

OPINION: to Sup't. Mo. School for the Deaf,
Fulton, Mo. on right of Board to
have Secretary perform duties of
Treasurer and act as such.

4704 & 5 Mar 1924
178.140

February 1,
1933.

Hon. Herbert E. Day, Sup't.,
Missouri School For The Deaf,
Fulton, Missouri.



Dear Sir:

You submit the two following questions: First - Legally, may the office of Secretary of the Board of Managers and that of Treasurer of the school be combined and one person act both as Treasurer and Secretary. Second - Will you please advise us as to the best way of collecting accounts long over due owing by counties to the school.

Answering your first inquiry, I presume you intend, although you do not so say, that the consolidation of Secretary and Treasurer of the Board as officers be brought about by action of the Board, and on this assumption it is my opinion that the Board has no power to consolidate the two positions.

There is no doubt but both the Treasurer and the Secretary are public officers within the meaning of the laws of Missouri. Our Supreme Court has said:

"A public officer is one elected or appointed in a manner prescribed by law as an agent of the public in the performance of duties imposed by law and exercise of authority necessary and incidental to a public discharge of such duties"

Zevelly vs. Hackmann, 300 Mo., p. 59
Hastings vs. Jasper County, 314 Mo., p. 144

Section 9704 Revised Statutes of Missouri, 1929, among other things, provides:

"At the regular meeting of the Board held in March of each odd numbered year there be elected one of their members president and also, ~~a secretary, who may or may not be one of their number; provided, that in either school that employes a secretary or bookkeeper, such secretary or bookkeeper shall be secretary of the Board of Managers thereof.~~"

+ one Vice Pres + other officers

178.140

Here you see, a Secretary is by law made an officer.

Section 9694 Revised Statutes of Missouri, 1929
provides:

"There shall be a Treasurer of each school appointed by the Board of Managers of the school, who shall give bond for the faithful performance of his duties in such sum and with such surety as shall be required by the Board."

This provision of the statute clearly makes the Treasurer an official.

I have examined the statutes of the state and so far as I can ascertain there is no direct authority authorizing the Board to consolidate these two offices - the Secretary and Treasurer. In my opinion if consolidation is desirable of these two offices, an act of the Legislature should be passed bringing about the desired results in providing for this consolidation.

Replying to your second question, I beg to say that you can present the claim to the County Court for allowance and issuance of warrant to pay the same, or you can have a suit instituted in the Circuit Court of your county or counties in default. The jurisdiction in each case would be in the county where the default occurred and in the Circuit Court of said county. Presentation of your claim to the County Court and a rejection thereof by the County Court or a neglect to act thereon would not bar a subsequent suit upon the same claim in the Circuit Court.

I find in examining the statutes that evidently some legislation should be enacted that would provide for speedy collection where the claim is uncontested.

The statute might provide for mandamus in those cases where the county ordered the student sent to the school and does not dispute the validity of the claim. An action of mandamus, of course, would be much more speedy than an ordinary civil suit against the county, although under our law the county can be sued in the ordinary civil proceedings.

The Supreme Court of this state in State ex rel vs. ^{not} Carroll County, 109 Mo., p. 248 held that a mandamus action could be instituted in the Circuit Court or in the Supreme Court to compel payment of a claim that had been rejected, but a claim that has been allowed by the County Court can be enforced by an action of mandamus, and our Supreme Court has so held in

State ex rel Whitehead vs. County, 29 Mo. 138

State ex rel vs. County, 48 Mo. 475

State ex rel West for the use of the County vs. Co. court Judges. 255 Mo. 340

I suggest that if these claims have not been allowed by the County Court that you proceed at once to present the same in any county where the court will allow the claim, although it might refuse to give you a warrant therefor. You can then begin a mandamus action in the Circuit Court or in the Supreme Court to compel the County Court to pay the claim. Also, in any case where the county court may refuse to take up the claim and consider it, a mandamus action can be commenced to compel the court to consider the claim and either refuse it or allow it.

Of course, these claims should be looked after promptly and the interest of the state protected by seeing that, if possible, the counties are made to pay. You understand a mandamus proceeding is one that is preemptory and gives much quicker results than you would get from the ordinary action in suing the county.

These are about all the suggestions I would have to make at this time, but if there is any further information that you desire, write me and if I can, I will be glad to give it to you.

It is self-evident that these claims where the counties refuse to pay should not be allowed to drag. It should be brought to the point where the county will either positively refuse to pay or will audit the claim and allow it and perhaps then refuse to issue the warrant, or will audit the claim and pay same.

Very truly yours,

E. C. CROW,
Assistant Attorney General

ECC:AH

APPROVED:

Attorney General