

Opinion No. 23.

**Nepotism—Employment by Individual
County Commissioners of Relative
of Another Member of the
Board.**

HELD: County commissioners have no authority to act individually and can only act as a board.

The Nepotism Act expressly forbids the employment of a person related to any member of the board.

February 24, 1939.

Mr. Maurice J. MacCormick
County Attorney
Deer Lodge, Montana

Dear Mr. MacCormick:

You have submitted the following facts and request for an opinion:

"I have been asked to obtain an opinion from the Attorney General's office relative to the Nepotism Act. You are acquainted with conditions as they have existed in Powell County, Montana, as far as the road supervisor goes, during the past two or three years.

"I obtained an oral opinion from you in the early part of January, of this year, to the effect that the hiring of a brother of a member of the board of county commissioners as a road supervisor for the county was a violation of the Nepotism Act. This opinion was given to the board of county commissioners.

"At the next meeting of the board of county commissioners the position of road supervisor was abolished by them.

"From the following state of facts, I would like to have an opinion as to its legality in regard to the Nepotism Law:

"The Powell County commissioners 'A,' 'B' and 'C,' in regular meeting abolished the position of road supervisor and passed a resolution to the effect that each commissioner would be in sole charge of the work in his district, as regards to construction, repair and maintenance of roads, the hiring and firing of all necessary men in his district and the said commissioner would be in sole charge of all work in his district. Each person hired by any commissioner would be hired by the day, and as the work was required. No commissioner of any other district has any right to hire, or fire men working in another district, nor has he any right to supervise the work in other districts. Nor have they the right to send men into other districts to do any county work on roads, or repair or construction work, or any other county work.

"Pursuant to this resolution passed at the regular meeting of the board of county commissioners of Powell

County, Commissioner 'A' has hired one 'JM,' who is a brother of Commissioner 'C.' 'JM' is hired by the day, as the work is required and 'A' is the only commissioner who has anything to say in regard to 'JM,' as to his work and duties. Commissioners 'B' and 'C' have no right to hire, or fire 'JM,' nor to supervise him in his work. The hiring is from day to day. 'JM' was formerly road supervisor, whose position was abolished by the board of county commissioners of Powell County, at their regular meeting.

"The opinion I desire is, whether the hiring of 'JM' by Commissioner 'A,' by the day, is a violation of the Nepotism laws of the State of Montana."

It is apparent from the foregoing facts that the county commissioners, being unable, under the Nepotism Law, to employ a brother of one of the commissioners now seek to accomplish the same thing by dividing the county into districts and delegating to each commissioner authority to employ persons in his respective district. We are of the opinion that this cannot be done for two reasons: First, the county commissioners have no power to act individually or to delegate powers to individual members. The Board has power only to act as a board. Second, it is a violation of the Nepotism Law.

In *Williams et al. v. Board of Commissioners of Broadwater County*, 28 Mont. 360, 72 Pac. 755, our Supreme Court said (p. 365):

"The statutes do not vest the power of the county in three commissioners acting individually, but in them as a single board; and the board can act only when legally convened."

In a late case, *Day v. School District No. 21*, 98 Mont. 207, 38 Pac. (2) 595, the Supreme Court, after quoting this language, affirmed the same in the following (p. 215):

"This doctrine has been consistently followed and applied by this court with respect to acts done by boards of county commissioners. (*Smith v. Zimmer*, 45 Mont. 282, 125 Pac. 420; *State ex rel. Urton v.*

American Bank & Trust Co., 75 Mont. 369, 243 Pac. 1093.)”

This rule is in line with the general rule that boards and commissions have power to act only as such boards and commissions and not individually. Moreover, and regardless of this rule, of which there can be no dispute, the Nepotism Law was carefully worded to prevent such action.

Section 456.2, R. C. M., 1935, provides:

“It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument **any person or persons related to him or them or connected with him or them** by consanguinity within the fourth degree, or by affinity within the second degree. It shall further be unlawful for any person or **any member of any board**, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or **any members of any boards**, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.” (Underscoring ours.)

It will be observed that the state expressly forbids any member of a board from employing a person related to him or “them” (the members of the board).

Section 456.3, making such action a misdemeanor, punishable by fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment, uses identical language. See also our opinion in Volume 15, Opinions of the Attorney General, p. 128.