

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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September 19, 2000

Opinion No. 00-143

Telephone Cooperative By-Laws

QUESTIONS

1. Does the by-law of the North Central Telephone Cooperative quoted below prevent the husband of an incumbent member's sister-in-law from nomination as a director?
2. Is such a by-law legal?

OPINIONS

1. We think a court would conclude that the incumbent director and the member who wishes to be nominated as a director are not "closely related" within the meaning of this by-law. Therefore, the by-law does not prevent this individual from nomination as a director.
2. Because of our answer to Question 1, Question 2 is moot.

ANALYSIS

This opinion concerns the interpretation of a by-law of the North Central Telephone Cooperative. Although the opinion request does not include a complete copy of the charter, it is assumed that this cooperative is organized and operates as a telephone cooperative under Tenn. Code Ann. §§ 65-29-101, *et seq.* Section 4.3 of the cooperative's by-laws provides in relevant part:

Any member shall be eligible to be nominated, elected, and remain a director of the Cooperative who:

* * * *

(3) Is NOT closely related to an incumbent director or an employee of the Cooperative. As used here, "closely related" means a person *who is related to the principal person by consanguinity or affinity, to the second degree or less* — that is a person who is either a spouse, child, grandparent, grandchild, parent, brother, sister, by blood or in law, of the principal. However, no incumbent director shall lose eligibility to remain a director

or to be reelected as a director if he becomes a close relative of another incumbent director or of a Cooperative employee because of a marriage to which he was not a party; neither shall an employee lose eligibility to continue in the employment of the Cooperative if he or she becomes a close relative of a director because of a marriage to which he or she was not a party.

By-Laws, Section 4.3(3) (emphasis added). A member of the cooperative wishes to become a director. The member is married to the sister of the husband of an incumbent director. The question is whether this member is “closely related” to the incumbent director within the meaning of this by-law.

The term “consanguinity” refers to the relationship of persons of the same blood or origin. *Black’s Law Dictionary* 299 (7th ed. 1999). The term “affinity” can refer to the relation that one spouse has to the blood relatives of the other spouse, or relationship by marriage; or any familial relation resulting from a marriage. *Black’s Law Dictionary* 59 (7th ed. 1999). The Tennessee Supreme Court has held that two individuals who married sisters are not related by consanguinity or affinity to one another. *Hume v. Commercial Bank*, 78 Tenn. 1 (Tenn. 1882). That case involved interpretation of a Tennessee statute prohibiting a judge from sitting “in any cause where he is related to either party by consanguinity or affinity within the sixth degree computing by the civil law . . .” A judge of the Tennessee Supreme Court and one of the parties in an action were married to sisters. The Court noted that the two were not related by consanguinity and then discussed relationship by affinity. The Court stated:

Affinity, as distinguished from consanguinity, signifies the relation which each party to a marriage, the husband and the wife, bears to the kindred or blood relations of the other. The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other. . . . The relationship by affinity does not extend further . . . It is therefore said by the civilians [that is, authorities on civil law] that if a brother and sister marry two persons not related, and the brother and sister die, the widow and widower may intermarry; for though a man is related to his wife’s brother by affinity, *he is not so to his wife’s brother’s wife*. It must be equally true that although a man is related to his wife’s sister by affinity, *he is not so to [his] wife’s sister’s husband*. . . . The same result follows necessarily from the fact that the degrees of affinity are computed by the civil law in the same way as those of consanguinity. The degree of relation by consanguinity of a husband or wife to a third person is computed by counting up to the common ancestor, and down to the related party.

78 Tenn. at 1 (emphasis added). We think a court would conclude that the by-law incorporates the technical meaning of the term “affinity” interpreted by the courts of this State. Under this interpretation, the incumbent director of the cooperative is related by affinity to the second degree to the blood sister of her husband. She is not related by affinity to that sister’s husband. For this reason, we think a court would conclude that the incumbent director and the member who wishes to be nominated as a director are not

“closely related” within the meaning of this by-law.

The second question is whether the by-law is legal. Because we have concluded that the by-law does not prevent the member from being nominated as a director, this question appears to be moot.

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