

February 19, 1954  
Opinion No. 54-26

TO: The Honorable Juliette C. Willis  
House of Representatives  
Capitol Building  
Phoenix, Arizona

RE: Anti-Nepotism Statute

QUESTION: Does the Arizona Anti-Nepotism Statute prohibit employment by a county officer of such officer's father-in-law, brother-in-law and/or sister-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 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)

At the outset it is advisable to note the difference between the terms "affinity" and "consanguinity". Bouvier's Law Dictionary, Rawle's Third Edition, defines "affinity" in the following manner:

"AFFINITY. The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other."

Bouvier's defines "consanguinity" as:

"The relation subsisting among all the different persons descending from the same stock or common ancestor."

In brief, then, affinity is that relationship created by marriage and consanguinity is a relationship by blood.

The nature and content of the above question dictates that we concern ourselves with affinity.

In the past, many troublesome problems have arisen concerning the proper method by which the degree of relationship between two or more persons is to be determined. Over the years, two methods were widely used for such determination, namely, the canon law or common law system, whereby the common ancestor is discovered, then, starting with him and reckoning downwards, the degree the person is distant from the common ancestor becomes the degree of kindred existing between them, for instance, two brothers are related to each other in the first degree because from the father to each of them is one degree. The other system is known as the civil law method, whereby the degree of relationship is determined by beginning at either of the persons in question and counting upward to the common ancestor and then downward to the other person calling it a degree for each person both ascending and descending. The degrees they stand from each other is the degree in which they stand related.

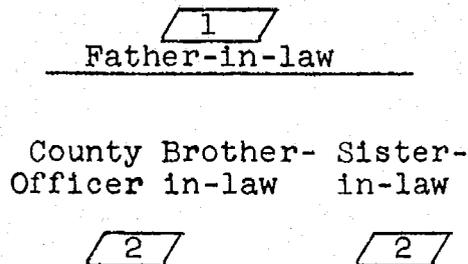
While the above explanation deals with consanguinity, Bouvier's Law Dictionary, Page 160, in defining the term affinity, makes the observation that "the degrees of affinity are computed in the same way as those of consanguinity." (See cases cited therein)

In the very recent Arizona case of GRAHAM COUNTY vs BUHL, (1953) Arizona, 263 P 2d 537, our Court unequivocally adopted the Civil Law Method of computing degrees of relationships. The Court stated at page 540:

"We hold the civil rule is the one the legislature intended in enacting our anti-nepotism law."

What then, is the degree of relationship by affinity between the county officer in question and his brother-in-law, sister-in-law and/or his father-in-law? By employing the civil law method of computation, it will be observed that the degree of affinity between the officer and his brother-in-law or sister-in-law is two-between the officer and his father-in-law, one.

The following diagram may prove helpful in understanding the application of the rule. The arabic numerals indicate the degree of affinity.



To further substantiate our position in this matter the Idaho Supreme Court, in the case of BARTON vs. ALEXANDER, (1915), 148 P 471, had occasion to interpret an anti-nepotism statute similar to the Arizona provision. The Court stated at page 475:

"\* \* \* Under the act in question an officer cannot appoint the following relatives of either himself or his wife: Parents, grandparents, and great-grandparents; uncles and aunts; brothers and sisters; children, grandchildren, great-grandchildren; nephews and nieces. \* \* \*"

Inasmuch as Section 56-105, supra, provides that it is unlawful for certain public officials to employ any person related to him by affinity within the third degree, it is apparent (assuming that the fact situation may be proved by competent evidence) that the officer in question is in violation of the law and is guilty of a misdemeanor involving official misconduct, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

Yours very truly,

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