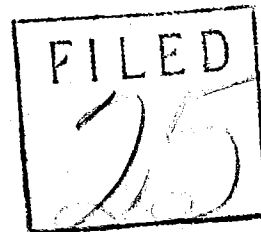


NEPOTISM: It is a violation of Section 13 of Article XIV of the Constitution of Missouri to appoint a road overseer who is the son of one judge and first cousin of another judge's wife.

February 18, 1941

Mr. H. M. Dye
Clerk of County Court
Waynesville, Missouri



Dear Sir:

This department is in receipt of your letter of February 6th, wherein you make the following inquiry:

"In regard to the phone call that Judge Wilson had with you this afternoon, the court would like to know about the employment of a man as county road overseer who is a son of one of the judges and a half first cousin to the presiding judge's wife and no relation to the other member of the court."

We assume that you have in mind the question of nepotism entering the appointment of the road overseer. The duty of appointing road overseers is placed on the county court by Section 8516 R. S. Mo. 1939:

"All road overseers shall be appointed by the county court of the county at the February term of said court. * * "

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

"Any public officer or employee

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."

There are two methods of determining the prohibited degree which is designated in the constitutional section as the fourth degree, one is by the canon law and the other by the civil law. The determination by each 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."

In our interpretation we have accepted the civil rules which, by computing relationships under the constitutional section herein referred to, we find that any relationship below first cousins is not prohibited. Therefore, if a road overseer is the son of one of the judges and a half first cousin to the presiding judge's

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wife, relationship being considered both by affinity and consanguinity, we are of the opinion that it would be a violation of the nepotism act for such appointment to be made by the court. The decisions referring to the nepotism act for determining violations in the past are State ex rel v. Hall and Ellis 325 Mo. 154, State ex inf. vs. Whittle 333 Mo. 705. In the decision of State ex inf. vs. Ferguson 333 Mo. 1177, the court held that a mayor forfeited his office by appointing his first cousin as pumper for the city water system.

Respectfully submitted

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

OWN:RT