

No. 263

COUNTY COMMISSIONERS—NEPOTISM

Held: Where there is no legal duty on the part of a board of county commissioners to terminate a contract of employment entered into by a former board, there can be no violation of the Nepotism Act by the newly elected board in retaining such person in said employment, where said person happens to be related to the newly elected commissioner. The Nepotism Act prohibits only the appointment and not the continuation of appointment previously made.

October 9, 1941.

Mr. W. W. Lessley
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Lessley:

You have submitted a copy of your opinion rendered to the Board of County Commissioners of Gallatin County in which you advise there is no violation of the Nepotism Act on the part of the Board under the following facts:

"Sometime in March of 1940, the County Surveyor retained X who was then employed as a workman on Gallatin County's road maintenance crew. This hiring was done by the County Surveyor under and by virtue of authority given to him by the Board of County Commissioners of Gallatin County to hire and fire, on his own personal judgment, any or all of the personnel of Gallatin County's road maintenance crew; this authority, however, does not appear on the Minutes of the Board of County Commissioners.

"On April 24, 1940, a vacancy on the Board of County Commissioners occurred due to the death of one of the duly elected, qualified, and acting members of the Board of County Commissioners. On that date, Judge Benjamin E. Berg appointed Y to fill the vacancy which had occurred on the Board of County Commissioners. Y, who qualified and entered into his duties as a County Commissioner of Gallatin County on that date is the father of X. Under the original arrangement of March, 1940, X is still working; having been elected County Commissioner, Y is now serving as County Commissioner."

This question was considered by this office in Opinion No. 204, Volume 16, Official Opinions of the Attorney General, under facts almost identical with those in this case. In that case the Board of County Commissioners of Powell County employed one not related to either of them as road foreman. Subsequently, the brother of the person so employed was elected county commissioner. The question submitted was whether the new board of which the brother was a member was violating the Nepotism Act in retaining the foreman appointed by the former board. The opinion referred to held that, while the present Board of County Commissioners of Powell County might have had the power to terminate the old contract made by the former Board, in the absence of a statute requiring it there was no duty to do so and, hence, in the absence of such duty, there was no violation of the Nepotism Act in retaining such employee. With that opinion I agree.

In view of the similarity of facts, it is my opinion the conclusions reached by you under the facts correctly states the law.

Sincerely yours,

JOHN W. BONNER
Attorney General