

Opinion No. 38-2030

August 15, 1938

BY: FRANK H. PATTON, Attorney General

TO: Hon. G. L. Reese, Jr. District Attorney Carlsbad, New Mexico

{*263} You request our opinion as to whether or not Chapter 50 of the {*264} Laws of 1925 (Sec. 96-136, 1929 Comp.) is unconstitutional by reason of the fact that the title of the Act merely states "An Act Relating to Nepotism."

I agree with you that the title could not have been more generally and broadly stated. It does not even indicate whether the **object** was to prohibit, encourage or regulate nepotism in public office or nepotism in general.

However, our Constitution, unlike many others, requires not the object of the act to be stated in the title but the subject. The subject of the Act is nepotism.

In *State vs. Ingalls*, 18 N.M. 211, it is held, quoting from *Cooley on Constitutional Limitations*, that the generality of a title is no objection to it so long as it is not made a cover to legislation incongruous in itself. It is further stated in that case that the true test of the validity of a statute is "Does the title fairly give such reasonable notice of the **subject matter** of the statute itself as to prevent the mischief intended to be guarded against?" -- that is to say, to prevent surprise and fraud.

Nepotism is defined by Webster's International Dictionary to be:

"Favoritism shown to nephews and other relatives; bestowal of patronage by reason of relationship, rather than merits. -- 45 C. J. 1383.

This is undoubtedly the popular understanding of that word.

It is my opinion that any member of the Legislature reading this title would immediately know that favoritism shown to relatives in public office was the subject of the Act, and would be placed on inquiry as to the contents of the bill in that respect.

It is said that the title in legislative bills is of the nature of a label, its purpose being to give notice of the subject of the Act, that it is only to the contents of the statute that the title is required to point and not to its results, and that a title is bad only if the average person reading it would not be informed of the purpose of the enactment **or put on inquiry as to its contents**. Statutes, 59 C. J., Sec. 387. Further, it is fundamental that a statute should not be held invalid unless the question is free from doubt. Statutes, 59 C. J., Sec. 390.

As you point out, there is considerable doubt as to the sufficiency of this title, but I cannot say in view of the above that its invalidity is free from all doubt. Therefore, I do not believe this office should hold the statute to be unconstitutional, and it is the opinion of this office that it is not unconstitutional.

We searched carefully in the office and were unable to find any prior opinions on the subject of nepotism.

In my research at the library, I found a case which, though discussing the title of such an act, is not in point but is quite interesting. That case is Wayne Company vs. Steel, 237 N. W. 288.

Since it is our opinion that the above statute should be considered as constitutional, it follows that Chapter 63 of the Laws of 1919 is repealed.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.