

MAINE STATE LEGISLATURE

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Y Educational Teacher Conflicts of 19/1001
20 M.R.S.A. 472
20 M.R.S.A. 302

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
October 18, 1977

Honorable Peter W. Danton,
7 Beach Street,
Saco, Maine 04072

Dear Senator Danton:

You have inquired as to the constitutionality of the statute which prohibits the spouse of a member of a school committee from being "employed as a full-time employee in any public school in said town or contract high school or academy located within a supervisory union of which he is a member of the joint committee." 20 M.R.S.A. § 472 (See 20 M.R.S.A. § 302 for a similar prohibition against the spouses of members of a school administrative district's board of directors).

It is my opinion that the limited prohibition against nepotism set forth in §§ 302 and 472 is not unconstitutional even though it is directed to a small class of people. These statutes reflect a proper exercise of the state's "police power" since their purpose is to preserve and to promote the "public good" by their limited prohibition against nepotism. See Ace Tire Co., Inc. v. Municipal Officers of the City of Waterville, 300 A2d 736 (Me., 1973); State v. Old Tavern Farm, 133 Me. 468 (1935). The above principles of law are well set forth in an opinion of the Supreme Court of Idaho:

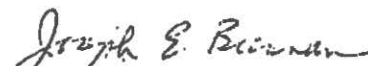
". . . we believe it to be within the legislative power to prohibit officers from appointing persons to office related to them by affinity or consanguinity, in the interest of efficiency

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in public service and for the best interests of the people and of the municipal subdivisions of the state, and as a legitimate police regulation, in regard to which the law-making power may legislate, and reasonable legislation in regard thereto is constitutional and enforceable." Barton v. Alexander, 148 P. 471, 475 (Idaho, 1915).

Since spouses fall within the category of persons related by affinity to the members of boards of directors or members of school committees, the anti-nepotism prohibition set forth in §§ 302 and 472 limited to the spouses of those members is a reasonable legislative prohibition and is not unconstitutional.

Respectfully yours,


JOSEPH E. BRENNAN
Attorney General

JEB:we
cc: Waldemar G. Buschmann