

NEPOTISM: Sister-in-law of County Clerk, acting without official appointment and merely assisting clerk, without compensation, does not violate Art. XIV, Sec. 13, Mo. Constitution; but if sister-in-law is officially appointed deputy clerk, with or without salary, then it appears to be violation of the amendment.

October 31, 1938

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Honorable L. B. Chuck
Prosecuting Attorney
St. Louis, Missouri

Dear Sir:

On October 26, 1938, you wrote us the following letter and requested an official opinion on the same:

"I am requested by a number of citizens of this county to secure the opinion of your office on the question of whether a Clerk of Court is authorized under the law to use a sister-in-law as a deputy clerk either with or without the payment of a salary."

Section 13, 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."

Oct. 31, 1938

You use the expression in your letter, "under the law to use a sister-in-law as a deputy clerk either with or without the payment of a salary." If the sister-in-law is acting without official appointment and is merely assisting the clerk without compensation, then we believe the opinion rendered by this Department on October 4, 1933, to Honorable Elliott M. Dampf, prosecuting attorney, Jefferson City, Missouri, a copy of which is enclosed, which is applicable to the situation. But if the sister-in-law is officially appointed deputy clerk, with or without salary, then it appears to be a violation of the amendment itself by its own contents, as the amendment does not mention that the relative within the fourth degree either by consanguinity or affinity, shall receive compensation. Of course, if the party is receiving compensation, it would appear that it is a clear case of violation of the nepotism act.

We base the above conclusions on the decisions in the cases of State ex rel. McKittrick v. Becker, 81 S. W. (2d) 948; State ex inf. Ellis v. Ferguson, 333 Mo. 1177; and State ex rel. McKittrick v. Whittle, 333 Mo. 705. The original decision which declared Section 13 of Article XIV, supra, to be self-executing is that of State ex inf. Norman v. Ellis, 325 Mo. 154.

We are enclosing a copy of an opinion rendered on December 19, 1935, to Honorable N. Elmer Butler, prosecuting attorney, Calena, Missouri, in which the contents of the above mentioned cases are quoted and explained.

Yours very truly

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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