

Opinion No. 2012-089

September 7, 2012

The Honorable Steve Harrelson
State Senator
300 N State Line Avenue
Texarkana, Arkansas 71854

Dear Senator Harrelson:

You have requested my opinion regarding A.C.A. § 14-47-135, which applies to cities organized under the manager form of government, where the supreme legislative and executive authority of the city is vested in a board of directors.¹ Section 14-47-135 bars the city's employment of persons related to board members as follows:

No person shall hold an appointive position or employment in the pay of the city if that person is *related by blood or marriage in the third degree* either to a member of the board of directors or to the city manager. Provided, however, this prohibition shall not prevent a person who holds an appointive or employment position with the city at the time the person's relative becomes city manager or a member of the board of directors from continuing in that position or employment.²

Your specific question pertains to an applicant for city employment who is the step-daughter-in-law of a city board member. The question, therefore, is whether a step-mother-in-law and step-daughter-in-law are "related by marriage" within the meaning of this statute.

¹ A.C.A. § 14-47-109(a)(2) (Repl. 1998).

² A.C.A. § 14-47-135 (Repl. 1998) (emphasis added).

RESPONSE

According to my research, the answer to this question is “no.” While the applicant’s husband is clearly “related by marriage” to the board member, within the meaning of A.C.A. § 14-47-135, it seems that the applicant is not. As explained further below, courts have generally held that step-relations other than the relationship of a step-child and step-parent do not fall within statutes such as this.

DISCUSSION

For purposes of statutes such as A.C.A. § 14-47-135, the words “related by marriage” refer to an “affinity relationship.”³ “Affinity” has been defined by the Arkansas Supreme Court as “the tie which arises from marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband.”⁴ *Black’s Law Dictionary* similarly defines “affinity” as “[t]he relations that one spouse has to the blood relatives of the other spouse; relationship by marriage.”⁵

In sum, and most significant for purposes of your particular question, affinity only extends to a spouse and the spouse’s blood relatives. In other words, a relationship by marriage, for purposes of A.C.A. § 14-47-135, exists only between each spouse and the blood relatives of the other spouse.⁶ A stepparent-stepchild relationship clearly is such a relationship. As stated by one of my colleagues:

Degrees of relationship by “affinity” are computed as are degrees of relationship by “consanguinity” [i.e., blood]. The doctrine of

³ See 41 Am.Jur.2d *Husband and Wife* § 4 (2012) (noting that “affinity relationships arise out of marriage....”); compare A.C.A. § 16-31-102(b)(1) (Supp. 2001) (disqualifying a person from service as a juror if he or she is “related to any party or attorney in the cause within the fourth degree of consanguinity [i.e., blood] or affinity[.]” (Emphasis added)).

⁴ *Mitchell v. Goodall*, 297 Ark. 332, 334, 761 S.W.2d 919 (1988). See also 41 Am. Jur. 2d *Husband and Wife*, *supra* n. 3 (referring to the so-called “affinity doctrine,” under which “each spouse is related by affinity to the blood relations of the other in the same degree as the other,” and noting that “[t]he affinity doctrine is based on the common-law axiom that a husband and wife are in legal contemplation but one person.”)

⁵ *Black’s Law Dictionary* 63 (Bryan A. Garner, ed., 8th ed., West 2004).

⁶ Cf. *State v. Thomas*, 351 Mo. 804, 174 S.W.2d 337, 338 (1943) (“[A] kinship by affinity—arising through marriage—exists only between each spouse and the blood relatives of the other spouse.”).

affinity grew out of the canonical maxim that marriage makes a husband and wife one. The husband has the same relation, by “affinity,” to his wife’s blood relatives as she has to them by “consanguinity” and vice versa. *A stepparent-stepchild relationship is one based on “affinity” which is a connection existing in consequence of marriage between each of the married persons and the kin of the other.*⁷

While a step-parent is therefore “related by marriage” to his or her step-child as contemplated by A.C.A. § 14-47-135, other step relations would not be included under the concept of “affinity” that this language embraces. Indeed, this is the general view of the courts. That is, while courts recognize a relationship of affinity between a step-child and step-parent, they generally have not expanded it to other step relations.⁸ As stated by one court:

Affinity is the product of marriage, the relationship between the husband and the consanguine of the wife, or between the wife and the consanguine of the husband. *A husband is not related to the affines of his wife....* [Citation omitted].⁹

Turning to your specific question, then, it seems clear that the city board member is “related by marriage” to the *husband* of the applicant for city employment in this situation (her step-son). And the applicant is “related by marriage” to the board member’s husband (her father-in-law). But it seems equally clear that the

⁷ 1985-86 Ind. Op. Att’y Gen. 191 (emphasis added). See also *State v. Serio*, 670 So.2d 1273 (La. Ct. App. 1996); *People v. Armstrong*, 212 Mich. App. 121, 536 N.W.2d 789 (1995); *Flitton v. Equity Fire and Cas. Co.*, 1992 Ok. 2, 824 P.2d 1132 (1992); *State ex rel. Mo. Hwy. Transp. v. Johnson*, 658 S.W.2d 900 (Mo.App.W.D. 1983); *Petition of United States*, 418 F.2d 264, 271 (1st Cir. 1969) (citing *Depositors Trust Co. v. Johnson*, 222 A.2d 49 (Me. 1966)).

⁸ *State Farm Mut. Auto Ins. Co. v. Byrne*, 156 Ill.App.3d 1098, 1101, 510 N.E.2d 131 (1987 (citing *Petition of United States*, *supra* n. 7)).

⁹ *Flitton*, *supra* n. 7, 824 P.2d at 1133. Accord *State v. Peterson*, 110 Utah 413, 174 P.2d 843 (1946). See also *State ex rel. Mo. Hwy. Transp. v. Johnson*, *supra*, n. 7, 658 S.W.2d at 905, quoting *State v. Hooper*, 140 Kan. 481, 37 P.2d 52, 64 (1934) as follows:

Marriage will relate the husband, by affinity, to the wife’s blood relations, but will not relate the husband’s brother to any of her relations. *The husband of the juror’s stepdaughter was not related to the juror, but only to the juror’s wife.*

(Emphasis added.) The statute at issue in *State v. Hooper* disqualified from juror service any person related by blood or marriage to a party in the case.

board member and the applicant are not “related by marriage” for purposes of section 14-47-135. It might seem at first glance that they are so related by virtue of the marriage between the board member and the father of the applicant’s husband. But I believe it becomes apparent upon further examination that this is not the case because according to the weight of authority, “related by marriage” under a statute such as this refers only to the *relationship that one spouse has to the blood relatives of another spouse*. As applied to the situation at hand, this means that the applicant’s husband is related by marriage to the board member, but the applicant is not.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh