

VOLUME NO. 33

Opinion No. 25

**NEPOTISM - board of trustees - teachers. Sections 59-519 and 75-4601,
Revised Codes of Montana, 1947.**

HELD: Since an additional member of a board of trustees is involved only in high school business, the fact that his brother is hired as a teacher in an elementary school within such high school district, does not violate the nepotism law.

July 2, 1970

Mr. Allen LeMieux
Jefferson County Attorney
Boulder, Montana 59632

Dear Mr. LeMieux:

You have requested my opinion on the following question: Is the nepotism law, section 59-519, R.C.M. 1947, violated if a teacher is granted a contract by the board of trustees of an elementary school district although the teacher's brother is an additional member of the board when it transacts business pertaining to the high school maintained by the participating elementary districts?

Since the brother of the teacher was elected to the board of trustees as an additional member, his duties are described in section 75-4601(b), R.C.M. 1947. That section provides in part:

“The additional members elected to the board of trustees of districts maintaining high schools, will take office immediately after qualifying and **shall participate on an equal basis with other members in all business transactions by the board of trustees, pertaining to the high school maintained by the districts.** Said additional elected members shall be entitled to vote on the selection of the district superintendent of schools.” (Emphasis supplied.)

The statute is quite clear that any additional member of the board of trustees shall participate only in business relating to the high school maintained by the elementary districts. The additional member has no authority to transact business relating to elementary schools and consequently does not have the power to hire or appoint teachers in the elementary schools.

Section 59-519, R.C.M. 1947, provides in part that:

“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; except that the provisions of this section

shall not apply to sheriffs in the appointment of females as cooks and/or matrons. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.”

Our statute prohibiting nepotism restrains only the appointing power. *State ex rel. Kurth v. Grinde*, 96 Mont. 608, 32 P.2d 15.

THEREFORE IT IS MY OPINION that the granting by a board of trustees of a contract to a teacher in an elementary school, whose brother is an additional member of the board when it transacts business pertaining to the high school maintained by such elementary districts, does not violate the nepotism law.

Very truly yours,
ROBERT L. WOODAHL
Attorney General