

**Opinion No. 234**

**Nepotism—Schools—Teachers.**

**HELD:** The Nepotism Act applies to school districts and the appointment of school teachers.

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June 8, 1933.

You have requested my opinion on the question whether the Nepotism Act, Chapter 12, Laws of 1933, applies to school boards and teachers. You have questioned its application on the ground that the act uses the word "appoint" and therefore does not apply to the "hiring" of school teachers.

While it is true that teachers are hired or employed, such hiring or employment between the board and the teacher results from the appointment to the position, which is the act of the board. This distinction is recognized

by the authorities as appears from Section 287 in 56 C. J. 377: "Selection, Appointment, or Election—Definitions. Appointment to a position as teacher or principal or superintendent in the public school system is the act of the officer or board, upon whom that duty rests, assigning a particular person to that service or office. When the act is that of a board, it is referred to generally as an election. Employment has reference to the agreement between board and appointee for the latter's services, resulting from the appointment or election to the position."

The word "appoint" is quite generally used in connection with the selection of teachers. See 56 C. J. 377, Section 237 and notes, as well as the following sections. The word "appoint" is defined in 4 C. J. 1402 as follows: "APPOINT. To allot, set apart, or designate; to choose or select; to nominate or authoritatively assign." Webster's New International Dictionary, the New Standard Dictionary, and the New Century Dictionary all define the word "appoint" as meaning to assign, to designate, set apart, allot, to fix upon, select, etc.

It is true that the word "appoint" is used in connection with the appointment to an office but as appears from Corpus Juris and the dictionaries above cited, the general use of the word is not so limited and we do not believe the legislature intended to use it in such a limited meaning. It will be observed that in both Sections 1 and 2 of the Act, the phrase "appoint to any position" is used. If the legislature intended to use the word "appoint" in a narrow, technical meaning, referring to offices only, it certainly would have used the word "office" in the above phrase in place of the word "position," which is by no means synonymous with the word "office." Words in common use are to be given their natural, plain, ordinary and commonly understood meaning. (59 C. J. 975). The intention of the legislature no doubt was to stop political patronage by reason of relationship and certainly political patronage has a broader significance than mere appointment to office.

It is interesting to note in this connection that the legislature in Chapter 87, Laws of 1927, passed an act entitled: "An Act \* \* \* Relating to the

Tenure of **Office of Teachers.**" I also call attention to Section 10710: "Construction of the Penal Code. The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice."

It is therefore my opinion that the Nepotism Act applies to the appointment and hiring of school teachers.