

NEPOTISM: Relationship existing between step-father and step-son.

May 31, 1945

Filed: #13

Honorable L. Madison Bywaters  
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Dear Sir:

Reference is made to your letter dated May 23, 1945, requesting an official opinion of this office, and reading in part as follows:

"I should like to have an opinion from your department on the following question. Can an assessor elected in November of 1944, who takes office June 1, 1945 appoint his step-father as a deputy without violating the nepotism provisions of the State Constitution."

By an election held on February 27, 1945, the people of the State of Missouri adopted a new Constitution, which became effective on March 30, 1945. The applicable provision of the Constitution of 1945 relating to your inquiry is Section 6 of Article VII, which reads as follows:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

Your inquiry resolves itself into two component parts:

Honorable L. Madison Bywaters

(1) Is a county assessor a "public officer" within the meaning of the term as used in the above constitutional provision?

(2) Is the step-father related to the step-son within the prohibited degree, either by affinity or consanguinity?

In the determination of the first question, we have resorted to the following definition of "public officer" as found in State ex rel. Pickett v. Truman, 64 S. W. 105, 1. c. 106:

"In Mechem on Public Officers, pp. 1 and 2, sec. 1, it is said: 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' We have approved this definition in State ex rel. Walker v. Bus, 135 Mo. 325, 331, 332, 36 S.W. 636, 33 L.R.A. 616, State ex rel. v. Hackmann, 300 Mo. 59, 254 S.W. 53, 55, and Hasting v. Jasper County, 314 Mo. 144, 282 S.W. 700, 701; and it appears to be in harmony with the great weight of authority. \* \* \* "

Applying this definition to the office of county assessor, we come to the conclusion that such officer is a "public officer" within the meaning of the term as used in the Constitution of 1945.

In the consideration of your second question, we have resorted to the definition of "consanguinity" as found in 12 C. J., at page 510, reading as follows:

"Consanguinity or kindred is the connection or relation of persons descended from the same stock or common ancestor, \* \* \* ."

Honorable L. Madison Bywaters

With this definition in mind, it is apparent that no relationship by consanguinity exists between a step-father and a step-son.

"Affinity" is defined in 2 C. J., at page 378, as follows:

" \* \* \* 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 connections with the relations of the husband; \* \* \*."

Under this definition, it is apparent that by the marriage of the person to the mother of the assessor, a relationship by affinity was created.

Your attention is further directed to the hereinbefore quoted constitutional provision, particularly that portion thereof prohibiting the appointment of persons related "within the fourth degree." It thereupon becomes necessary to determine the degree of relationship existing between the step-father and step-son in order to determine whether or not such relationship is within the prohibited degree.

Two methods exist for the computation of degrees of relationship: The cannon law and the civil law. No appellate court decisions appear in the reports definitely fixing the method of reckoning the degrees of kinship under the nepotism provision of the Constitution of 1945, or under Section 13 of Article XIV, being the comparable nepotism provision of the Constitution of 1875. However, in other states, under similar constitutional provisions, computation has generally been made under the civil rule. We believe that the courts of this state, when the matter is directly presented for decision, will adopt the civil rule in computing the degree of relationship.

The rule under the civil law for the computation of the degrees of relationship is stated in 12 C. J., at page 511, reading as follows:

Honorable L. Madison Bywaters

"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."

In the situation presented by your letter of inquiry, under application of the quoted rule for reckoning the degree of relationship, it is found that the step-father is related in the first degree to the step-son, and therefore is within the prohibited degree of relationship as established by Section 6 of Article VII of the Constitution of 1945.

CONCLUSION

In the premises, we are of the opinion that a county assessor is a "public officer" within the meaning of that term as used in Section 6 of Article VII of the Constitution of 1945; and that the step-father of such public officer is within the fourth degree of relationship to such public officer, and cannot be appointed deputy assessor without subjecting such officer to forfeiture of office.

Respectfully submitted,

WILL F. BERRY, Jr.  
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APPROVED:

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