

NEPOTISM:

Judges of the county court who vote for the appointment or connive to bring about the appointment of any relative, within the prohibited degree, on the County Old Age Assistance Board, is subject to ouster.

12-21
December 19, 1935



Honorable N. Elmer Butler
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Sir:

This Department is in receipt of your letter of December 5, wherein you make the following inquiry in regard to the county court appointing relatives to the County Old Age Assistance Board. Your letter is as follows:

"Will you please give me an opinion on the following:

"The County Court in selecting the County Old Age Assistance Board did it in the following manner:

"The two associate judges submitted a list of names from their part of the county, neither submitted the name of a relative, but the county clerk also submitted a list of names and on his list were the names of a relative of each of the associate judges, one man a brother-in-law of the Southern Judge and the lady a married daughter of the Northern Judge. Then the Presiding Judge selected from all the lists three names, two of them being the names of the two relatives. The Judge whose daughter had been selected

objected at the time, but later on the court met and by order of Court appointed the three members as selected. Did the two associate judges violate the Nepotism Law? "

It appears that you have received some correspondence from this office in regard to this question. We are unable to locate in our files any previous letters written regarding the subject; hence, it will be our aim to clarify the situation with this opinion. If there is a violation of what is commonly called the Nepotism law, it must be found under Section 13 of Article XIV of the Constitution of Missouri, 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."

By the terms of the Old Age Assistance Act, Laws of Missouri 1935, page 309, Section 3, it is the duty of the county court to appoint the County Old Age Assistance Board. Section 3 is as follows:

"In every county there shall be established a County Old Age Assistance Board, to consist of three persons domiciled in the county, each of whom shall have been a resident taxpaying citizen of the county for a period of five years prior to his or her appointment at least

one of whom shall be a woman, who shall be appointed by the county court for a term of four years, except that of the members first appointed, one shall be appointed for a term of two years and one for a term of three years. Vacancies shall be filled in the same way in which the original appointment was made. The members of the county board shall serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them. "

The most recent decision regarding the Nepotism section hereinbefore quoted is that of State ex rel. McKittrick v. Becker 81 S. W. (2d) 948. In that decision the Court held that:

"Two of judges of Court of Appeals could in exercise of their jurisdiction appoint first cousin of third judge as commissioner, and such appointment would not violate provision of Constitution forbidding officers to appoint relatives to public service, where third judge refrains from voting and other judges exercise appointive power free from connivance, agreement, or conspiracy (Const. art. 14 Sec. 13, adopted in 1924)."

In the case of State ex inf. Ellis v. Ferguson 333 Mo. 1177, the Court held:

"A mayor of a city of the third class, in appointing his first cousin to the position of pumper of the waterworks system of the city, violated the nepotism amendment to the State Constitution, Section 13, Article XIV, and thereby forfeited his right and title to the office and was subject to ouster in quo warranto proceeding."

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In the case of State ex rel. McKittrick v. Whittle 333 Mo. 705, the court held:

"Section 9209 R. S. Mo. 1929, providing that a board of school directors should have power to contract for the employment of teachers, must be substantially complied with and a director having the deciding vote in employing a teacher comes within the provisions of the nepotism amendment as having 'the right to name or appoint' a teacher, and cannot participate in the appointment of his first cousin by affinity as teacher in the district."

We assume that you are familiar with the case of State ex inf. Norman v. Ellis, which originated in your county, 325 Mo. 154. In this decision it was held that the circuit clerk and the county clerk of Stone County had violated the nepotism section by appointing their wives, and were ousted.

CONCLUSION

Under Section 3 of the County Old Age Assistance Act it was the duty of the county court to appoint three persons to the board. We note in your letter that the relatives, namely, the brother-in-law of the Southern Judge and the married daughter of the Northern Judge were placed by the County Clerk. The presiding judge then selected from all the names the three names of the board, including the two relatives of the two judges. In order for the appointments to have been valid it was at least necessary that one member, either the Northern or the Southern Judge, should concur in the appointments. If either judge voted for the appointment of his relative, of course, under the decisions hereinabove quoted, he is subject to custer. If neither judge voted for

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the appointment of his relative but connived, aided or abetted, he is subject to ouster,

In this opinion we have endeavored to set out the law relating to the nepotism section of the Constitution as construed by the courts. As to whether or not the judges in question have violated the same would be a question of fact which this office cannot pass upon.

Yours very truly,

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APPROVED:

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