

PROSECUTING ATTORNEYS: There is no act of nepotism in the ap-  
CONFLICT OF INTEREST: pointing by the prosecuting attorney as  
NEPOTISM: his secretary the daughter of a county judge.  
CONSTITUTIONAL LAW: The act of nepotism arises from the fact  
COUNTY COURT: that the appointing officer who "names or  
COUNTY JUDGE: appoints the employee" is, himself, related  
to the employee within the prohibited degree  
defined by statute.

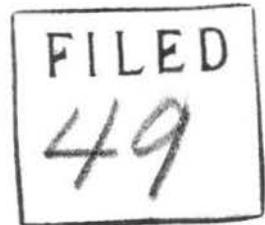
Inasmuch as there is no private business action which is involved where a prosecuting attorney appoints as secretary a woman who is the daughter of a county judge, there is no violation of the conflict of interest statutes found in Sections 105.450 to and including 105.495, RSMo Supp. 1965.

The "principles of public policy" are not violated by the appointing by a prosecuting attorney as his secretary the daughter of a county judge.

*See 1978 Amendments  
to Ch 105.*

OPINION NO. 49(1968)  
(# 262 - 1967)

January 16, 1968



Honorable Robert A. Bryant  
Prosecuting Attorney  
Carroll County Courthouse  
Carrollton, Missouri 64633

Dear Mr. Bryant:

This opinion is written to answer your question which you posed to us in the following form:

"Does the employment by the Prosecuting Attorney of the married daughter of a present County Court Judge for the job of secretary to the Prosecuting Attorney's Office, under the authority granted the Prosecuting Attorney by Section 56.245, RSMo, violate Article VII, Section 6 of the Constitution of the State of Missouri or any other nepotism or conflict of interest legislation as it might apply to the said County Court Judge?"

The young lady in question is married; lives apart from her father; and works only on a part-time basis.

The constitutional provision which you refer to (Article VII, Section 6, of the Missouri Constitution) reads as follows:

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"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."

The term "nepotism" is defined in 66 C.J.S. 6, as follows:

"NEPOTISM. The bestowal of patronage by public officers in appointing others to offices or positions by reason of their blood or marital relationship to the appointing authority, rather than because of the merit or ability of the appointee."

Section 56.245, RSMo Supp. 1965, reads as follows:

"The prosecuting attorney in counties of the third and fourth class may employ such stenographic and clerical help as may be necessary for the efficient operation of his office. The salary of any stenographer or clerk so employed shall be fixed by the prosecuting attorney with the approval of the county court to be paid by the county but such salary shall not exceed twenty-seven hundred dollars per year in third class counties and twelve hundred dollars per year in fourth class counties."

A close reading of the constitutional provision (supra) establishes that the appointing official who "names or appoints" must be related to the employee within the proscribed degree and it is that official who must make the appointment in order to constitute a violation of the constitution. Inasmuch as the prosecuting attorney names the secretary pursuant to Section 56.245, RSMo Supp. 1965, there is no act of nepotism committed by the county judge.

The question on the conflict of interest presents a more serious problem.

The conflict of interest statutes to which we refer are Sections 105.450 to and including 105.495, RSMo Supp. 1965.

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Its obvious application arises out of the definition found in Section 105.450, subdivision (1), which provides:

"(1) 'Agency', any department, office, board, commission, bureau, institution or any other agency, except the legislative and judicial branches of the state or any political subdivision thereof including counties, cities, towns, villages, school, road, drainage, sewer, levee and other special purpose districts;"

Thus, these sections are made applicable to political subdivisions of the state to include counties.

However, an examination of these statutes (Sections 105.450 through 105.495, RSMo Supp. 1965) establishes there is no direct violation of these statutory provisions. Inasmuch as there is no private business transaction involved in which the officer (county judge) owns an interest or has an interest in any matter pending upon which the officer will be required to render a decision or pass judgment, we conclude there is no direct violation of the conflict of interest statutes.

Prior to the enactment of the conflict of interest statutes in 1965, contracts in which an "officer" had an interest were reviewed by courts and their validity determined by courts using as their yardstick what was referred to as "public policy." There is no reason to believe that the enactment of the "conflict of interests" statutes changed these principles of public policy nor the validity of their application.

Accordingly, your question should also be examined in this area to determine if there is a violation of these principles.

With facts and relationship of the parties in mind as we have heretofore set out, can there be any contractual relationship or interest sufficient in extent so as to vitiate the employment? We think not, in light of the facts. The young lady is employed by the prosecuting attorney who sets her salary. The money is appropriated by the county court to pay her salary.

The Missouri Supreme Court in Githens v. Butler County, 165 S.W.2d 650, 652, stated:

"[4] An indirect interest may be so remote as to not avoid a bargain between an official and the public body he represents, consequently when the interest is

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not direct there is more reason for considering each case on its special facts. 6 Williston, Contracts § 1735; Thompson v. School Dist. No. 1, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 790."

Under the special facts of this case, we conclude that the interest of the parties herein would only be considered remote within the meaning of the Githens case which we have set out above.

#### CONCLUSION

It is the opinion of this office that:

(1) There is no act of nepotism in the appointing by the prosecuting attorney as his secretary the daughter of a county judge. The act of nepotism arises from the fact that the appointing officer who "names or appoints the employee" is, himself, related to the employee within the prohibited degree defined by statute;

(2) Inasmuch as there is no private business action which is involved where a prosecuting attorney appoints as secretary a woman who is the daughter of a county judge, there is no violation of the conflict of interest statutes found in Sections 105.450 to and including 105.495, RSMo Supp. 1965;

(3) The "principles of public policy" are not violated by the appointing by a prosecuting attorney as his secretary the daughter of a county judge.

The foregoing opinion, which I hereby approve, was prepared by my assistant Richard C. Ashby.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General