

No. 160

**NEPOTISM—SCHOOL BOARD OF TRUSTEES—  
TEACHERS**

**Held:** The Nepotism Act applies to the hiring of school teachers. A contract appointing a wife of a member of the school board as a teacher is void. The Nepotism Act does not provide for any exemptions for occasional work. Therefore, the appointment by the school board of the wife of one of its members to do occasional teaching is prohibited by the act.

July 3, 1941.

Mr. Norman R. Barncord  
County Attorney  
Wheatland County  
Harlowton, Montana

Dear Mr. Barncord:

You have submitted the following:

“School District No. 16, Wheatland County, Montana, is a School District having five trustees. One member of the Board of Trustees we will call “AB.” We will call his wife “Mrs. AB.” Mrs. AB was

employed as a regular school teacher in this school district for a long time prior to her marriage. From that time up until her husband was elected as a trustee, she served as a substitute teacher. Having in mind our statute with reference to nepotism, can she now work or be employed from time to time as a substitute teacher only in School District No. 16, while her husband is a trustee? In my opinion, this would constitute temporary emergency employment, and would be of value to the district. Can the Board, while her husband is a member of the Board of Trustees, allow her to serve as a substitute teacher in the school district in which her husband is a trustee, and pay her the same wages that the teacher she is substituting for during the absence or illness would get?"

Section 456.1, Revised Codes of Montana, 1935, provides:

"Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit."

Section 456.2, Revised Codes of Montana, 1935, provides:

**"Appointment of relative to office of trust or emolument unlawful.**

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 the 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."

Section 456.3, Revised Codes of Montana, 1935, provides:

**"Penalty for violation of nepotism law.** Any public officer or employee, or any member of any board, bureau or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof, and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee, or any member of any board, bureau or commission of any other department of this state or any of its subdivisions to appoint to any position 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, shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine 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."

The Nepotism Act is equally applicable to all political subdivisions of the state. See Attorney General's Opinion No. 345, Volume 17, page 412, wherein it is said:

" . . . Was it the intent of the Legislature, in adopting the Nepotism Act, to control small communities where it became necessary, as above stated, to carry out the laws governing such communities, as an emergency to appoint a relative of some head of the governing body of such community, where no one else except a relative was available for such services?"

"The Montana Supreme Court has laid down a guide for the construction of the Nepotism Law in *State ex rel. Kurth v. Grinde* (96 Mont. 609, at 614):

"... Is urged by appellants that, since this is a penal statute, it must be strictly construed. To this we cannot assent. Section 10710, Revised Codes of 1921, provides: '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.' (Compare *Continental Supply Co. v. Abell*, 95 Mont. 148, 24 Pac. (2d) 133.) Our duty is but to ascertain the intention of the legislature. (Sec. 10520, Revised Codes 1921.) But this intention is to be ascertained from the terms of the statute, and we may not 'insert what has been omitted, or . . . omit what has been inserted.' (Sec. 10519, Id).

"Applying these rules of construction, neither omitting nor inserting extraneous matter into the statute, I am of the opinion that the Nepotism Law applies to all political subdivisions, it is plain that the law is applicable to all incorporated towns."

A school district is a political subdivision of the state. See *State vs. Myers*, 65 Mont. 124, 210 Pac. 1064 and also Opinion No. 319, Vol. 15, page 214 wherein, among other things, it said:

"A school district is a political subdivision of the state. (*State v. Myers*, 65 Mont. 124, 210 Pac. 1064.) The Nepotism Act is a declaration by the legislature of the public policy of the state with reference to the appointment of relatives. The trustees, being public officers, were charged with the duty of obeying the law and of taking such steps as were necessary to carry out the public policy and to prevent the appointment and employment of the wife of the chairman as a teacher of the district. (See opinion No. 234, this volume). To accomplish that purpose it was their duty to the State of Montana, and their school district to notify their teachers, (conceding that the teacher was entitled to such notice in view of the Nepotism Act) that her services were no longer required. Whether they met and formally voted not to notify her or refrained from voting or neglected to vote at all, in either event they failed to discharge their duty. Whether it was an act committed or an act omitted, is immaterial under our statute. It is the rule generally that an omission may be a crime when the omission is connected with a legal duty to the state, or an individual. (*Bishop New Crim. Law*, Vol. 1, Section 217 (3), 314 and 316; *Wharton Crim. Law* (12th Ed.) Vol. 1, Sec. 198.)"

The Nepotism Act applies to the hiring of school teachers. See Attorney General's Opinion No. 234, Vol. 15, page 163, also Opinion No. 124, Volume 18, wherein, among other things, it said:

"On March 23, 1933, the attorney general held that the Nepotism Act applies to school districts and school district officials. (Vol. 15, O. A. G., 98.) On April 25, 1933, he held that a member of a school board violates the Nepotism Act when he acts to appoint as clerk a relative of another member of the board. (Id. 128). Again on June 8, 1933 he gave an opinion to the effect that the Nepotism Act applies to school districts. (Id. 163) See also recent rulings of the attorney general, being opinions numbered 23 and 96 in volume 18, O. A. G., (not yet printed) where the former opinions are approved."

The Nepotism Act does not provide for any exceptions for occasional work; and therefore the appointment by an officer of a relative to do occasional mimeograph work is prohibited under the act. See Attorney General's Opinion No. 270, Vol. 15, page 188, wherein it says:

"Section 2 of the Act makes it unlawful to appoint 'to any position of trust or emolument,' and Section 3 prescribes the penalty for a

public officer who has the 'right to make or appoint any person to render services to this state or any subdivision thereof, and who shall make or appoint to such services . . .' In view of the wording of the act, we are unable to find any valid reason for making any distinction between part time and full time work or between occasional piece work or regular work. While the employment of a relative to do occasional mimeograph work amounting to a very small sum per month seems relatively harmless yet the legislature did not see fit to make any distinctions or to provide for any exemptions in such cases. Moreover, should we attempt to prescribe exemptions, which we have no authority to do, it would be most difficult to find a stopping place."

It is my opinion the views expressed in the above opinions and decisions are correct. It is not possible to arrive at any other conclusion. The Nepotism Act applies to the hiring of school teachers. A contract appointing a wife of a member of the school board as a teacher is void (Opinion No. 179, Vol. 15, page 128.) The Nepotism Act does not provide for any exemptions for occasional work. Therefore, the appointment by the school board of the wife of one of its members to do occasional teaching is prohibited by the act.

Sincerely yours,

JOHN W. BONNER  
Attorney General