

No. 201

COUNTY COMMISSIONERS—NEPOTISM—EMOLUMENT

Held: A person employed in county work as a common laborer on an hourly or daily basis is employed in a "position of emolument," as that term is used in Section 456.2, Revised Codes of Montana, 1935, and if related to any member of the board of county commissioners within the degree specified in said section may not be employed without violating the Nepotism Act.

August 8, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have requested my opinion relative to the Nepotism Act as applied to the following facts:

"Under arrangement between the commissioners of a county, one commissioner has charge of road maintenance and construction in a

certain area of the county. He employs his son as a driver of a tractor. The son is not employed by the month but only on an hourly basis, and is paid only for the actual time worked."

Your question is whether such facts come within the language of Section 456.2, Revised Codes of Montana, 1935, to-wit, "appoint to any position of trust or emolument."

This office has on several occasions passed upon the meaning of the language of the Nepotism Act under somewhat similar facts. The most recent opinions are found in Volume 18, Official Opinions of the Attorney General, numbered 23 and 96.

In Opinion No. 23, supra, the commissioners by resolution determined each commissioner should be in sole charge of all county work in his district. Under this arrangement, the commissioner of one district employed the brother of one of the other commissioners. The hiring was by the day and only for such periods as the work required such services. This office there held this arrangement was a violation of the act. In Opinion No. 96 two of the commissioners voted to hire the son of the third as county surveyor to fill a vacancy. It was there held such action was a violation of the act. With these holdings, under the facts given, I agree.

The case you present comes just as squarely within the language of the act as the facts in the opinions referred to. In the case presented here, the question raised is whether under such facts the position or employment is one "of trust or emolument." While it may not be said employment as a common laborer is a position of trust, we think it comes within the meaning and definition of the word "emolument."

Websters' New International Dictionary, Second Edition, defines the word "emolument" as follows: profit from office or employment; compensation; fees or salary.

It may further be stated that, as pointed out in Opinion No. 23, Volume 18, supra, county commissioners may act only as a board and not as individuals. (See *Williams v. Board of County Commissioners*, 28 Mont. 360, 72 Pac. 755; *Day v. School District*, 98 Mont. 207, 38 Pac. (2nd) 595.) Hence, hiring of laborers and employees of the county may be done only by the board of county commissioners acting as such in meeting duly convened.

It is therefore my opinion a person employed in county work as a common laborer on an hourly or daily basis is employed in a "position of emolument," as that term is used in Section 456.2, Revised Codes of Montana, 1935, and if such person so employed is related within the degree mentioned in Section 456.2, supra, to any member of the board, his employment, either by the board as such, or by an individual member, would be in violation of said Section 456.2.

Very truly yours,

JOHN W. BONNER
Attorney General