

NEPOTISM:-The violation of Section 13 of Article XIV of the Constitution does not automatically remove a director; proper proceedings must be brought for that purpose.

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FILED
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Mr. Merrill E. Montgomery,
Prosecuting Attorney,
Milan, Missouri.

Dear Sir:

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

"I have been confronted with numerous questions concerning relationship within the prohibitive degree of the Nepotism section of the Missouri Constitution. I have considered your opinions addressed to Miss Marjorie Neff Hoy, County Superintendent of Schools, Marshall, Mo., on October 31, 1933; and also your opinion to William J. Sherwood, Assistant Prosecuting Attorney at St. Joseph, Mo., dated March 31, 1934, and your opinion to Hon. Orin J. Adams, Prosecuting Attorney at Kingston, Mo., dated August 25, 1933.

My specific question is: What is the immediate effect of the act of a school board member violating the provisions of the Nepotism section, e.g. where he votes for a teacher within the prohibited degree? Is he automatically disqualified from acting as a director, or, must there be a legal proceeding brought and have the fact adjudicated before his position as director is considered vacant? The question becomes important because the other directors on the board and the County Superintendent of Schools do not know whether to proceed to fill the vacancy or to wait for some legal action against the member of the board who has violated his oath of office."

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."

The above section of the Constitution imposes a penalty for appointing to office anyone within the prohibited degree. While the section is self-enforcing and does not require any statutory enactment to make it effective, yet it is necessary, in our opinion, to bring a proceeding in a court of competent jurisdiction to remove any person who violates the provision. While the section lays the foundation for the removal in that it prohibits the appointment of persons related within the fourth degree, the section does not automatically remove the offender from office. Any person accused of violating this section of the Constitution would be entitled to his day in court and a hearing before a proper tribunal to determine whether or not as a matter of fact as well as of law he is guilty of violating the provision.

We are of the opinion therefore that a director is not automatically disqualified from acting as a director by the violation of the Statute. Until a proceeding is brought in which the violation of the Constitution is established the director is entitled to remain upon the board. In other words, it takes a finding or a decree of a court of competent jurisdiction to determine whether or not the Constitution has been violated. There has to be, as in all other cases of violation of the Constitution and criminal laws, a court which determines whether or not such Constitution and laws have been violated, and while it may appear on the face of things that there is no defense to a proceeding to remove this director, yet he is entitled to have his case tried in court and until some proceedings are brought to remove him he is still a member of the board. As we view the Constitution it simply creates the offense and lays the foundation for the removal. The removal must be had by proper legal proceedings.

It is therefore the opinion of this Department that a proceeding should be brought to remove the offending director and until such proceedings are brought and he is removed the board has no right to elect another member.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.