

**Opinion No. 49****Nepotism—Relationship by Affinity—  
Appointments.**

**Held:** A person who is the niece of the wife of one of the members of the Board of County Commissioners may be appointed to fill a vacancy existing in the office of county assessor, without violating the nepotism statute. The parties are related by affinity in the third degree and therefore outside the scope of the nepotism statute which only prevents appointment when the parties are related in the second degree by affinity.

November 24th, 1951.

Mr. Manuel J. Roth  
County Attorney  
Garfield County  
Jordan, Montana

Dear Mr. Roth:

You have requested my opinion on the following question that has arisen in your County:

“May the Board of County Commissioners appoint a person to fill a vacancy existing in the office of county assessor, if the appointee is the niece of the wife of one of the members of the Board of County Commissioners?”

This question arises because of the nepotism statutes, which were enacted

to prevent the bestowal of political patronage by reason of relationship rather than merit. These statutes are Sections 59-518 to 59-520 R. C. M., 1947. Section 59-519, supra, makes it unlawful for any member of any board to appoint to any position of trust or emolument any person related to him within the fourth degree by consanguinity, or within the second degree by affinity.

Consanguinity is the relationship that exists between persons who have descended from the same stock or common ancestor. This relationship may be either lineal or collateral. It is lineal if one descends in a direct line from the other. It is collateral if the persons descend from the same stock, but a collateral relationship differs from a lineal relationship in that the persons do not descend from one another. See: Section 91-407, R. C. M., 1947, 8A Words and Phrases 178.

Affinity is defined as the tie which arises from marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. The rule for determining degrees of affinity is that the husband is related by affinity to the consanguines of his wife in the same degree that his wife is related to her consanguines by consanguinity, and vice versa.

There are two different ways of determining degrees of relationship by consanguinity. One is the common law method which was derived from canon law, and the other is the civil law method. Montana like most of the States of the union has adopted the civil law method of determination. Section 91-406, R. C. M., 1947. Section 91-410, R. C. M., 1947, gives the method of computation of relations in a collateral line. This section provides as follows:

"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 decedent 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 germaine in the fourth and so on."

Thus, in your case the wife of the

member of the Board of County Commissioner is related to her sister's daughter in the third degree by consanguinity. That is, from the wife to her father, who is the common ancestor, is one degree, from the father to the wife's sister is two degrees; and from the sister to her daughter is three degrees. The member of the board is therefore related to the prospective appointee by affinity in the third degree, because he is related by affinity to the blood relations of his wife in the same degree as the wife is related to them by consanguinity. Hence, I agree with your opinion that the appointment may be made without contravening the nepotism statutes as the parties involved are outside the scope of Section 59-519, supra.

Therefore, it is my opinion that since the niece of the wife of one of the members of the board of county commissioners is related to that member in the third degree by affinity, she may be appointed by the board to fill a vacancy existing in the office of county assessor without violating the nepotism statute as that statute only prohibits appointments of relatives within the second degree of affinity.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General