

ELECTIONS - Judges of election may be appointed, even though a member of their family be a candidate for county office or central committee.

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June 29, 1934.



Miss Lula May Barry, Chairman  
Grundy County Democratic Central Committee  
Trenton, Missouri

Dear Madam:

This department acknowledges receipt of your letter of June 28, 1934 containing the following request for an opinion:

"Please give me an opinion on whether an individual of one family can act as Judge or clerk of an election, with another member of the same family a candidate for a county office, or a candidate for county committee."

We assume that your question involves the Nepotism Section of the Constitution of Missouri, the same being Section 13 of Article XIV, which is 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 manner of appointing judges of the various precincts in an election is the duty of the county court as provided in Section 10206, R. S. Mo. 1929. The pertinent part of said section we are herewith quoting:

"In all counties in this state, four judges of election shall be appointed by the county court for each election precinct in each of said counties; and there shall be also be provided two ballot boxes for said judges of election, one of which shall be numbered No. 1 and the other numbered No. 2; and it shall be the duty of said judges to select from their number two judges who shall be designated and known as receiving judges, and two who shall be designated and known as counting judges."

Additional judges may be appointed, under certain conditions, in the same manner by the county court under the new Section 10208, Laws Missouri 1933, p. 238, and as it is similar to Section 10206, quoted supra, will not be herewith quoted.

The recommendations and appointments of judges is the duty of the central committee and the manner of making recommendations is contained in Section 10209 R. S. Mo. 1929, which is as follows:

"All judges of elections, appointed under the provisions of this article shall be selected by the county court from a list of persons furnished said court in the form and manner following: The political party that polled the largest number of votes at the last preceding general election and the political party that polled

the next largest vote at said election shall, each, through its central committee, furnish to said county court at least fifteen days before the election, a list of names of persons qualified by law to serve as judges of election, double the number required for judges of said election, from which said list said county court shall, at least ten days before the election herein provided for, select and appoint the number of judges required to hold said election, taking one-half of the judges so appointed from each of said lists: PROVIDED, that for the purpose of determining the political parties entitled to representation on the election board, the county court shall take the vote cast for governor throughout the entire state for the respective parties: PROVIDED FURTHER, that if any political party, through its committee, shall fail to present a list of names as aforesaid, within the time aforesaid, then the said county court may select and appoint the requisite number of judges provided by law for said party."

We call your attention to the fact that the Constitutional provision herein quoted contains the phrase,

" \*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,\* "

Miss Lula May Barry

-4-

June 29, 1934.

which said phrase seems to apply to the facts in your case. The candidate for a county office does not, in anywise, make the appointment of his brother as a judge or clerk. The clerks are appointed by the judges of the election, as contained in Section 10211, with the new additional section of 10211, Laws Missouri, 1933, p. 239. Under Section 10209, quoted supra, the central committee recommends a list to the county court, but the appointments are made by the county court and not by the central committee. Hence, a member of the county committee might recommend the appointment of some member of his family, but the actual appointment would be made by the county court.

CONCLUSION.

We are of the opinion that a member of a family of a candidate for a county office or for a county committee may be appointed judge or clerk of a primary or general election. We are of the further opinion that the members of the county court could not appoint a member of their own family judge of the election. The conclusion of this opinion is based solely from the legal aspect of the question, but as to the moral effect or public policy, we will leave to your own discretion.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General