

## Opinion No. 63-114

September 6, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** K. K. Miller, Chief New Mexico State Police Santa Fe, New Mexico

### QUESTION

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What legal restrictions regarding nepotism are applicable in respect to the hiring of employees of the New Mexico State Police Department, and particularly, we request interpretation of the nepotism provisions contained in Laws 1963, Chapter 100.

#### CONCLUSION

See Analysis.

### OPINION

#### {\*256} ANALYSIS

In resolving the question presented it is necessary to review three statutory provisions which bear in part upon the question presented for determination. Section 5-1-10, N.M.S.A., 1953 Compilation, is a general State statute pertaining to nepotism and sets out:

"Nepotism prohibited -- Exceptions. -- It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ as clerk, deputy or assistant, {\*257} in such office or position, whose compensation is to be paid out of public funds, **any person related by consanguinity or affinity within the third degree to the person giving such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment;** Provided, that this act (5-1-10, 5-1-11) shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$ 600 or less a year, nor shall it apply to persons employed as teachers in the public schools." (Emphasis supplied).

Section 5-1-11, N.M.S.A., 1953 Compilation, specifies that no person unlawfully employed in violation of Section 5-1-10, supra, shall be paid or receive any compensation from public funds, and "such employment shall be null and void, and the person or persons giving such employment, together with his or their bondsmen, shall be liable for any and all moneys so unlawfully paid out."

In addition to the above provisions, Section 39-2-6, N.M.S.A., 1953 Compilation, contained in the laws specifically pertaining to the State Police, prohibits nepotism in the appointment of members of the State Police. This Section was amended by Laws 1963, Chapter 100 to read in applicable part as follows:

"Members of the New Mexico State Police, except the chief must possess the following qualifications;

G. Nepotism shall not be practiced in the appointment of members of the State Police, and no person shall be commissioned a member of such police who is related by blood or marriage within the fourth degree to any member of the police board (or to any other members of the State Police)."

The 1963 Amendment to Section 39-2-6, *supra*, deleted the language from the prior law which is contained in brackets as set out above. The effect of this amendment was to liberalize the law in respect to what persons may be hired. As the statute now reads those persons related by blood or affinity within the fourth degree to any member of the **police board** may not be legally hired.

Under the former law, if a brother or other relation was already a **member of the police board or state police** no other person related within the fourth degree could be employed. See Attorney General's Opinion No. 58-170, dated August 14, 1958, and wherein it was held that a nephew of the wife of a state policeman cannot be appointed to the state police force. Under the 1963 amendment, the legislature has removed from the State Police Statutes the nepotism prohibition against hiring individuals related to state police personnel who are **not** members of the State Police Board.

Careful review of Section 5-1-10, *supra*, leads us to the conclusion that this general state statute pertaining to nepotism is not applicable in regard to the hiring of state police personnel, but that Section 39-2-6, *supra*, contained in the Statutes pertaining specifically to the State police is instead controlling.

Pursuant to Section 39-2-4, N.M.S.A., {258} 1953 Compilation, the New Mexico State Police Board employs all State police personnel, including the chief, officers, patrolmen, and all clerical personnel. By law, all new appointees to the State police force must attend a school of instruction as specified in Section 39-2-15, N.M.S.A., 1953 Compilation, and then, pursuant to Section 39-2-9, N.M.S.A., 1953 Compilation, police personnel must serve a probationary period of two years during which time they may be removed or suspended at the discretion of the State Police Board. Section 39-2-9, *supra*, sets out in part:

"At the end of the two years of satisfactory service and upon recommendation of the chief, the appointee may receive a permanent commission as a member of the state police. . . ."

Section 39-2-12, N.M.S.A., 1953 Compilation authorizes the State Police Board to require the chief "and such other members of the State police or clerical employees as the board may direct" to give bond in such amount as the board may designate.

Since the board is by law the authority which may prescribe a bond for state police personnel, and since the board is the actual hiring authority for all employees of the State police, it is therefore our opinion that Section 5-1-10, supra, would not preclude the State Police Board from employing persons related by blood or consanguinity to any other member of the State police force if in the discretion of the Board the person sought to be employed was otherwise qualified.

We wish to emphasize however, that in accordance with Section 39-2-6, supra, in no event may any person be employed by the State Police Board, if the individual is related by blood or marriage within the fourth degree to any member of the State Police Board.

By: Thomas A. Donnelly

Assistant Attorney General