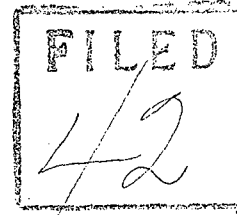


The civil rule should be used in computing the relationship under Section 13 of Article XIV of the Constitution.



11-3  
October 31, 1953.

Miss Marjorie Neff Hoy,  
County Superintendent of Schools,  
Marshall, Missouri.

Dear Miss Hoy:

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

"I have been asked how to figure the degree of kinship. In talking with some of our lawyers I find they have not had occasion to look into this matter. In order that I will make no mistake in advising people on the question I would like for you to tell me."

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 personality 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 next 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 degree 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 less relationship than second cousins would not come within the prohibition of the Constitution.

In determining the relationship of persons, relationship by affinity must be considered as well as that of consanguinity. Affinity is defined in 2 G. J. 378 as follows:

"The connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands towards them, and gives to the wife the same reciprocal connection with the relations of the husband."

In 2 G. J. 378, it is said:

"Blood relations of the husband and blood relations of the wife are not related to each other by affinity. Nor does the term 'affinity' ordinarily include a person related to the spouse simply by affinity."

In Encyclopaedia Britannica, 11th Ed. Vol I, page 301, the author has the following to say about affinity:

"The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. But the relation is only with the married parties themselves and does not bring those in affinity with them in affinity with each other; so a wife's sister has no affinity to her husband's brother."

In applying the foregoing principles we advise you that under the civil rule, which we adopt, any persons related as closely as first cousins, either by blood or marriage, would come within the prohibition of the Constitution. Persons related by blood or marriage as second cousins, or more distantly than second cousins, do not come within the prohibition of the Constitution. We hope that by these suggestions you may be able to compute the relationship of persons seeking your opinion, and if any particular situation should arise we shall be glad to advise you upon that proposition should you request it.

Very truly yours,



Assistant Attorney General.

FWR:S

APPROVED:

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Attorney General.