

NEPOTISM:

Recorder receiving personal services from wife does not violate Section 13 of Article XIV of the Constitution of Missouri, as she does not render service to the State in an official capacity.

October 4, 1933.

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Mr. T. J. Harper
Prosecuting Attorney
Galena, Missouri

Dear Sir:

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

"At the request of Mr. Jones, Recorder of Deeds in this county, I am writing you for an opinion on the anti-nepotism law as applied to the office which he holds.

Mr. Jones' wife has been assisting him with his work, but for fear of violating the anti-nepotism law he has suspended her services until I can hear from you.

Mr. Jones's office is of course operated on the fee basis, and the fees taken in in this County do not nearly pay for the work he does, as he has a great deal of necessary work to do that nets him nothing. For instance, running records for the information of his clients, etc.

Mr. Jones' salary will run from \$1600.00 to \$1700.00 per year in this County, and no other pay is given him other than his fees. Therefore, his question is, shall he be allowed to retain his wife to assist him in his office, or shall he be required to hire an assistant or deputy, which will no doubt cost him from \$800.00 to \$900.00, and will therefore only leave him about \$800.00 per year for his own salary. His wife doesn't draw any salary and she is not a deputy.

I will greatly appreciate your advices, and while on the face of a recent ruling by one of your assistants, it appears that this ruling affects Mr. Jones, it should not do so, as he will hardly have a living fee left after being forced to hire an assistant. Former Attorney General, Shartel, ruled in answer to Mr. Jones' query, that Mr. Jones was not affected by this law. Copy of Hon. Shartel's letter to Mr. Jones enclosed."

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 constitutional provision makes no distinction between officers whose compensation results from fees collected and officers who draw a specified salary. They are both compensated, though differently, for the services they render to the State, and are paid out of public funds. The Legislature could as well have required that the fees of this office, as many others, be paid into the treasury, and that the officer be paid a salary. The fact that some offices are fee offices and others salary offices does not relieve either class from the prohibition contained in the above constitutional provision. We, therefore, hold that even though the office in question be a fee office, the provision of Section 13 of Article XIV above applies to such office-holder.

However, upon the facts given in your letter, we conclude that Mr. Jones does not violate the provisions of Section 13 of Article XIV by having his wife assist him.

Under the above section of the constitution any officer who names or appoints any person within the fourth degree to render service to the State, makes himself liable to forfeiture of office. We believe, however, that the proper construction to be placed upon that constitutional provision is that such person must be appointed to hold an official position existing under the laws or constitution of the State. We believe that there is a distinction between a person holding an office and rendering service to the State in an official capacity and a person having no official position and rendering gratuitous personal service to the office-holder. The test as to whether or not Mr. Jones violated the constitution, in our opinion, is not whether or not his office be a fee or salary office, but is whether or not his wife is occupying an official position and is rendering service to the State in such official capacity, or whether the services rendered by her are personal services to Mr. Jones.

You state that the wife occupies no official position; receives no compensation for her services and is rendering

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gratuitous service to Mr. Jones on account of the relationship. We conclude that she is rendering personal service to Mr. Jones and is not, in an official capacity, rendering service to the State of Missouri.

It is therefore the opinion of this Department that Mr. Jones is not violating Section 13 of Article XIV of the Constitution; not because his office is a fee office, but because the wife is rendering personal service to him and is not, in an official capacity, rendering service to the State of Missouri.

Very truly yours,

FRANK W. HAYES
Assistant Attorney General

APPROVED:

Attorney General.

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