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PAGE 1 OF 1

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January 5, 2015

Mr. Roger Wall
Douglas County Prosecuting Attorney
Douglas County Courthouse
P.O. Box 245
Ava, Missouri 65608

Dear Mr. Wall:

You ask whether the nepotism provision of Mo. Const. Art. VII, § 6, was violated when a school board member voted to appoint the husband of his step-daughter to fill a vacancy on that board. We understand that the school board member is not related by blood or adoption to his wife's daughter. In providing this response, we do not mean to suggest that we are providing you legal advice or otherwise treating you as a client of the Attorney General or any of his assistants. We merely wish to assist you in performing your official duties as the Douglas County Prosecuting Attorney.

Article VII, § 6, of the Missouri Constitution, provides 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.

By its plain terms, this provision prevents those holding public offices from appointing certain family members to public office. Members of school boards are public officers bound by this provision. *State ex inf. Nixon v. Corley*, 896 S.W.2d 931, 931-32 (Mo. banc 1995) (school board member who voted to hire son and was then sued for nepotism could not win on summary judgment by

OP-2014-0116

asserting parole evidence rule), *overruled on jurisdictional issue by State v. Olvera*, 969 S.W.2d 715, 716, note 1 (Mo. banc 1998); *State ex inf. McKittrick v. Whittle*, 63 S.W.2d 100, 102 (Mo. banc 1933) (prior version of this constitutional provision prohibited nepotism by: “Any public officer or employee of this State or of any political subdivision thereof ...;” member of board of directors of school district was a public officer under this language). Also, voting on an appointment is a type of action that comes within the parameters of this provision. *State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397, 400 (Mo. banc 1994) (“participating in the appointing process” may constitute a violation of this provision), *overruled on jurisdictional issue by State v. Olvera*, 969 S.W.2d at 716, note 1; *State ex inf. Graham v. Hurley*, 540 S.W.2d 20, 26 (Mo. banc 1976) (voting for the appointment of a prohibited relative was a violation of this provision even where the vote was not decisive to the success of the appointment). Therefore, the only question is whether the school board member’s relationship to his step-daughter’s husband is within the fourth degree of consanguinity or affinity.

We first point out that the school board member is not related to his step-daughter’s husband by consanguinity. To be related by “consanguinity” means to have “the same blood or origin” as another person. Black’s Law Dictionary (2009). Because the school board member has no blood relationship to the husband of his step-daughter, there is no consanguinity between them. Therefore, there is no violation of the prohibition against appointing a relative within the fourth degree of consanguinity.

We next determine whether the school board member is related to his step-daughter’s husband within the fourth degree by affinity. To determine what degree of relationship two people have, Missouri uses the civil law method of counting. *State ex inf. Roberts v. Buckley*, 533 S.W.2d 551, 554 (Mo. banc 1976). “Under the civil law the count ascends by generations from either of the two relatives to the common ancestor and thence down the collateral line to the other.” *Id.* at 555, note 4, quoting *State v. Thomas*, 174 S.W.2d 337, 340 (Mo. 1943). A husband and wife are related to each other by one degree of affinity. *State ex inf. Norman v. Ellis*, 28 S.W.2d 363, 367 (Mo. banc 1930) (common-law idea that husbands and wives are not related to each other is “absurd;” a wife and husband have a “relationship of affinity ...”). Thus, in *State ex inf. Roberts v. Buckley*, 533 S.W.2d at 555, the

Mr. Roger Wall
Page 3

husband was related to his wife's father's brother in the third degree by affinity. The husband's marriage to his wife was the first degree, her blood relationship to her father was the second degree, and her father's blood relationship to his brother was the third degree. *Id.*

However, the school board member is not related to his step-daughter's husband by affinity. A relationship by affinity is the "relation that one spouse has to the blood relatives of the other spouse; [a] relationship by marriage." Black's Law Dictionary (2009). A relationship by affinity does not extend beyond the blood relatives of the spouse. *State v. Thomas*, 174 S.W.2d at 338 ("A kinship by affinity—arising through marriage—exists only between each spouse and the blood relatives of the other spouse."); *State ex inf. Norman v. Ellis*, 28 S.W.2d at 366 ("[T]he husband is related by affinity to his wife's relatives in the same way that she is related to them by blood, and she is related to his relatives by affinity in the same way that he is related to them by blood."); Attorney General Opinion 2001-157 (because affinity extends to blood relatives of spouse, clerk's husband's brother's wife was no relation to clerk); Attorney General Opinion 1980-189 (because affinity extends only to blood relatives of spouse, clerk could appoint his brother's wife's niece without violating nepotism provision).

Accordingly, the school board member has a relationship within the fourth degree of affinity to his wife's daughter, because the daughter is a blood relation of his spouse.¹ But the husband of the daughter is not a blood relation of the school board member's wife. Therefore, the school board member has no relationship by affinity with the husband of his wife's daughter. Because the school board member has no relationship by affinity with his step-daughter's husband, there is no violation against the prohibition of appointing a relative within the fourth degree of affinity.

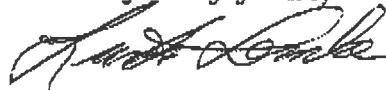
In view of the fact that the school board member has neither a relationship by consanguinity, nor a relationship by affinity, with his step-daughter's husband, the school board member did not violate Mo. Const. Art.

¹ Because the school board member is related by affinity to his step-daughter, he could not appoint her to a public office or employment without violating the nepotism provision. *State v. Thomas*, 174 S.W.2d at 338 (a person is related by affinity to his or her spouse's blood relatives).

Mr. Roger Wall
Page 4

VII, § 6, when he voted to appoint his step-daughter's husband to the vacant office on the school board.

Very truly yours,



LINDA LEMKE
Assistant Attorney General