

Opinion No. 49-5247

September 15, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable W. T. Scoggin, Jr. District Judge Third Judicial District Las Cruces, New Mexico

{*87} I have your letter of August 30, 1949, asking whether or not § 10-110 of the 1941 Compilation is applicable to appointments made by you.

§ 10-110, supra, is known as the Anti-Nepotism Statute and prohibits the employment of public officials of any person related to the official within the third degree. The act prohibits such employment by "any person elected or appointed to any public office {*88} or position under the laws of this state or by the virtue of any ordinance of any municipality thereof."

It would seem to be clear that a person holding the office of District Judge is a person elected or appointed to a public office under the Laws of the State of New Mexico and, therefore, the act would be applicable to any appointments made by you which are prohibited by the statute. You will note that the act applies only to clerks, deputies or assistants in such office or position. There would be no appointments of that nature in the office of District Judge. However, by virtue of the position as District Judge, appointments are made in the office of the Clerk of the Court. It is my opinion that the statute would apply to such appointments.

The statute further provides that such appointments may be made if approved by the officer or board whose duty it is to approve the bond of the person giving the employment. Since the District Judge gives no bond, there would be no official or board who could approve such an appointment.

As the statute applies to **all** public officials elected or appointed under the laws of the state, if the person wishing to make such an appointment is not required to furnish bond, there is no manner in which such an appointment can legally be made.