



Missouri Ethics Commission

Elizabeth L. Ziegler
EXECUTIVE DIRECTOR

November 23, 2020

Re: Advisory Opinion No. 2020.11.CL008

At the November 23, 2020 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to Section 105.955.16, RSMo, the Missouri Ethics Commission (MEC or Commission) may issue a written opinion regarding any issue on which the Commission may receive a complaint. Section 105.957.1(6), RSMo, authorizes the MEC to receive complaints alleging violations of “[t]he provisions of the constitution or state statute or order, ordinance or resolution of any political subdivisions relating to the official conduct of officials or employees of the state and political subdivision.” The Commission issues this opinion within the context of Missouri’s laws governing such issues, assuming only the facts presented by you in your letter and other such facts that are generally available to the public.

The question presented and the Commission’s opinion appear below.

I am the mayor of a city that has a vacancy on its city council. My brother’s wife is interested in being appointed to the position. Would such an appointment by me, trigger the Missouri Constitution’s Article VII, Section 6 nepotism clause?

The provision of the Missouri Constitution at issue here states 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.

Mo. Const. Art. VII, Section 6.

While the Missouri Ethics Commission is statutorily authorized to accept and investigate complaints alleging violations of this provision, it has no authority to enforce its forfeiture

provision. “The power to determine whether or not a Quo Warranto proceeding shall be instituted is vested in the Attorney General or prosecuting attorneys by Section 531.010, and Supreme Court Rule 98.02.” *State ex rel. St. Charles County Counselor v. City of O’Fallon*, 53 S.W.3d 211, 213 (Mo. App. 2001). In providing the following advisory opinion, the Commission relies upon the guidance and interpretation of the Missouri Constitution as provided by Missouri’s courts.

As a threshold matter, the Commission notes that the definitions of “public office or public officer” are “determined from the particular facts” in a given case upon consideration of a wide variety of factors. *State ex inf. McKittrick v. Bode*, 113 S.W.2d 805, 806 (Mo. 1938). Even so, Missouri’s courts have generally accepted that “A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law.” *State ex rel. Zevely v. Hackmann*, 254 S.W.53, 55-56 (Mo. banc 1923). Applying this definition to the facts presented by this question, the Commission concludes that both you (as mayor) and the members of the city council are “public officials.” Accordingly, the Constitution’s anti-nepotism prohibition may be implicated by this question because you, as an elected or appointed official, propose to appoint a relative to a public office.

The question then is whether your brother’s wife is a “relative within the fourth degree, by consanguinity or affinity.” Simply stated, consanguinity refers to blood relations: the term is defined by Black’s Law Dictionary as follows: “The relationship of persons of the same blood or origin.”

Affinity is defined as a legal relationship which arises as the result of marriage between each spouse and the consanguinal relatives of the other. That is, the 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.

State ex inf. Roberts v. Buckley, 533 S.W.2d 551, 554 (Mo. banc 1976) (internal citations omitted). “In other words for a kinship by affinity the person merely steps into the shoes of their spouse and the count begins as to the blood relatives of the spouse.” *State ex rel. Mo. Highway Transp. Comm’n v. Johnson*, 658 S.W.2d 900, 905 (Mo. App. 1983).

We turn then to the question of counting the relationship degrees. Missouri courts apply the civil law method. *Buckley* at 554.

There are two methods of reckoning degrees of consanguinity: The canon law, and the civil law. Under the canon law the number of generations is counted from the common ancestor down to the fartherest of the two descendants whose degree of relationship is to be ascertained. 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. The reckoning by the civil law would be just double that under the canon law, as applied to relatives removed an equal number of generations from the common ancestor. Thus, brothers would be related in the 1st degree under the canon law, and in the 2nd degree

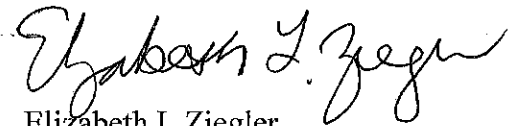
under the civil law; first cousins similarly in the 2nd and 4th degrees; second cousins in the 3rd and 6th degrees, etc.

Id. at FN4 (citing *State v. Thomas*, 174 S.W.2d 337, 340 (Mo 1943)).

For counting purposes, the civil method prescribes an upward count – from you – until reaching a common relative. In this instance, your parents. They are relatives within the first degree. The count then descends down from your parents until reaching your brother and his wife. Note: they step into one another’s shoes, owing to their kinship by affinity. Only one additional step is necessary to reach them so there are a total of two degrees of relationship between them and you. In other words, your brother is a relative within the second degree by consanguinity (blood) and his wife is a relative within the second degree by affinity (marriage).

In light of the forgoing, the Commission therefore concludes that your sister-in-law is a “relative within the fourth degree.” *See State ex inf. Attorney Gen. v. Shull*, 887 S.W.2d 397 (Mo. banc 1994) (affirming lower court’s judgment of ouster against a county commissioner who committed nepotism by appointing her sister-in-law to a public office). If you appoint your sister-in-law to the city council, that appointment would appear to be in violation of Article VII, Section 6 of the Missouri Constitution. The remedy for this violation is forfeiture of office, but the Commission defers to the Attorney General or the applicable county prosecutor in the handling of such matters.

Sincerely,



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Executive Director