

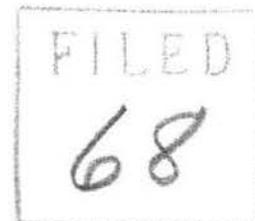
NEPOTISM:
PUBLIC OFFICERS:
SCHOOLS:

School Board Member who votes to employ relative violates constitutional nepotism provision. Violator forfeits his office.

OPINION NO. 460⁶⁸ - 1967

April 25, 1967

Honorable Lawrence O. Davis
Prosecuting Attorney of
Franklin County
Union, Missouri



Dear Mr. Davis:

Your predecessor in office, Mr. William D. Kimme, made a request for an opinion, dated September 2, 1966. It is as follows:

"In March 1966, the Robertsville School Board voted to contract the secretarial services of a certain individual under a Federally sponsored program.

"The individual who was hired was a sister-in-law of one of the school board members.

"All six board members were present when a vote was taken on the hiring of this individual.

"The vote of the board at this meeting was four (4) for hiring, one (1) against, and one (1) member did not vote.

"Section 162.301 Missouri Revised Statutes provides that in order to enter into a contract, the majority of the board must vote affirmatively. This was accomplished as indicated.

"It has been determined previously by your office in Opinion No. 75, May 15, 1953, that when a director of a Board of Education casts a necessary or deciding vote in favor of employment of any relative within the fourth degree, that member forfeits his office.

"In the matter under consideration here, the Board Member who was related to the individual hired was one of the four members, the majority, voting for the hiring.

"Based upon these facts it has been requested that I institute an ouster proceeding against said interested director on the basis that his vote was a necessary vote in this particular matter. The question which I present under these facts, and to which I respectfully request your opinion, is whether or not when an interested director votes for the hiring of a relative and his vote is one of the four votes cast, being a majority, along with one no vote, and one abstention, whether or not he has violated his office and is subject to ouster? Is the abstaining director's vote to be taken as a yes vote, thereby eliminating the question of the interested director's vote being 'necessary'? Has the interested director merely voted with the majority?"

Article VII, Section 6 of the Constitution of Missouri, 1945, provides that any public officer or employee who appoints or employs a relative shall forfeit his office. This Article 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."

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We discussed a similar situation, in Opinion No. 177, directed to Don E. Burrell, dated May 31, 1966. A copy of this opinion is attached hereto.

This opinion holds that a school director is a public officer as pertains to the above section of the Constitution and cites State ex rel vs. Whittle, 63 S.W.2d 100 as authority for so holding.

In the situation which you have presented here, the six member school board voted to employ the person in question on the following basis: Four members of the Board voted "yes"; a fifth voted "no" and the sixth abstained from voting. The director, whose sister-in-law was the prospective employee, voted "yes".

The opinion referred to in your letter (Opinion 75, May 15, 1953, to James T. Riley) cites the case of State ex inf. McKittrick vs. Whittle, 63 S.W.2d 101. The Whittle case holds (p.102):

"* * * * 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 will be seen from a reading of the Whittle case that a director of a school board who casts a vote in favor of hiring an individual, to whom he is related violates the restrictions contained in the constitutional provision.

Under the law of this state and the provisions of the Constitution, the director's action in voting in favor of the hiring of his relative is an express and positive action and hence constitutes a violation, and would become subject to ouster.

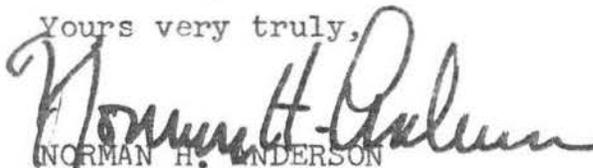
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CONCLUSION

It is, therefore, the opinion of this office that, where a member of a school board casts a vote for the employment of a relative, and said relative is within the fourth degree of consanguinity or affinity, he has violated the nepotism provision of the Constitution and could be removed from office.

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

Yours very truly,


NORMAN H. ANDERSON
Attorney General

Encl.