NEPOTISM: Where Board votes unanimously in favor of a teacher, director who is first cousin of teacher violates Section 13 of Article XIV of the Constitution of Missouri.

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Mr. J. H. Mosby,
Prosecuting Attorney,
Linn, Missouri.

Dear Sir:

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

> "I would be pleased to have an opinion from your office on the following proposition:
>
> A school teacher is employed by the Board of Directors of a School District, without a dissenting vote. Contract is duly made and executed. The teacher so employed is a cousin of the wife of one of the Directors. All members of the Board are present at the meeting at which the teacher is employed. Is this a violation of the Constitution and laws relating to Nepotism?
>
> A copy of the minutes of meeting above mentioned is enclosed.
>
> I would appreciate an early reply, inasmuch as the Board of Directors will be called upon for salary for the teacher of the school soon."

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."

You state that a school teacher was employed by the Board of Directors of your district without a dissenting vote. The teacher elected was the cousin of the wife of one of the directors.

Under the rule laid down in 12 C. J. page 511, the relationship is computed 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 here and there 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."

The civil law method is the one to be used in determining the relationship under the above constitutional provision. The first cousin of the wife is related by affinity to the director within the fourth degree as prohibited by the constitution. The question then remains as to whether or not, under the facts given by you, the director was guilty of naming or appointing this relative.

It appears from the minutes of the meeting of the Board that all of the directors agreed to the selection of the related teacher. When the three members of the Board, by their unanimous action, elected this teacher, each of them exercised his right to name or appoint in favor of that teacher. The Supreme Court in the case of State ex rel. v. Otto Whittle (not yet reported) in which they ousted the director for voting in favor of a related teacher, said:

> "Respondent also argues that the amendment is only directed against officials who have all the right (power) to appoint. We do not think so. The question must be determined upon the construction of the amendment. It is not so written therein. The amendment is directed against officials who <u>shall have</u> (at the time of the selection) 'the right to name or appoint' a person to office. Of course, a Board acts through its official members or a majority thereof. If, at the time of the selection, a member has the right (power), either by casting a deciding vote or otherwise, to name or appoint a person to office and exercises said right (power) in favor of a relative within the prohibited degree, he violates the amendment."

The Supreme Court says that if the director who has the

right, either by casting a deciding vote or otherwise, to name or appoint a person to office and exercises that right in favor of a relative, he violates the amendment. When three members, which make up the entire Board, vote or consent to the election of a teacher, each member of that Board has exercised the right he had to name or appoint in favor of the relative. We believe that the Supreme Court meant that whenever a director votes in favor of a relative within the prohibited degree and such relative is elected to office, that he violates the constitution provision.

We believe that there is a great misunderstanding among the directors as to what is meant by the "deciding vote." Take for an example: A board consisting of six members, four is a majority and necessary to elect a teacher. Assume that director No. 1 is related to the teacher. Assume that directors 2, 3 and 4 vote in favor of the teacher and directors 5 and 6 vote against the teacher. When the time comes for director 1 to cast his vote the vote stands three in favor of the teacher and two opposed. Director 1 votes with the other three and makes it four to two in favor of the related teacher. Certainly in such instance he has cast a deciding vote. If, on the other hand, in the order of voting, director No. 1 voted first and in favor of the teacher and then three more voted in favor of the teacher and two against, the vote of director No. 1 was just as necessary to the election and was exercised in favor of the related teacher to the same extent as if he had been the last member to vote. We do not believe that the constitutional provision is to be nullified by the directors adopting any particular method of voting or by them juggling their votes. We believe the constitution means, as interpreted by the Supreme Court, that whenever any director exercises his right to name or appoint a teacher in favor of a relative within the prohibited degree, he has violated the constitutional amendment. It would be absurd to take the view that director No. 1 forfeited his office in the first example given because he was the last to vote, and did not forfeit his office in the second illustration because he was the first to vote. In both events he had the right to name the appointed teacher within the meaning of the constitution, and in both events he exercised that right in favor of a teacher within the prohibited degree.

According to the facts contained in your inquiry, the Board unanimously, without a dissenting vote, selected a teacher related to one member of the Board. It is not necessary to a violation of this amendment that a formal vote, either orally or written, be taken. But the Board unanimously consenting to her selection is the same thing as the Board unanimously voting in her favor. Every member of the Board, under such circumstances, must legally be deemed to haveexercised his right to name or appoint in favor of the teacher so selected.

When one member of your Board exercises his right to name or appoint in favor of the related teacher, either by formally casting his vote or otherwise, he has violated the constitutional provision.

It is therefore the opinion of this Department that when the Board of Directors of your school district, without a dissenting vote, elected to office a teacher related to one member of the Board, each director will be deemed to have exercised his right to name or appoint in favor of the teacher so selected. As one of the directors was a first cousin to the selected teacher he was related within the fourth degree as prohibited by the constitution and when he exercised his right to name or appoint that teacher he was guilty of violating Section 13 of Article XIV of the Constitution.

Very truly yours,

Frank W. Hayes

Assistant Attorney General.

APPROVED:

Attorney General.

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