

Nepotism – A hazard for unwitting pols

A decade ago, a Missouri mayor of a city of about 200 souls paid her son-in-law \$100 to fix the wooden town sign.

The act cost her her office.

In *State v. Rhoads*, 399 S.W.3d 905 (Mo.App.W.D. 2013), the Missouri Court of Appeals upheld the trial court’s finding the mayor’s conduct violated the Missouri Constitution’s anti-nepotism provision, and removal from office was the result.

A hotline inquiry last month caused me to dig deeper. It turns out that Article VII, Section 6 of the Missouri Constitution’s proscription against it is both broader and stricter than I had imagined, and perhaps interesting implications for journalists covering public bodies.

The Missouri Constitution provides: “[a]ny public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.”

The legal reach of the phrase “within the fourth degree” is impressive. According to the Missouri Ethics Commission, this would mean a mayor could not hire their children, grandchildren, or great-grandchildren, or even great- great-grandchildren. No first cousins could be appointed, for instance. No great uncles or great nephews. And no one in between.

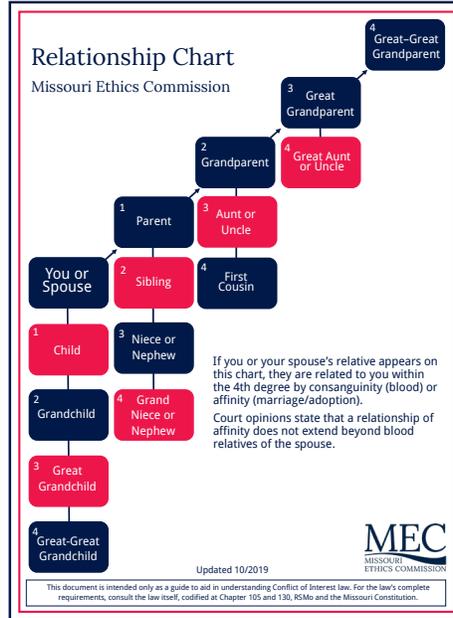
[The Missouri Ethics Commission has a good chart illustrating four degrees of separation on its website.](#)

In a smaller town with a few big extended families, that might create a sticky situation.

It doesn’t matter if the job or appointment is done at cost or even unpaid. The Rhoads decision noted that the Missouri Constitution makes no exception for free work by a relative.

It likely doesn’t matter if the paid person is an independent contractor.

And it doesn’t even matter that a public official’s vote is not decisive. If a relative casts any vote at all to hire a family member, they could run afoul of the Constitution. *State v. Shull*, 887



S.W.2d 397, 399 (Mo. banc 1994).

And while the case law is focused on public officials, it’s certainly worth noting that the Constitution also addresses employees who make nepotistic hires.

The breadth of this makes me wonder how often a Missouri civic employee or council member votes to hire a grand-niece to paint the next city mural, having no idea the Constitution was violated.

But what makes this even more interesting is this: The remedy is dramatic. The anti-nepotism statute’s use of the word “shall” necessitates forfeiture of office. Missouri courts have described this provision as “self-executing” – meaning that forfeiture of office happens automatically if the public official’s action violates Article VII, Section 6. *State ex rel. Gardner v. Carmody*, 618 S.W.3d 560, 564 (Mo. App. E.D. 2020). The implication here is that making a mistake, or being ignorant of the law, would be no defense.

Big consequences for the unwary. Something to keep an eye out for.



CALENDAR

July

31 — Mizzou Ticket Tradeout Forms Due Back to Missouri Press

August

19 — Deadline to Reserve a Sleeping Room for the Annual Convention and Tradeshow in Springfield

19 — Early Bird Registration Deadline for the 158th Annual Convention, Springfield

September

19-21 — Missouri Press’ Annual Convention, Springfield

22-28 — Missouri Photo Workshop, Kennett

October

17 — Missouri Photojournalism Hall of Fame Induction Ceremony, Columbia

17 — Ozark Press Association Annual Meeting, Willow Springs

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The website also has award nomination forms, board of director applications and much more.