

Opinion No. 32.**Counties—County Commissioners—
Nepotism.**

HELD: County commissioners are not prohibited from purchasing gasoline, oils, etc., and having cars and machinery repaired and serviced in a shop or garage operated or owned by a son of one of the commissioners.

February 2, 1937.

Mr. Harold G. Dean
County Attorney, Sanders County
Thompson Falls, Montana

My dear Mr. Dean:

You have submitted to this office for an opinion the following two questions:

First: Can the Board of County Commissioners legally purchase gasoline, oil, tires and cars from the Heater & Heater Garage, operated by the sons of a member of the Board of County Commissioners?

Second: Can the Board of County Commissioners have the county cars serviced and repaired in the Heater Garage, operated by two sons of a member of the Board of County Commissioners?

Answering question one of your inquiry, it appears that the nepotism laws have no application to that situation. Those laws only apply to the appointing of relatives to an office of trust or emolument.

Answering your second question, a different situation arises.

Section 456.2, R. C. M. 1935, provides:

“It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this State or any political subdivision thereof to appoint to any position of trust or emolument any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree, or by affinity within the second degree.”

Section 456.3 provides:

“Any public officer or employee, or any member of any board, bureau or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof, and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee, or any member of any board, bureau or commission of any other department of this state or any position any person or persons related to him or them, or connected with him or them by consanguinity within the fourth degree, or by affinity within the second degree, shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment.”

Although Perry A. Heater, Sr., is a member of the Board of County Commissioners in your county, it is not Mr. Heater who has the power of appointing or the authority to give his sons a position of emolument; it is the Board of County Commissioners that has that power. The statutes quoted above have reference only to the appointive power, and these statutes are not sufficiently broad to prohibit a relative of a member of the Board from receiving employment from the Board.

It has been held that these nepotism statutes are to be liberally construed.

Mr. Heater, as an individual member of the Board has no power or authority whatsoever. It is not Mr. Heater, but it is the Board of County Commissioners who authorizes the Heater Garage to perform these services.

The problem that has confronted you has been adjudicated in the case of *State ex rel. Kurth v. Grinde*, 96 Mont. 608.

It is therefore my opinion that the Board of County Commissioners is not prohibited from purchasing gasoline, etc., and having cars and machinery serviced and repaired in the Heater Garage, which is operated by the sons of the Board of County Commissioners.