

## **Opinion No. 58-170**

August 14, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A Dickson, Assistant Attorney General

**TO:** Chief Joseph P. Roach, New Mexico State Police, P. O. Box 919, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

In keeping with the provisions of Section 39-2-6 (g), N.M.S.A., 1953 Compilation, is it permissive for an applicant to be considered for the New Mexico State Police Force, whose father's sister is married to an officer of said force.

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

The statutory provisions governing the qualifications of members, in part, of the New Mexico State police are found in Section 39-2-6 (g). Specifically this law provides:

"Members of the New Mexico State Police, except the Chief of the State Police, 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 member of the state police."

Instantly it becomes apparent that in giving answer to the inquiry stated a determination must be made as to the relationship as exists between a present member of the state police and a nephew of such policeman's wife.

Under the laws of this state and as is the situation in a majority of the jurisdictions of this country, the Civil Law rule pertaining to descent and relationship of families by consanguinity or affinity is followed. Attorney General's Opinion No. 5040, dated June 16, 1947. There is provided, in part, by Section 29-1-3 that:

"Relationship in the collateral line in its computation is reckoned by the number of persons begotten, not counting the trunk, to which they are referred as having descendent from it, but which are separate laterally, as branches pendant from that trunk; for example, brothers are of the second degree, because they are two (2) persons, begotten by and descended from the same trunk, or if the number of brothers be greater, the comparison is always one (1) with another; the sons of these are of the fourth degree, . . ."

And by Section 29-1-4, there is provided in part:

"The relation of affinity is contracted by the union of man and woman in the bonds destined for the propagation of the species, and its computation is in the same order as the relation of consanguinity in respect to the direct line, in descendants and ascendants, and in respect to the collateral line, and it extends only to the eighth degree of civil computation, . . ."

Accordingly, and following the Civil Law rule, it may be said that the officer, as herein considered, and his wife stand one and the same, in relation to the collateral line relationship of the wife. This being so, the wife and her brother stand as to one another in the second degree. And continuing one (1) degree further to the son of the aforesaid brother, being also the nephew of the herein considered officer's wife, we find that a prohibited relationship degree exists, e.g., a third degree separation.

Therefore it is our opinion, in keeping with the requirements of Section 39-2-6, supra, that the considered applicant is prohibited from being appointed or commissioned as an officer of the New Mexico State Police.