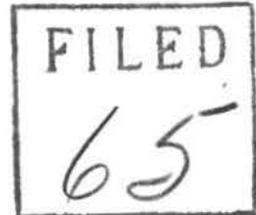


COUNTY If treasurer appoints wife deputy or
TREASURER: clerk he forfeits his office.

November 30, 1942

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Honorable W. L. Mulvania
Prosecuting Attorney
Atchison County
Rock Port, Missouri



Dear Sir:

Under date of November 20, 1942, you wrote this office requesting an opinion as follows:

"At the November election Mr. Rolla Cook was elected to the office of county Treasurer. The present incumbent is Mr. R. O. Bartholomew. At the present time Mr. Cook is engaged in the military services of the United States of America and has been so engaged since about the month of June, 1942.

"I have been requested to ask you for the opinion as to whether the office would be considered vacant in the event that he came back here long enough to qualify but was obligated to return to his camp immediately thereafter. There is the further question of whether the place might be filled by a clerk, since there is no provision in the statute for a deputy in a county of this size. It is my understanding that his wife would like to carry on the duties of the office as a clerk if she would be authorized to do so under the law. If she was paid by him out of his salary would this be in violation of the nepotism law.

"Both the incumbent and Mr. Cook, the treasurer-elect would appreciate having

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your opinion on these questions."

As we informed you in our letter acknowledging receipt of your request, we are not in position to rule upon the question of whether or not a vacancy would exist in the office of county treasurer due to the drafting into the Army of the elected treasurer. However, the other question contained in your request can be answered at this time.

The county treasurer is an officer of the county elected under the provisions of Section 13791 and 13792, R. S. Mo., 1939. The county treasurer is a ministerial officer. State ex rel v. Adams, 101 M. A. L. C. 472. Being a ministerial officer the treasurer would have the authority to appoint a deputy even though there is no statute authorizing the appointment of a deputy. Small v. Field, 102 Mo. 104, State ex rel v. Reber, 226 Mo. 229.

The nepotism law referred to in your letter is Section 13, Article 14 of the Constitution; and in the case of State ex inf. Norman v. Ellis, 28 S. W. (2d) 363, this section of the constitution was held to be self-enforcing. In the same case at l.c. 367 and following a wife was held to be a relative as the term is used in Section 13, Article 14 of the Constitution. The following quotation is a portion of the Court's discussion of the status of a wife:

"The entire trend of recent legislation, the recent interpretation of the relation of husband and wife, is to make

them different persons, each having individual rights independent of the other; each responsible for his or her conduct, independent of the other. The old fiction of oneness in a legal sense has been entirely abrogated by the statutes and by judicial interpretation. The only reason for saying that a man is not related to his wife has disappeared. With the disappearance of the reason the thing disappears; when the reason for a rule of law fails, the rule fails. When the reason for a definition of a legal term ceases, the definition is obsolete. Since at common law the reason a man was not related to his wife was because his wife had no separate legal existence, and since, under modern interpretations and modern statutes, she has come into existence, and at law she is as distinct an individual as he is, then the fiction of no relationship vanishes. She is related to him by affinity by reason of the engagement before the marriage, and that relationship of affinity continues after the marriage. The absurd fiction that he could not be related to her but is related to her blood kin by marriage disappears entirely.

"It is suggested that in using common-law terms, lawmakers are presumed to use them in their common-law significance, and intend to have them applied as understood at common law. There is another rule superior to that, which is that the intention of the lawmakers and Constitution makers must be gathered when interpreting an act or a constitutional provision. Lawmakers and the people adopting

a constitutional provision, have a right to put an interpretation on the words they use which meets their intention. They can define their language as they please and, if they see fit, can give a common-law phrase or word a meaning entirely contrary to its ancient usage. This the Legislature has done in section 6632, Rev. St. 1919, and the Constitutional Convention of 1924, and the people have done in adopting section 13, article 14. The debates in the Constitutional Convention show that it was intended to apply to wives of officials, and as a matter of common knowledge the voters in 1924 so understood it.

"These respondents, having the opinion of the Attorney General upon which to proceed, are not to be blamed morally for appointing their wives as their deputies. Nevertheless they have forfeited their offices, and therefore ouster is ordered in each case."

Counties are political subdivisions of the State. *Barton County v. Walser*, 47 Mo. 189. A county treasurer is a public officer of a political subdivision elected by the people and having power to appoint a deputy or an assistant. Any person appointed by the treasurer to assist him in the performance of his duties, he would appoint by virtue of his office or employment.

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CONCLUSION

It is the conclusion of this office that a county treasurer who would appoint his wife a deputy and leave to the wife as deputy the operation and management of the office of county treasurer would be violating provisions of Section 13, Article 14 of the Constitution and would thereby forfeit his office.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

WOJ:FS