

August 16, 1971

OPINION LETTER NO. 377
Answer by letter-Jones



Honorable Barnes Griffith
Prosecuting Attorney
Dade County Courthouse
Greenfield, Missouri 65661

Dear Mr. Griffith:

This letter is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"Section 52.280 provides that County Collectors in Counties of the third and fourth classes may retain certain fees pursuant to 52.260 and 52.270 V.A.M.S. for the payment of deputy and clerical hire, said sum not to exceed seventy per-cent of the maximum amount of fees and commissions which said Officer is permitted to retain by the foregoing sections. It is provided in said Section that said deputy and clerical hire is payable out of fees and commissions earned and collected by the Officer only and not from the General Revenue. Section 52.260 cited aforesaid, sub-section 13 fits the circumstances of Dade County and the Treasurer Ex-Officio Collector thereof.

"The legal question is as follows: Does Article 7, Section 6 of our State Constitution, which relates to nepotism, preclude our ex-officio collector from paying his wife for clerical work out of the fees and commissions which he is permitted to retain for clerical hire pursuant to the above mentioned Statutes?"

Honorable Barnes Griffith

Section 6 of Article VII, Missouri Constitution of 1945, provides 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."

The above section indicates that there are three necessary elements which must exist before there has been a violation of said section. First, the party to be charged must be a public officer or employer in this state. Secondly, he must name or appoint, by virtue of his office or employment, some party to public office or employment. Thirdly, the party named or appointed must be a relative within the fourth degree either by consanguinity or affinity.

It is our view that the above elements exist in the factual situation presented in the opinion request. It has been held that a county court judge, a mayor, and a member of a school board come within the above-quoted section. See *State ex inf. Stephens v. Fletchall*, 412 S.W.2d 423 (Mo. banc 1967), *State ex inf. Ellis ex rel. Patterson v. Ferguson*, 333 Mo. 1177, 65 S.W.2d 97 (1933), certiorari denied *Ferguson v. State of Missouri ex inf. Ellis*, 54 S.Ct. 559, 291 U.S. 682, 78 L.Ed. 1070, and *State ex inf. McKittrick v. Whittle*, 333 Mo. 705, 63 S.W.2d 100 (banc 1933). It was also held in *State ex inf. Norman v. Ellis*, 325 Mo. 154, 28 S.W.2d 363 (banc 1930) that clerks of county and circuit courts appointing wives as deputies forfeited their offices since their wives were related by affinity within the constitutional provision.

The question remains, however, as to whether or not there would be a violation of the anti-nepotism section by the ex-officio collector paying his wife for clerical work out of fees and commissions which he is permitted to retain for clerical hire pursuant to statute.

In Opinion of the Attorney General No. 72, Pryer, 9-26-45, the issue was whether a sheriff paid entirely by fees resulting from the performance of his duties, could legally appoint his son as deputy sheriff, with the understanding that the deputy's remuneration would come entirely from the funds of the sheriff. The holding of the opinion was that the arrangement was in violation of Section 6 of Article VII, Missouri Constitution of 1945, as it was not necessary that the relative who was appointed receive compensation in any manner. It was further pointed out that Section 6 of Article VII, Missouri Constitution of 1945, was violated by the appointment and not by the fact that he was to receive compensation (copy of opinion attached).

Honorable Barnes Griffith

In Opinion of the Attorney General No. 13, Butler, 5-13-53, it was held that a county collector was not guilty of violating Section 6 of Article VII, Missouri Constitution of 1945, by permitting his wife to render to him personal service where the wife was not holding an official position nor rendering service to the state (copy of opinion attached). It should be noted, however, that the following comment was made on page three of the opinion:

"You do not state in your request, and therefore we must assume for the purpose of this opinion, that the person to whom you refer is not to be employed as a statutory clerk or deputy in any sense. We assume that such person will merely be assisting the officer personally; that she will not take an oath of office or perform, either in her own name or in the name of the officer, any of the duties of a statutory clerk or deputy. . . ."

For the above reasons, it is our opinion that Section 6 of Article VII, Missouri Constitution of 1945, which relates to nepotism, prohibits the treasurer and ex-officio collector of a third class county from paying his wife for clerical work out of fees and commissions which he is permitted to retain for clerical hire pursuant to Section 52.280, RSMo 1969.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 72
9-26-45, Pryer

Op. No. 13
5-15-53, Butler