

LIBRARIES:
NEPOTISM:
COUNTY LIBRARIES:

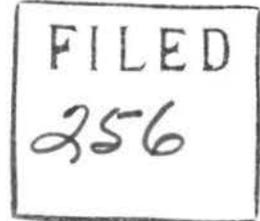
A judge of the county court violates the prohibition of nepotism contained in Article VII, Section 6 of the Missouri Constitution if

he participates in the appointment of a relative within the fourth degree of consanguinity to the board of trustees of the county library district.

OPINION NO. 256

November 1, 1972

Mr. Charles O'Halloran
State Librarian
Missouri State Library
308 East High Street
Jefferson City, Missouri 65101



Dear Mr. O'Halloran:

This is in response to your request for an opinion on the following question:

"Article 7, Section 6, of the State Constitution provides that no public officer or employee in this state shall name or appoint to public office or employment any relative, and provides a penalty if such appointment or employment should take place.

"Section 182.050, RSMo, provides that the county court of a county shall appoint the members of the county library board.

"If a county court should appoint to the county library board an individual who is related by consanguinity or affinity to a member of the county court, does Article 7, Section 6, of the Constitution apply? Is membership on a county library board a 'public office' in the sense intended in the Constitution?"

Article VII, Section 6 of the Missouri Constitution provides:

"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."

Mr. Charles O'Halloran

In State ex inf. McKittrick v. Whittle, 63 S.W.2d 100 (Mo. Banc 1933), the Supreme Court held that a director of the school district occupies a public office. In so doing, the court stated, l.c. 102:

"A public office is defined to be "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." Mechem, Pub. Off. 1. . . ."

Article IX, Section 10 provides:

"It is hereby declared to be the policy of the state to promote the establishment and development of free public libraries and to accept the obligation of their support by the state and its subdivisions and municipalities in such manner as may be provided by law. When any such subdivision or municipality supports a free library, the general assembly shall grant aid to such public library in such manner and in such amounts as may be provided by law."

Therefore, in Missouri, operation and maintenance of free public libraries is a sovereign function of government.

In carrying out the policy of the state of Missouri to promote free public libraries, the legislature in Sections 182.010 through 182.160, RSMo 1969, has provided for county libraries. The board of trustees of a county library is charged under Section 182.060 to carry out the intent of Sections 182.010 to 182.120 in establishing and maintaining free county libraries. Therefore, a member of the board of trustees of the county library would hold a public office.

Since a member of the board of trustees holds a public office, the appointment of the member is subject to the prohibition against nepotism contained in Article VII, Section 6. The cases of State ex inf. McKittrick v. Whittle, supra, and State ex rel. McKittrick v. Becker, 81 S.W.2d 948 (Mo. Banc 1935), hold that the nepotism prohibition applies to appointments to public office made by boards or other multi-member bodies as well as by individuals. In the Whittle case, the court noted, l.c. 101-102:

Mr. Charles O'Halloran

"Of course, a board acts through its official members, or a majority thereof. If at the time of the selection a member has the right (power), either by casting a deciding vote or otherwise, to name or appoint a person to office, and exercises said right (power) in favor of a relative within the prohibited degree, he violates the amendment [prohibiting nepotism].
. . ."

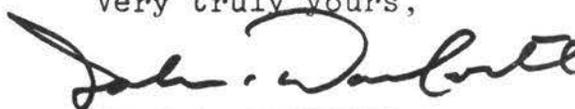
However, the Becker case recognizes that there may be an appointment of a relative of one of the members of the appointing body, if it is possible for that appointment to be made without the participation of the member. Therefore, it is possible for a county court to appoint a person to a library board of trustees who is a relative within the fourth degree of one of the judges of the county court if that particular judge abstains from participating in the decision to appoint his relative and the appointment is not the result of collusion or connivance with the abstaining judge.

CONCLUSION

It is, therefore, the opinion of this office that a judge of the county court violates the prohibition of nepotism contained in Article VII, Section 6 of the Missouri Constitution if he participates in the appointment of a relative within the fourth degree of consanguinity to the board of trustees of the county library district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Charles A. Blackmar.

Very truly yours,



JOHN C. DANFORTH
Attorney General