

Opinion No. 37.

**Nepotism—Affinity, Termination
of Relationship By.**

HELD: Relationship by affinity terminates upon the death of one of the spouses or other dissolution of the marriage, except where the marriage has resulted in issue who are still living.

February 5, 1935.

Mr. F. F. Haynes
County Attorney
Forsyth, Montana

This will acknowledge receipt of your letter of February 2, asking us to review an opinion rendered by you to the county assessor of your county, in which you hold that the county assessor is prohibited by Chapter 12, Laws of Montana 1933, from re-appointing his deceased brother's widow as a deputy in his office. Several

children were born of the marriage and because of this it is your opinion that the relationship by affinity within the proscribed degree still exists between the assessor and the widow.

It would seem that the general rule of law is that a relationship by affinity terminates upon the death of one of the spouses or other dissolution of the marriage, except when the marriage has resulted in issue who are still living. The reason for the exception seems to be that the living issue of the marriage in whose veins the blood of both parties is commingled, preserves the relationship by affinity.

It is your opinion that the exception to the rule, as above stated, applies to the case before you and you cite as authorities the following: *Spear v. Robinson*, 29 Me. (16 Shep.) 531; See *Words and Phrases*, 1st Series, Affinity, p. 246, *Dissolution of Marriage*; *Dearmond v. Dearmond*, 10 Ind. 191; *Bigelow v. Sprague*, 140 Mass. 425; *Paddock v. Wells*, 2 Barb. Ch. (N. Y.) 331; *Stringfellow v. State*, 61 S. W. (Tex.) 719; *Jagues v. Com.*, 10 Gratt (51 Va.) 690; 2 C. J. 379.

We have carefully examined the above authorities and believe that they support your position. See also: *Pegues v. Baker*, 17 So. 943; *Tagert v. State*, 39 So. 293; 38 C. J. 1293; and also *Back v. Back*, 125 N. W. 1009.

Although the rule of law may seem to work a hardship in this particular case, the conclusion you have reached is correct under the authorities and your opinion is hereby confirmed.