

Opinion No. 17.**Nepotism—Civil Aeronautic's Administration—Instructors, Act does not apply to instructors under contract.**

Held: Instructors in Civilian Pilot Training Program employed under contract between school board and government agency not affected by Nepotism Act where present employment began before relative became member of school board.

Where there is no legal duty on the part of the board to terminate a contract of employment at the time a relative of an employee becomes a member of the board, there is no violation of the Nepotism Act in retaining such employee.

March 9, 1943.

Mr. Marshall Murray
County Attorney
Flathead County
Kalispell, Montana

Dear Mr. Murray:

I have your opinion rendered to the president of the board of trustees of the Flathead county high school in which you reach the conclusion the

board, under the provisions of the Nepotism Act, is prohibited from paying the salary of one of the instructors secured to teach various subjects under the civilian pilot training program, because of the relationship of such teacher to a member of the board.

The facts upon which your conclusion is based are as follows: The teacher in question was employed by the board under a contract between the school board and the Civil Aeronautic's Administration of the United States, some time in June of 1942; subsequently, and in January of 1943, a brother-in-law of this teacher became a member of the board of trustees; under the program the course of instruction for each class of trainees is of about two months' duration, when another class begins the training.

In view of the fact this question is of some importance and because, as I am informed, it is difficult to obtain competent instructors, I have made considerable inquiry into the facts surrounding the employment of instructors under the contract between the board and the governmental agency. I have done this also for the reason that, as in most questions of this nature, each case presented must be decided on the facts of that particular case and the law in question must be applied to such facts.

I am informed the Civil Aeronautic's Administration, an agency of the United States, enters into a contract with the board of trustees under which the agency provides the funds to purchase necessary material, equipment, and all facilities, and also transportation and maintenance of the trainees and salary of the instructors. This fund is placed on the county treasury and warrants drawn thereon by the board. The contract provides the board shall furnish the instructors. In other words, the instructors are employed by the board, with the approval of the agency. There is no definite term of employment mentioned in the contract. The following provisions of the contract, however, are pertinent here and in my opinion decisive of the question:

"Article 3. Instructors. (a) Unless otherwise directed by the Administrator, the Contractor shall provide and maintain at all times for each unit of five trainees or fraction thereof of the assigned quota receiving instruction under this contract, one

rated flight instructor holding a currently effective Commercial Pilot Certificate appropriate for such flight instruction issued by the Administrator.

(b) The Contractor shall provide the Administrator with the names of the trainees assigned to each flight instructor. Such instructor shall be responsible for the instruction of these trainees during the entire course. Unless otherwise directed by the Administrator, no more than five (5) trainees shall be assigned to one instructor. **No change or shift of instructors shall be effected except in case of sickness, death, the instructor leaving the employ of the Contractor, or similar causes which in the opinion of the Government are beyond the control of the Contractor.**" (Emphasis mine.)

I am informed that, before a change or shift of instructors may be effected, a request on Form ACA-811 (CPT-42) must be made by the contractor and approved by the agency. I am further informed that at the completion of each course (a period of about two months) the contractor (in this case the board) must furnish to the agency a certificate on Form ACA-540A (CPT-40). It is quite possible that, because of the information required to be given by the board in this certificate concerning instructors, the impression has been gained that the instructors are re-employed for each new course of training. The pertinent requested information is contained in paragraphs 3 (a), (b), (c), and (d), wherein it reads: "Each of the following instructors selected to teach . . . ' naming the particular subject. However, I am informed this certificate is required so the agency may know the school is maintaining the requisite instructional staff, as well as the requisite material and facilities. It is no part of the contract and in nowise modifies or changes the provisions of the contract. We must therefore be governed by the provisions of the contract quoted above.

This office has held there is no violation of the Nepotism Act where there is no legal duty to terminate a contract of employment of a road supervisor at the time a relative of the employee takes office as county commissioner. (Volume 16, Report and Official Opinions of the Attorney General, No. 204.)

Under the facts here considered, there is not only no legal duty to terminate the contract of employment with the instructor, but there is a definite prohibition against it in the contract itself.

It is therefore my opinion, under the facts appearing in the case here considered, there is no violation of the Nepotism Act by the board in paying the salary of the instructor whose brother-in-law is a member of the board of trustees.

Sincerely yours,
R. V. BOTTOMLY
Attorney General