

Nepotism: As a rule death terminates the relationship by affinity, under Article XIV, Section 13 of the Constitution of Missouri.

May 6, 1941

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Honorable Oliver L. Linck, Jr.
Assistant Prosecuting Attorney
St. Joseph, Missouri



Dear Sir:

This department is in receipt of your letter of April 24th, 1941, wherein you make the following inquiry:

"The members of Jones School District No. 62 Rural Buchanan County are Earl Brumley, Charles Jones and William Teaney. William Teaney's wife was a sister to Vianna Davis Brumley, but Mrs. Teaney died April 5, 1941. The question is whether William Teaney is restricted under the constitutional provision of nepotism from voting for Vianna Brumley. Would this relationship in any manner impair his position as a member of the district board under the above act?"

A postscript to your letter states the following:

"Vianna Davis Brumley has an application before the board for the position of teacher in relation to the above question."

We are not exactly clear as to the relationship involved. You state that William Teaney's wife was a sister to Vianna Davis Brumley. We cannot determine whether Vianna Davis

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Brumley is the wife or related to Earl Brumley who is a member of the board. But we assume that she is within the prohibited degree as you state that William Teaney desires to vote for Vianna Davis Brumley.

It has been ruled under the nepotism act that the appointing power is prohibited from contracting with any relation by consanguinity or affinity within the fourth degree, and the fourth degree has been interpreted to include, but not lower than the fourth cousin.

We think that the rule relating to the nepotism act varies in this respect: that the relationship after death continues by consanguinity, but terminates as to affinity. There have been no direct decisions on this question in the State of Missouri. However, the decisions of Kelly v. Nealy, 12 Ark. 657 and Blodgett v. Brinsmaid, 9 Vt. 27, are directly in point to the effect that affinity ceases with the dissolution of the marriage which produced it. In fact, the greater weight of authority from the other states support the decisions mentioned above. The decision of Brotherhood of Locomotive Firemen and Enginemen v. Hogen, 5 Fed. Supp. 598, 1. c. 605, is to the effect that if there are no children of the marriage its dissolution terminates the relationship by affinity. The decision of Stringfellow v. State, 61 S. W. 719, 1. c. 721, is to like effect.

Having stated that the greater weight of authority is to the effect that dissolution of marriage terminates the relationship, we are of the opinion that the death of Mr. Teaney's wife terminated the relationship of Mr. Teaney with reference to Vianna Davis Brumley and that the nepotism act would not apply in so far as his voting for her is concerned.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

* Erratum

See, also, Opinion 207-75

OWN:CP