

## Opinion No. 21

## Nepotism—Liquor Store—Section 59-519, RCM, 1947

**Held: A state liquor vendor and his daughter may be simultaneously employed in the same liquor store and such employment does not violate Section 59-519, RCM, 1947.**

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July 16, 1957

Mr. J. E. Manning  
Liquor Control Board  
Helena, Montana

Dear Mr. Manning:

You have asked whether appointment of a retail liquor vendor's daughter as clerk in a retail liquor outlet violates Section 59-519, RCM, 1947.

Section 59-519, RCM, 1947, provides 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 . . ."

This section prohibits a person from "appointing" a relative, within the prohibitory degree, to any position of trust or emolument. If a vendor does not possess any appointive power, then a vendor's daughter may be employed in the same liquor store outlet without violating this statute.

Section 4-112, RCM, 1947, referring to the state liquor board, provides:

"The board shall have the following functions, duties and powers . . . (g) To appoint vendors, and also every officer, inspector, clerk or other employee, required for the operation or carrying out of this act, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient."

Section 4-113, RCM, 1947, provides:

". . . The power of the board . . . shall extend to and include . . . (b) Prescribing the duties of the officers, clerks and servants

of the board, and regulating their conduct while in the discharge of their duties."

Section 4-114, RCM, 1947, referring to the board, provides in part:

" . . . The board shall establish and maintain . . . one or more stores to be know(n) as 'state liquor stores' . . . the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees . . ."

Section 4-115, RCM, 1947, states that the sale of liquor shall be conducted under the supervision of a vendor in each liquor outlet. The vendor is responsible, under the direction of the Board, for carrying out this act and the regulations made thereunder so far as they relate to the conduct of such stores and the sale of liquor thereat. No power is given to the vendor to hire and fire personnel, nor is there any delegation of this power to the vendor.

The sole and exclusive power to appoint personnel in state liquor stores resides in the Liquor Control Board or the state liquor administrator, if the board should grant such power to that person.

In the light of these statutes, I conclude the employment of a retail liquor vendor's daughter in a state liquor store does not violate Section 59-519, RCM, 1947, since a vendor has no appointive power over state liquor board employees. The State Liquor Control Board alone may employ and discharge employees. Section 59-519, RCM, 1947, is violated only when a person is employed by the board who is related within the prohibitory degree to any member of the board.

It is therefore my opinion that Section 59-519, RCM, 1947, is not violated when a vendor and his daughter are simultaneously employed in the same liquor store since the appointment is made by the Liquor Control Board and not the vendor.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General