

NEPOTISM: - A teacher whose grandmother is a half-sister to a director's wife's mother is not related within the fourth degree.

April 17, 1934



Mr. George D. Brownfield,
Prosecuting Attorney,
Boonville, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"A question has arisen in this county whether the teacher's grandmother, being a half-sister to the director's wife's mother, may be legally employed.

If you can give us any information in regard to this, same will be greatly appreciated and thank you for a prompt reply."

Section 13 of Article XIV of the Constitution of Missouri provides as follows:

"Any public officer or employe of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by ~~consanguinity~~ or affinity, shall thereby forfeit his or her office or employment."

Under the foregoing constitutional provision a director who participates in the election of a person related to him within the fourth degree shall forfeit his office. The sole question presented by your inquiry is whether the teacher who seeks the appointment is related within the fourth degree to the director.

There are two rules which are used in computing the degrees of relationship. These rules are laid down in 12 C. J. 511 as follows:

"One by the canon law, which has been

adopted into the common law of descents in England, and the other by the civil law which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law is as follows: 'We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related.' By the civil law the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending."

We do not find that the Courts of this State have laid down any rule as to how the relationship under Section 13 of Article XIV of the Constitution is to be computed. In other states where anti-nepotism provisions are in force the Courts have generally applied the civil rule. We believe that the Courts of this State, when the matter is presented for consideration, will adopt the civil rule in computing the degrees of relationship, under our constitution. As there is no decision by our Courts on this matter this Department has applied the civil rule in figuring relationship. Under the civil rule persons who are related as first cousins or closer would be within the fourth degree, as prohibited by the Constitution. Persons who are related as second cousins and by less relationship than second cousins would not come within the prohibition of the Constitution.

Of course, the relationship prohibited by the Constitution applies to the relationship created by marriage as well as by blood. However, in applying the civil rule to the facts stated in your inquiry, we are of the opinion that the teacher about which you inquire is not related within the fourth degree, as prohibited by the Constitution, and that even though the director should vote for her employment such director would not be liable to forfeiture of office.

Very truly yours,

APPROVED:

FRANK W. HAYES
Assistant Attorney General

Attorney General

FWH:S