

Opinion No. 204.**Nepotism—Road Supervisor—County Commissioners.**

HELD: There is no violation of the Nepotism Act where there is no legal duty to terminate a contract of employment of a road supervisor at the time a relative of the employee takes office as county commissioner.

December 3, 1935.

Mr. E. M. Keeley
County Attorney
Deer Lodge, Montana

You have submitted facts which are substantially as follows:

In October, 1934, the Board of County Commissioners of Powell county, composed of "A," "B" and "C," employed one "J. M.," who was not related to either of them, as road foreman or supervisor for a period of two years. In November, 1934, "D," a brother of "J. M.," was elected county commissioner. The new board consisting of "A," "B" and "D" has taken no action. The question you submit is whether the present board is violating the Nepotism Law, Chapter 12, Laws of 1933.

I assume that "J. M.," regardless of the title he holds, was appointed

under and by virtue of Section 1622, Revised Codes, as amended by Chapter 128, Laws of 1925, for you state he has charge of Powell county roads. This section, in prescribing powers and duties of County Commissioners respecting highways, provided that they may, in their discretion, employ a competent road builder who shall be paid for his services not to exceed \$8.00 per day, and his actual expenses, and who shall serve during the pleasure of the Board.

This office has held that where a school board fails to discharge its duty to notify a teacher that her services shall no longer be required, with the result that the teacher, who is a wife of a member of the board, is re-elected, the Nepotism Act was violated. In that case, however, it will be observed that there is a positive duty imposed by statute upon the Board to give notice to a teacher before a certain date in order to prevent a new contract with the Board, which is forbidden by the Nepotism Act.

While the present Board of County Commissioners of Powell county may have the power to terminate the old contract made by the former Board, in the absence of a statute requiring it, I seriously question that there is a legal duty to do so. I am, therefore, inclined to agree with the conclusion you have reached that there has not been a violation of the Nepotism Act.