

**Opinion No. 41****Nepotism—Clerk of District Court—Appointment of Deputy—  
Emolument, Position of**

**Held:** In a situation wherein the Clerk of the District Court resigns and his son is appointed to fill the vacancy, the son cannot appoint the father as a Deputy in such office without violating the provisions of the Nepotism Act.

July 26th, 1949.

Mr. Lawrence Persson  
County Attorney  
Broadus, Montana

Dear Mr. Persson:

You have submitted the following question for my opinion:

"A resigned as Clerk of the District Court. The County Commissioners appointed A's son, B to fill the vacancy. May B now appoint A as his deputy if the reason is to have A train and aid B until B is familiar with the work?"

The Nepotism Laws of the State of Montana were enacted as Chapter 12, Montana Session Laws of 1933, and are now contained in Sections 456.1 through 456.3, Revised Codes of Montana, 1935.

Section 456.1 defines Nepotism as follows:

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

Section 456.2 is as follows in part:

"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. . . ."

Section 456.3 provides penalties for violations of the Nepotism Act. It is not open to question that B could not appoint A permanently to a position of trust or emolument, regardless of merit. Opinions Number

117 and 179, Volume 15, Report and Official Opinions of Attorney General. Father and son are in the first degree of consanguinity and thus within the ban of the statute.

That the position under consideration is one of trust or emolument is also not open to question. Ballentines Law Dictionary, 2nd Edition, defines emoluments as follows:

"The profit arising from office or employment; that which is received as compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private."

A person who receives a salary as Deputy Clerk of Court certainly is in a position of emolument under this definition. The term emolument has a very broad definition as evidenced by the fact that in Opinion Number 201, Volume 19, Report and Official Opinions of Attorney General, it was held that a person employed in County work as a common laborer on an hourly basis was employed in a position of emolument.

The only remaining question is whether or not the Nepotism Act applies to a temporary job, i.e. one such as in the instant situation where the position is taken merely to train and aid the son for a period of time. In that connection I refer to Opinion Number 215, Vol. 21, Report and Official Opinions of Attorney General wherein the following language is used:

"The Nepotism Statutes do not refer merely to permanent positions but refer to any and all jobs, no matter whether permanent, temporary, ministerial or otherwise. It has been so held in Opinion No. 270, Vol. 15, Report and Official Opinions of the Attorney General."

I agree with these two opinions. The Nepotism Act makes no exceptions of any kind. It refers to "any position" and can only be interpreted as all inclusive.

It is therefore my opinion that in the factual situation you have described the son, B, cannot appoint his father, A, as a deputy without violating the provisions of the Nepotism Act.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.