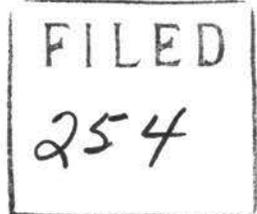


December 31, 1975

OPINION LETTER NO. 254
Answer by Letter - Klaffenbach

Honorable Michael B. Hazel
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri 63830



Dear Mr. Hazel:

This letter is in response to your question asking:

"Whether or not members of the Board of Trustees of a third class county hospital are guilty of nepotism under Article VII, Section 6 of the Missouri Constitution if at the time of their election and during part or all of their term of office they have relatives of the fourth degree of consanguinity or affinity working as employees of the county hospital who were employed prior to the time that these Board Members were elected to office?

"Would participation or non-participation in voting when the officials relatives came up for pay increases, promotions and salary increases have an effect on the answer?"

You have mentioned in your correspondence to us the case of State v. Fletchall, 412 S.W.2d 423 (Mo.Banc 1967), and we believe that such case is controlling with respect to your first question because in that instance as in this the officers did not participate in the hiring of their relatives.

In your second question you inquire as to the effect of participation or non-participation in voting when the officials' relatives came up for pay increases, promotions and salary increases.

Mr. Michael B. Hazel

There appears to be some question concerning the facts involved. It is clear, however, that such board members are within the prohibitions of Article VII, Section 6 of the Missouri Constitution. While we find no case authority directly in point to guide us, it is our view that where the employee, who was hired before the board member came into office, received pay increases, such pay increases are merely incidental to the original employment which took place prior to the time such related board member was elected to office. Therefore, the granting of pay increases would not violate the nepotism provision. However, it is also our view that where the board member participates in the appointment of the employee to a distinctly different position, the nepotism provisions of the Constitution are violated.

Very truly yours,

JOHN C. DANFORTH
Attorney General