

# MAINE STATE LEGISLATURE

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July 15, 1975

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5 M.R.S.A. § 558

This will respond to your June 30, 1975, memo concerning the statute referred to above.

In Maine, for purposes of descent and distribution of decedent's estates, degree of kindred is computed according to the rules of civil law. 18 M.R.S.A. § 1002. We believe that the Legislature intended that degree of kindred, for the purposes of 5 M.R.S.A. § 558, also be computed according to the rules of civil law. 67 C.J.S. Officers, § 22 at 133.

Under the civil law system of computation, the degree of kindred is the total of (1) the number of the steps, counting one for each generation from the appointing or promoting State official up to the nearest common ancestor of such official and the applicant for employment or employee being considered for promotion, and (2) the number of steps from the common ancestor down to the applicant for employment or employee being considered for employment. 26A C.J.S. Descent and Distribution, § 22 at 562.

For example, with reference to the chart below, X, a State official, ordinarily makes the final decisions as to which applicant will be hired and which employee will be promoted. Maternal Cousin is an applicant for employment and Great Uncle is eligible for a promotion. Pursuant to the nepotism restrictions of 5 M.R.S.A. § 558, X must determine if he may lawfully, in part or wholly, make the decision to approve or deny Maternal Cousin's application for employment and Great Uncle's promotion. By applying the civil law rule for computation of degree of kindred, X first locates the ancestor which he and Maternal Cousin have in common. As you will note that ancestor is Maternal Grandparent. X counts each step (generation) from himself to Maternal Grandparent (Step #1 Mother-Father; Step #2 Maternal Grandparent), and then each step from Maternal Grandparent, the common ancestor, down to Maternal Cousin (Step #1 Maternal Uncle and Step #2 Maternal Cousin). X then totals the number of steps (2 plus 2) and notes that he and Maternal Cousin are related in the 4th degree. Section 558 specifically forbids X from participating in an employment decision involving a relative

Maternal Great Grandparents

(3) Paternal Great Grandparents

(2) Maternal Grandparents

(2) Paternal Grandparents

(4) Great Uncle  
(Employee being promoted)

(3) Maternal Uncle

(1) Mother & Father

Paternal Uncle

(4) Maternal Cousin  
(Applicant Seeking Employment)

X  
(State official making Promotion or Appointment Decision)

Paternal Cousins

Paternal Cousins  
(once removed)

within the fourth degree. If you will perform the same computation for X and Great Uncle, you will find that X and Great Uncle are also related in the fourth degree and that X cannot, under § 558, participate in the final decision on Great Uncle's promotion.

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RJS/ec