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OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

July 24, 1975

OPINION LETTER NO. 180

Honorable Hugh C. Roberts, Jr.
Prosecuting Attorney
St. Francois County Courthouse
Farmington, Missouri 63640

Dear Mr. Roberts:

This letter is in response to your question asking whether the appointment by a sheriff of his wife's uncle to a position of deputy sheriff is in violation of the nepotism prohibition contained in Section 6, Article VII, Missouri Constitution.

Such section 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."

We previously held in Opinion No. 45, dated March 10, 1952, to Jennings (copy enclosed), that it was our view that sheriffs are within such prohibition.

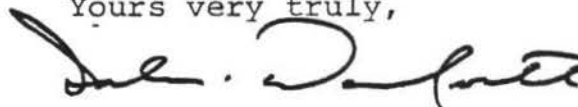
Under the principles we adopted in Opinion No. 22, dated October 12, 1933, to Dorris (copy enclosed), the relative involved is within the prohibited degree of affinity.

We further expressed our view in Opinion No. 19, dated April 5, 1956, to Connett (copy enclosed), that it is within the discretion of the prosecuting attorney as to whether or not he will bring ouster.

Honorable Hugh C. Roberts, Jr.

The question of forfeiture is a judicial question and must be determined before the officer can be ousted. State v. King, 379 S.W.2d 522, 525 (Mo. 1964).

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 45
3-10-52, Jennings

Op. No. 22
10-12-33, Dorris

Op. No. 19
4-5-56, Connett