Opinion No. 47-5040

June 16, 1947

BY: C. C. McCULLOH, Attorney General

TO: T. E. Mears, Jr. Assistant District Attorney Portales, New Mexico

*{*60}* In your letter dated June 12, 1947, you refer to Section 10-110 of the 1941 Compilation, pertaining to anti-nepotism and inquiring what method is to be used in computing degrees of relationship and specifically whether or not first cousins come within the provisions of the law.

Section 10-110 prohibits the employment as a clerk, deputy or assistant of any person related by consanguinity or affinity to the person giving such employment within the third degree unless such employment shall first be approved by the officer, board, council or commission having the duty of approving the bond of the person giving the employment, and provided that the act shall not apply where the compensation is at the rate of $ 600.00 or less a year, or to persons employed as teachers in the public schools.

In dealing with degrees of relationship relative to estates of decedents, in Section 31-103, it is apparent that the Legislature has adopted the civil law rule when it says that brothers are of the second degree and sons of these are of the fourth degree, which means that cousins would be considered in the fourth degree of relationship. I believe that is the intention of the Legislature under Section 10-110.

In an Idaho case entitled Barton v. Alexander, 148 P. 471, the Idaho Court distinguishes the rule under the common or canon law and that under the civil law and states that practically all of the states in the union follow the civil law, quoting Kents Commentary, 14th Edition, bottom of page 473.

Under the civil law rule cousins do not come within the third degree and therefore a public officer is not prohibited from employing a cousin as deputy or assistant.