

Opinion No. 79**Statutes — Construction — Deputies
—County Officers.**

HELD: The Nepotism Act, Chapter 12, Laws of 1933, is not retroactive and does not apply to appointment of a deputy prior to approval of act.

February 16, 1933.

You have requested my opinion on the following question:

"May a deputy in a county office continue to hold such office and receive compensation, though related to his principal within the degrees mentioned in Chapter 12, Senate Bill No. 19 of the present legislative session (Nepotism Bill) where the appointment of such deputy was made prior to said Nepotism Bill going into effect?"

Section 3, R. C. M. 1921, provides: "No law contained in any of the codes, or other statutes of Montana, is retroactive unless expressly so declared."

Chapter 12 was approved on February 10, 1933, and as provided therein, went into full force and effect from and after its passage and approval. After a careful reading of this bill I am unable to find any language whatever in the act in which the legislature expressly declared it to be retroactive. Section 2 of the act provides: "It shall be unlawful for any person * * * to appoint to any position of trust * * *" and further provides: "It shall be further unlawful for any person * * * to enter into any agreement or any promise with other persons * * *." Section 3 provides: "Any public officer * * * who shall make or appoint to such services, or enter into any agreement or promise with any other person * * * to appoint any person * * *."

It is obvious from a reading of the act that the legislature did not expressly declare it to be retroactive nor do I find any language in it from which one might infer that the legislature intended to make it retroactive in any way.

I have been able to find one case where this question was considered.

In *Barton v. Alexander*, 148 Pac. 471, the Idaho Court in construing an act somewhat similar in language to ours, held that the legislature did not intend the act to be retroactive, and said on pp. 475-476:

"The first section of said act provides that any officer therein named 'who appoints or votes for the appointment of any person related to him,' etc., is 'guilty of a misdemeanor involving official misconduct, and upon conviction thereof shall be punished by fine * * * and shall forfeit his office and be ineligible for appointment to such office for one year thereafter.' The legislature by using that language evidently did not intend to make an official guilty for acts done prior to the date of said act that were not crimes at the time said acts were done, and the language, 'who appoints or votes for the appointment of a person related to him,' clearly indicates that the legislature did not intend to make said act retrospective or ex post facto. If it did so intend, the law would be absolutely void for attempting to make an act a crime when it was not a crime at the time the act was performed. Ex post facto laws are prohibited by Section 16, Article I, of the Constitution of this state, and are also prohibited by the provisions of the Constitution of the United States, nor is there anything in the title of the act that would indicate that the legislature intended that the act should have a retroactive effect."

In Idaho the constitutional provision is not quite as broad as in Montana. Section 9444 of the Idaho Laws, reads as follows: "No part of **these compiled laws** is retroactive unless expressly so declared."

Since the legislature has not expressly declared the act to be retroactive and has used no language from which it might be inferred that such was their intention, it is unnecessary to determine whether the act is unconstitutional on that ground, nor do we find it necessary to consider the constitutionality of the act on any other ground.

It is therefore my opinion that Chapter 12, Laws of 1933, has no application to the appointment of a deputy made prior to February 10, 1933.