

No. 84

NEPOTISM—OFFICERS—CONSANGUINITY—
AFFINITY

Held: Second cousins not within degree of relationship prohibited by Section 456.2 of the Revised Codes of Montana, 1935 (Nepotism Act).

April 17, 1941.

Honorable Sam C. Ford, Governor
State of Montana
State Capitol
Helena, Montana

Dear Governor Ford:

Section 456.2 of the Revised Codes of Montana, 1935, a portion of the "Nepotism Act," declares it 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."

You request my opinion as to whether a second cousin falls within the degrees of relationship prohibited from appointment under the foregoing section.

Second cousins are persons who are related to each other by descending from the same great-grandfather or great-grandmother (Black's Law Dictionary). Children of one's first cousins, although perhaps not technically second cousins, are often termed "second cousins" (In re Bonner, 19 Ch. D. 201; People v. Clark, 16 N. Y. S. 473) and are sometimes called "first cousins once removed." (Culver v. Union & New Haven Trust Co., 120 Conn. 97, 179 Atl. 487; Weaver v. Liberty Trust Co. (Md.), 183 Atl. 544; South Carolina Nat. Bank of Columbia v. Bates, 175 S. C. 168, 178 S. E. 611.)

Consanguinity is the connection or relation of persons descended from the same stock or common ancestor (15 C. J. S. 976; 2 Blackstone Commentaries 202). In computing the degrees of consanguinity, the civil law is generally followed in all the states of the union (4 Kent's Commentaries (14th Ed.) 473; Barton v. Alexander (Ida.), 148 Pac. 471).

Sections 7076 to 7080, inclusive, of the Revised Codes of Montana, 1935, provide for computation of degrees of kindred according to the civil law and are as follows:

"7076. **Degrees of Kindred—How Computed.** The degree of kindred is established by the number of generations, and each generation is called a degree."

"7077. **Same—Lineal and Collateral Consanguinity.** The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity."

"7078. **Same—Ascending and Descending Direct Line.** The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends."

"7079. **Same—Degrees in Direct Line.** In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons."

"7080. **Same—Degrees in Collateral Line.** In the collateral line, the degrees are counted by generations from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the descendent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on."

It is clearly apparent the Legislature intended that degrees of kindred under the Nepotism Act should be governed by the civil law as set forth in the foregoing sections.

Affinity is the legal relationship arising as the result of marriage between each party thereto and the consanguineal relatives of the other (2 C. J. S. 991). The degrees of affinity are computed in the same way as those of consanguinity (State v. Hooper, 140 Kans. 481, 37 Pac. (2nd) 52).

Applying the foregoing authorities and statutes to the question you present, it appears the question is one of degree of consanguinity in the collateral line. As specifically pointed out in Section 7080, supra, cousins german (first cousins) are related in the fourth degree. The child of a first cousin, commonly referred to as a "second cousin," as we have previously pointed out, would be another generation removed. Hence such person would be another degree removed or related in the fifth degree. Using the definition of second cousins—as having a common great-grandparent—the computation would ascend for three degrees to the common great-grandparent and descend three degrees to the second cousin who would thereby be related in the sixth degree. Likewise, third cousins would be related in the eighth degree. (People v. Clark, 16 N. Y. S. 473, 62 Hun 84.)

We conclude, therefore, that second cousins are related to each other in either the fifth or sixth degree, depending upon the definition used, and in no event is the relationship within the degrees prohibited by Section 456.2 of the Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General