Opinion No. 117

Nepotism Act—Construction—Merit.

HELD: In case of prosecution for violation of Nepotism Act, where relative is appointed, it is not a defense to prove appointment was made because of merit.

March 16, 1933.

You have asked my opinion on the following question: "In order to find a violation of the nepotism act would it not be necessary to prove that an appointment of a relative was made because of relationship rather than because of merit?"

The so-called Nepotism Act, Chapter 12, Laws of 1933, is a peculiarly worded act. The title reads:

> "An act to define nepotism and to prevent such practice in the State of Montana and prescribing the penalties thereof."

Section 1 defines nepotism as follows:

> "Nepotism is the bestowal of political patronage by reason of relationship rather than of merit."

Sections 2 and 3 of the act, however, make no reference to nepotism as de-

fined but simply make it unlawful to appoint any person related to the person making the appointment within the second degree. In view of the wording of sections 2 and 3, which omit all reference to merit and which fail to provide a defense when an appointment is made by reason of merit, it is my opinion that proof of an appointment because of merit would be no defense to one who is charged with a violation of the Nepotism Act, and who has appointed a person related to him as specified in sections 2 and 3.

I am therefore unable to advise that an officer who appoints a brother-in-law, even though the appointment is made because of merit rather than relationship, would not be violating the law.