degree both by consanguinity and affinity in the third degree. My question is whether or not Section 168.101 will apply to school bus drivers or whether or not it only applies to teachers; and two, whether or not the 'half' relationship is enough to come under Section 168.101 if that Section does apply to bus drivers and other employees as well as teachers.

"In order to make this matter more plain, I am enclosing a diagram of the relationship involved.

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"I call upon your office for an opinion in this matter because Section 162.091 makes the violation of this Section we are talking about, a misdemeanor, and I am trying to make a determination whether or not I will prosecute on this matter."

You state in your letter and in the attached diagram, that Wayne Butler is president of the board of a school district and that he has employed Jesse Mooneyham as a bus driver for that district. Your diagram shows that James Monroe Mooneyham is a common ancestor to both of these men; that James Monroe Mooneyham was married twice, and that his first marriage resulted in the birth of a daughter, Mirita Mooneyham, who later became Mirita Mooneyham Butler; that Mirita Mooneyham Butler was the mother of Wayne Butler, the man in question.

Born of James Monroe Mooneyham's second marriage was Jesse Mooneyham, the other man in question. Thus, it would seem that the mother of Wayne Butler, Mirita Mooneyham Butler, and Jesse Mooneyham, are half-brothers and sisters, so that Jesse Mooneyham is the uncle of Wayne Butler.

Section 168.101 Cum. Supp. 1965, provides:

" \* \* \* The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of the board member is necessary to the selection of the person; \* \* \*"

It is to be noted that this section refers only to "teachers" and we do not believe that by its terms it would be broad enough to cover the employment of a bus driver.

But Article VII, Section 6, of the Constitution of Missouri, of 1945, provides:

"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."

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The case of State ex rel. vs. Whittle, 63 S.W. 2d 100, Mo. holds that a school director is a public officer as pertains to this section of the Constitution. Further, Article VII, Section 6, states that any employee who, by virtue of his office or employment employs any relative within the fourth degree of consanguinity shall forfeit his office or employment. Under the terms of this provision of the Constitution, Wayne Butler, the president of the board of the school district being the nephew of Jesse Mooneyham, is prohibited from employing the said Jesse Mooneyham as a bus driver for the school district because the said Jesse Mooneyham is within the fourth degree of consanguinity.

The question as to whether or not the relationship is one of half blood, is immaterial, insofar as the nepotism provision of the Constitution is concerned, and we enclose an opinion rendered by this office under date of May 12, 1942, to Honorable Thomas G. Woolsey, which so holds.

Section 162.091, Mo. Cum. Supp. 1965, provides that any school board member who willfully neglects or refuses to perform any duty imposed upon him by chapters 160 to 168, 170, 171, and 177 to 179, RSMo, or who violates any provision of these chapters is guilty of a misdemeanor and upon conviction shall be punished by a fine or imprisonment in the county jail.

This section of the statute provides for penalty only for violations of duties imposed by the named chapters, and does not provide any punishment under the constitutional provision against nepotism. Consequently it is our opinion that the president of the school board could not be punished under this section of the statute.

It is our opinion, however, that due to the violation of the provisions of Article VII, Section 6, of the Constitution of Missouri, as set out herein, he would forfeit his office.

We are also enclosing a copy of an opinion of this office to Honorable James T. Riley, dated May 15, 1953, which opinion is applicable to the subject matter discussed herein.

#### CONCLUSION

By reason of the authorities quoted herein, it is the opinion of this office that a member of a school board, who votes for the employment of a relative as a school bus driver, when

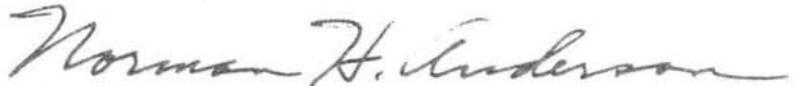
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said relative is within the fourth degree of consanguinity, violates the constitutional nepotism provision.

Further, that the member of the school board could not be prosecuted for having made such appointment, but that the violator forfeits his right to the office which he holds.

The foregoing opinion which I hereby approve was prepared by my assistant, O. Hampton Stevens.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General

Encl:

Opinion dated May 12, 1942, to Hon. Thomas G. Woolsey;  
Opinion No. 75, dated May 15, 1953, to Hon. James T. Riley.