

PROSECUTING ATTORNEYS:)
SCHOOL DISTRICTS:)

School district may employ attorney.
Prosecuting Attorney may defend school
district in civil actions, in his private
capacity.

June 14, 1947



Honorable Lane Harlan
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Harlan:

This is in reply to your letter of June 5, 1947,
requesting an opinion from this department, which reads as
follows:

"Lowland School District is bringing
suit for a declaratory judgment against
Wooldridge School District to ask that
an election held on February 5 annexing
Lowland District with Wooldridge District
be declared null and void.

- "1. The question is can Wooldridge
School District use school funds
to employ an attorney for this
particular suit?
- "2. Assuming that the district can
use school funds for this pur-
pose can I as prosecuting attor-
ney be retained by said Wooldridge
School District to defend the suit
and accept the money from the
school fund?"

In answering your first question we would direct
your attention to an opinion of this department rendered to
Honorable Marshall Craig, Prosecuting Attorney of Mississippi
County, under date of November 14, 1946, a copy of which is
enclosed, holding that directors of common school districts

may employ attorneys to defend themselves against a mandamus action and pay such attorneys out of the school money so long as they act in good faith in refusing to do the things sought to be compelled by such mandamus action. We submit that said opinion is authority for the ruling that a school board may employ attorneys when situations arise which make it necessary for the school district to have the services of an attorney. It follows, of course, that said attorneys should be compensated from school money.

With respect to whether a school district may employ the prosecuting attorney of the county for the purpose of defending a suit against the district, we must determine whether such employment is incompatible with the official duties of the prosecuting attorney. In an opinion rendered to Honorable George A. Spencer, Prosecuting Attorney of Boone County, under date of September 4, 1943, this department ruled that a prosecuting attorney is not authorized or required to render legal services in his official capacity as prosecuting attorney to the school districts in his county.

Section 12928, R. S. Mo. 1939, provides that a prosecuting attorney may not accept employment by any party other than the state, except in civil cases. It is as follows:

"It shall be unlawful for either of the officers specified in the preceding section, during the term of office for which he shall have been elected or appointed and qualified, to accept any employment by any party, except in civil cases, other than the state of Missouri. Any violation of the provisions of this section shall be deemed a misdemeanor, to be punished as in this act prescribed."

Under the provisions of Section 12944, R. S. Mo. 1939, a prosecuting attorney is required to prosecute or defend all civil cases in which the county is interested. It reads, in part, as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the

county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto: * * *

According to the above provisions a prosecuting attorney is permitted, in his private capacity, to prosecute or defend any civil action in which the county or state is not interested. It is clear then that the employment by a school board of a prosecuting attorney for the purpose of defending the school district in a civil action, is not incompatible with the official duties required to be exercised by the prosecuting attorney.

Conclusion

Therefore, it is the opinion of this department that the school district may employ attorneys when a situation arises which makes such action necessary. It is further the opinion of this department that a prosecuting attorney may accept employment, in his private capacity, from a school district in his county for the purpose of defending a civil action against said school district, provided neither the county nor the state is interested in such suit.

Respectfully submitted,

DAVID FONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General