

COUNTY SUPERINTENDENT:
OFFICERS:
COMPATIBILITY OF OFFICES:
TEACHERS:

1. The capacities of county superintendent and public teacher are incompatible.
2. If a county superintendent accepts employment as a public school teacher he ipso facto vacates his office as county superintendent.
3. If the office of county superintendent is vacated by acceptance of a second incompatible position, the county superintendent's right to compensation ceases and also the county court does not have authority to employ clerical assistance for the county superintendent's office.

December 30, 1964

OPINION No. 350

Honorable Marvin L. Dinger
Prosecuting Attorney
Iron County
Ironton, Missouri



Dear Mr. Dinger:

This official opinion is issued upon your recent request. You inquire:

"1. Does the performance of teaching by a County Superintendent of Schools constitute abandonment of his job as County Superintendent of Schools, merely a suspension of the job of Superintendent of Schools for the period of the teaching employment or have no effect on his job as County Superintendent of Schools?"

"2. What, if any, effect does the performance of teaching by the County Superintendent of Schools have on the County Court to pay the County Superintendent of Schools, both for his work and for secretarial help?"

I.

Generally one person may hold several public offices simultaneously unless prohibited by statute or constitution, or by the common-law rule against simultaneous holding of incompatible offices. It is our conclusion that county superintendents are prohibited by both statute and common law from simultaneously serving as public school teachers.

Section 167.100, RSMo 1959, provides:

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"During his term of office the county superintendent shall not engage in teaching or in any other employment that interferes with the duties of his office as prescribed by law. * * * "

If there should be any doubt as to Section 167.100 flatly prohibiting a county superintendent to simultaneously engage in teaching, we will further consider the question of common law incompatibility.

At common law, offices are held to be incompatible when (a) one is subordinate to the other, (b) one has supervisory power over the other, (c) one has power of appointment or power of removal over the other, or (d) one audits the other's accounts. 67 C.J.S., Officers § 23, p. 135; State v. Wittmer, Mont., 144 Pac. 648, 649; Opinion 167 issued April 19, 1963, to Daniel V. O'Brien (copy enclosed).

The duties of a county superintendent are defined by our statutes. He has the power to assign students from one school to another more accessible (Section 161.093 RSMo 1963 Cum. Supp). If a county superintendent were an employee of a school district affected by an assignment, his interests in making the assignment could be in conflict. The county superintendent is also secretary of the county board of education (Section 165.660 RSMo). He has the power to participate in the arbitration of boundary disputes and select other arbitrators (Section 165.170 and 165.294). He has the power to fill vacancies on school boards (Sections 165.217 and 165.317). He may cast a tie-breaking ballot at the request of three members of a school board (Section 165.320).

Other examples can be cited but the above should sufficiently demonstrate that the capacities of county superintendent and public school teacher are not compatible.

We are aware that in some counties of our state some or even all of the school districts may not be under the supervision of the county superintendent in every respect. In certain districts he has been relieved of the duty to supervise transportation (Section 167.050) and the duty to assist in the preparation of budgets (Section 167.130 et seq.). However, the fact that a county superintendent might seek employment as a teacher of a school district where some of his duties have been transferred to others, does not change our conclusion, because every county superintendent has certain duties which apply to every school district regardless of its form of organization. Examples of these duties were mentioned above.

Although no case of this nature has been presented to the courts of Missouri, courts of other states have held these two capacities

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incompatible. Knuckles v. Board of Education of Bell Co., Ky., 114 S.W.2d 511; Richardson v. Bell County Board., Ky., 177 S.W. 2d 871.

Therefore, both by statute and common-law standards a county superintendent cannot simultaneously be a public school teacher.

II.

The effect upon the first office of acceptance of a second incompatible office has been clearly enunciated by the Supreme Court of Missouri.

"The rule at common law is well settled that where one, while occupying a public office, accepts another, which is incompatible with it, the first will ipso facto terminate without judicial proceeding or any other act of the incumbent. The acceptance of the second office operates as a resignation of the first. * * * Where the holding of two offices by the same person, at the same time, is forbidden by the constitution or a statute, the effect is the same as in case of holding incompatible offices at common law. In such case the illegality of holding the two offices is declared by positive law, and incompatibility in fact is not essential. In each case the holding of two offices is illegal, it is made so in one case by the policy of the law, and in the other by absolute law. In either case the law presumes the officer did not intend to commit the unlawful act of holding both offices, and a surrender of the first is implied. * * * "State ex rel. Walker v. Bus, Mo., 36 S.W. 636, 637.

Therefore, if a county superintendent accepts employment as a public school teacher he ipso facto vacates his office as county superintendent.

III.

As to your second inquiry: Since a county superintendent is compensated as an incident of his office and for the performance of official duties, it follows that his right to compensation terminates when he vacates his office and ceases to have official duties. State ex rel. Owens v. Draper, 45 Mo. 355.

As to the payment of clerical hire when the office of county superintendent is vacant, note Opinion No. 21 of this office issued

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October 23, 1959 to Bill Davenport. A copy is enclosed. There, this office ruled that when the office of county superintendent is vacant the county court does not have authority to employ clerical assistance to the county superintendent.

CONCLUSION

Therefore, it is the opinion of this office that:

1. The capacities of county superintendent and public school teacher are incompatible.
2. If a county superintendent accepts employment as a public school teacher he ipso facto vacates his office as county superintendent.
3. If the office of county superintendent is vacated by acceptance of a second incompatible position, the county superintendent's right to compensation ceases and also the county court does not have authority to employ clerical assistance for the county superintendent's office.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louis C. DeFeo, Jr.

Very truly yours,


THOMAS F. EAGLETON
Attorney General

Enclosures