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**ARIZONA ATTORNEY GENERAL**

Opinion No. 63-9  
R-108  
January 8, 1963

REQUESTED BY: THE HONORABLE E. D. McBRYDE  
Pinal County Attorney and  
THE HONORABLE CHARLES MOODY  
State Representative

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

- QUESTIONS: 1. Is it a violation of A.R.S. § 38-481 (anti-nepotism statute) for a justice of the peace to employ his wife's sister as his clerk?
2. If the clerk holds the job as clerk to a justice of the peace prior to January 1, 1963, and on that date the new justice (brother-in-law to the clerk) is sworn in, may the clerk continue to act for the new justice without violating the provisions of A.R.S. § 38-481?

- ANSWERS: 1. Yes.
2. No.

A.R.S. § 38-481, defining employment of relatives; penalty; definition; reads as follows:

"A. It is unlawful, unless otherwise expressly provided by law, for an executive, legislative, ministerial or judicial officer to appoint or vote for an 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 or compensation of such appointee is to be paid from 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 within the degree provided by this section.

B. Any executive, legislative, ministerial or judicial officer who violates any provision of this section is guilty of a misdemeanor punishable by a fine of not less than one hundred nor more than one thousand dollars.

C. The designation executive, legislative, ministerial or judicial officer includes all officials of the state, or of any county or incorporated city within the state, holding office either by election or appointment, and the heads of the departments of state, county or incorporated cities, public school trustees, officers and boards or managers of the university and its several branches and state colleges."

Arizona Constitution, Article 6, Judicial Department

"§ 1. Judicial power; courts

Section 1. The judicial power shall be vested in an integrated judicial department consisting of a Supreme Court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts." (Emphasis added).

The statute in question, A.R.S. § 38-481 (anti-nepotism law) was passed in 1931. (Chapter 52, House Bill No. 114) by the Tenth Legislature, in Regular Session, and the wording is the same today.

"'Nepotism' is defined as the bestowal of patronage by public officers in appointing others to offices or positions by reason of their blood or marital relationship to the appointing authority, rather than because of the merit or ability of the appointee."  
C.J.S. Vol. 66, p.6.

Nepotism is defined in Webster's New International Dictionary as favoritism shown to nephews or other relations; the bestowal of patronage by reason of relationship rather than of merit.

Throughout the states, anti-nepotism laws have been enacted for the clearly intended purpose of eradicating the evil wherein it was customary for elected officials to appoint their relatives to subordinate positions in their department of state or municipal governments.

It is the policy of the law to secure the utmost freedom from personal interest or undue influences in the selection of public officers, whether elective or appointive. See Horning v. The State ex rel. Gamble, 116 Ind. 458, 19 N.E. 157 (1888); 43 Am.Jur. § 261 p.78.

In some states, it is provided that the officer making the appointment, and also the officer paying out the public funds, in violation of the prohibition shall forfeit their office. Our statute imposes a fine in an amount from one hundred dollars up to one thousand dollars.

The board of supervisors has the authority and power to provide in its budget for a clerk for the justice of the peace. If the justice of the peace would be violating the anti-nepotism law in retaining or reappointing as a holdover his sister-in-law, contrary to the law, the board of supervisors must refuse to provide funds for the position. An employee retained by a new justice of the peace, when he takes office, is deemed to have been appointed by him for the purpose of this statute.

Obviously, the law as written could not very well encompass every situation that might arise. We do not have any doubt that this is a hardship case, in that the clerk or stenographer is a holdover from the predecessor justice of the peace. However, it is our opinion that the justice of the peace who takes over the office in January 1963, would be plainly violating the law since he is the person with the right to appoint, name or select the person he thinks has the proper qualifications for the position.

Our Supreme Court in June 1962 issued the "Arizona Manual for Justice Courts," wherein at page 10, section 13, it states:

"Personnel of the Court

Should the volume of business require, the board of supervisors has the responsibility to

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appoint a clerk to assist the justice with his ministerial duties. The person appointed must not be related to the justice within the third degree." (Emphasis added).

From this paragraph it would seem that even if the supervisors actually did the appointing, the justice of the peace may not have a clerk related to him within the third degree.

In conclusion, A.R.S. § 38-481(A), supra, (anti-nepotism law) provides that it is unlawful for a judicial officer to appoint any person related to him by affinity within the third degree to any clerkship or employment in the department of the county government of which he is a member, where the compensation is to be paid from public funds. Since there exists an affinity by marriage between the incoming justice of the peace and his sister-in-law within the prohibited third degree and since the post of clerk is compensated from public funds, and since the holdover would be considered as employed by the incoming justice of the peace, such employment would be unlawful employment contrary to our anti-nepotism statute, A.R.S. § 38-481.

  
ROBERT W. PICKRELL  
The Attorney General

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