Robert Morrison
xxxxxxxxxxx

January 11, 1956
Opinion No. 56-1

TO: The Honorable Wm. T. Brooks
Corporation Commission
Capitol Annex
Phoenix, Arizona

RE: Anti-Nepotism Statute

QUESTION: Does the Arizona Anti-Nepotism Statute prohibit employment by officer of such officer's wife's brother-in-law?

Section 56-105 A.C.A. 1939, makes the employment of relatives within certain degrees unlawful. This section provides:

"56-105. Employment of relatives unlawful, when -- It shall be unlawful for any executive, legislative, ministerial or judicial officer to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office, position, employment or duty in any department of the state, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages, pay or compensation of such appointee is to be paid out of the public funds or fees of such office, or to appoint, vote for, or agree to appoint, or to work for, suggest, arrange, or be a party to the appointment of any person in consideration of the appointment of a person related to him as aforesaid. Any executive, legislative, ministerial or judicial officer who shall violate any provision of this article shall be deemed guilty of a misdemeanor involving official misconduct, and shall be punished by a fine of not less than one hundred ($100) nor more than one thousand dollars ($1,000.00). The designation executive, legislative, ministerial or judicial officer includes: All officials of the state of Arizona, or of any county or incorporated city within the state, holding office either by election or appointment, and all the heads of the departments of

COPY

> state, county or incorporated cities, public school trustees, officers and boards or managers of the state university and its several branches, and state colleges." (Emphasis supplied)

In the question posed above, we are only interested in determining whether an appointive officer's wife's brother-in-law comes within the third degree of relationship by affinity to the officer so as to make it unlawful for such officer to appoint or vote for appointment of such person.

In reading many cases defining relationship by affinity, it seems that the vast majority of cases show that affinity is the relationship that is created by the marriage contract between one spouse and blood relations of the other. In other words, the affinities of one spouse are not related by affinity to the affinities of the other. (For instance, the first cousin of son-in-law of the deceased is not related to deceased by affinity at all:)

> "Relationship of affinity is that between one spouse of the subsisting marriage-- in this case, Mrs. Media Floyd Giles, the deceased-- and the blood relatives of the other spouse." DUAR v. STATE, 55 S. 2d 764.

> "Affinity is the relationship which arises as a result of the marriage contract between the spouse and the blood relations of the other, in distinguishing on consanguinity or relation by blood." ZIMMERMAN v. PRUDENTIAL INSURANCE COMPANY, 34 N.E. 2d 750.

> "A kinship of affinity arises through marriage and exists only between each spouse and the blood relatives of the other spouse." STATE v. THOMAS, 174, S. W. 2d 337.

So, in this case, the sister of the appointing officer's wife is related to the officer by affinity, and the wife is related by affinity to the sister's husband, but the officer and the wife's sister's husband are not related either by affinity or consanguinity.



22 56710 AZ ST LIB: JRS
05 MISC 01/21/09 10

We need not go into the question of degree of relationship, as it is plain, in this instance, that there is no relationship whatsoever in the legal meaning under our statute on anti-nepotism.

ROBERT MORRISON
The Attorney General

NORMAN N. WHITING
Assistant to the
Attorney General

COPY