

NEPOTISM: Great nephew is within fourth degree.

December 8, 1942



Honorable Percy W. Gullie
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FILED 35

Dear Sir:

Receipt is acknowledged of your letter of December 2, 1942, requesting an opinion as follows:

"The Circuit Clerk elect has asked me to write in regard to his using his great nephew by marriage, as his deputy in the office.

"The Circuit Clerk's wife is the boy's great aunt, and he wants to know whether he would be in violation of Nepotism Law, by using him as deputy."

The portion of our law generally referred to as the "nepotism law" is Section 13 of Article 14 of the Constitution, which is as follows:

"Any public officer or employee 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."

In the case of State ex inf. Norman v. Ellis, 325 Mo. 154, this section was held to be self-enforcing. In the case of State ex inf. Ellis v. Ferguson, 333 Mo. 1177, is found the following definition of a public officer at page 1181:

"The first question in this connection is: Is the mayor of a city of the third class a public officer? The answer must be yes. A public office is well defined to be:

"The right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law, . . . an individual is invested with some portion of the sovereign functions of government, to be exercised by him, for the benefit of the public;" and a public officer is one who receives his authority from the law and discharges some of the functions of government.* * * *

The case of State ex inf. McKittrick v. Whittle, 63 S.W.(2d) 100, contains an interesting discussion of the reason for the adoption of this amendment to the Constitution. It is found on page 101:

"It is a matter of common knowledge that at the time of the Constitutional Convention in 1922-1923, and for a long time prior thereto, many officials appointed relatives to positions, and thereby placed the names of said relatives upon the public pay rolls. The power was abused by individual officials and by members of official boards, bureaus, commissions, and committees, with whom was lodged the power to appoint persons to official positions. It also was abused by officials with whom was lodged the power to appoint persons to official positions, subject to the approval of courts and other functionaries of the state

and its political subdivisions.

"It also is a matter of common knowledge that many of the relatives were inefficient, and some of them rendered no service to the public. * * * *"

The definition of "consanguinity" is found in volume 12 C.J. page 510, and is as follows:

"Consanguinity or kindred is the connection or relation of persons descended from the same stock or common ancestor, *vinculum personarum ab eodem stipite descendentiem*, as distinguished from affinity, or relationship by marriage; the being of the same family and stock; the having the blood of some common ancestor; blood relationship; relationship by blood; the actual relationship of blood. * * * *"

and in volume 2 C.J. page 378 is the following definition of affinity:

" * * * * * The term has been variously defined as the connection existing in consequence of marriage between each of the married persons and the kindred of the other; the connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands toward them, and gives to the wife the same reciprocal connection with the relations of the husband. * * * * *"

Applying this definition of affinity, it will

be noted that the Clerk of the Circuit Court would be related to his wife's blood relatives by affinity.

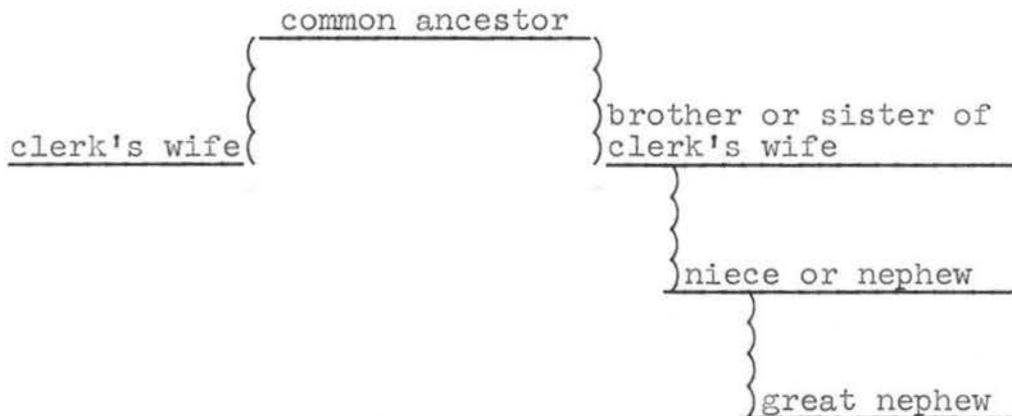
There have been several cases before the appellate courts in which the question of the enforcement of Section 13 of Article 14 of the Constitution, supra, was passed upon. None of these cases has laid down a rule to be followed in determining whether or not a person comes within the prohibited degree of relationship. Two methods of determining relationship have been used: the canon law and the civil law. These rules for determining relationship are set out in vol. 12 of C. J. at page 511:

"There are two methods of computing the degrees of consanguinity: One by the canon law, which has been adopted into the common law of descents in England and the other by the civil law which is followed both there and here in determining who is entitled as next of kin to administer personalty of a decedent. The computation by the canon law . . . is as follows: "We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related. By the civil law, the computation is from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending. By this mode the intestate is taken as the terminus a quo, and the propinquity to him of any collateral relative is determined by the sum of the degrees in both lines to the common ancestor." The clearest and most comprehensive exposition of

the subject . . . is in 2 Coke Lit *p. 158 (Thomas Ed., p. 129), as follows: "It is to be noted that in every line the person must be reckoned from whom the computation is made. And there is no difference between the canon and civil law in the ascending and descending line, but in the collateral line there is. Therefore, if we will know in what degree two of kindred do stand according to the civil law, we must begin our reckoning from one by ascending to the person from whom both are branched, and then by descending to the other to whom we do count, and it will appear in what degree they are. For example, in brothers' and sisters' sons, take one of them and ascend to his father, there is one degree; from the father to the grandfather, that is the second degree: then descend from the grandfather to his son, that is the third degree; then from his son to his son, that is the fourth. But the canonists do ever begin from the stock, namely, from the person from whom they do descend, of whose distance the question is. For example, if the question be, in what degree the sons of two brothers stand by the canon law, we must begin from the grandfather and descend to one son, that is one degree; then descend to his son, that is another degree: then descend from the grandfather to his other son, that is one degree; then descend to his son, that is a second degree: so in what degree either of them are distinct from the common stock, in the same degree they are distant between themselves; and if they be not equally distant, then we must observe another rule. In what degree the most remote is distant from the common stock, in the same degree they are distant between themselves: and so the most remote maketh the degree." *McDowell v. Addams*, 45 Pa. 430, 432. (2) 'In determining degrees

of relationship by consanguinity or affinity, like in determining the descent of property, we must proceed from a single, definite propositus. In the descent of property the propositus is the ancestor or person from whom the descent is reckoned. In consanguinity it is a single, definite person; and in affinity it is a single, definite marriage.
 * * * * *

In an opinion dated October 31, 1933, written by the honorable Frank W. Hayes, assistant Attorney General, to Miss Marjorie Neff, County Superintendent of Schools, Saline County, it was held by this office that the civil law method should be followed in determining a relationship for the purpose of enforcing the nepotism law. Applying the rule as it is set out above to determine whether or not the circuit clerk elect is related to his wife's great nephew within the fourth degree by affinity we would ascend to the father or mother of the clerk's wife, the common ancestor, then descend to the brother or sister of the clerk's wife, to the niece or nephew of the clerk's wife, then to the great nephew. This clearly places the great nephew within the fourth degree, as will appear by the diagram below.



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CONCLUSION

It follows that if the circuit clerk elect of Oregon County would appoint as his deputy the great nephew of his wife he would be violating the provisions of Section 13 of Article 14 of the Constitution and would forfeit his office.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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