

SCHOOLS: Interpretation of Sections 9470 and 9474 R. S. Mo.
1929.

July 25, 1933



Hon. Thomas A. Mathews
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

This department is in receipt of your letter of July 10th, wherein you enclosed bulletin or circular sent your County Superintendent by the Honorable Charles A. Lee, State Superintendent of Schools. In order that we may have a complete record your letter is quoted as follows:

"I inclose herewith a copy of a circular letter under date of June 16th, by Chas. A. Lee, State Superintendent of Schools, wherein he gives it as his opinion that County Superintendents are not required to endorse with examination second grade certificates from other counties in this State unless said certificates were issued on state grades. I am utterly unable to find that the Law gives Mr. Lee any authority whatever for rendering such an opinion. Under Section 9470 R. S. 1929, County Superintendents are given authority to issue second grade certificates on county grades. It is true that applicants, if they prefer, may have their papers graded by the State Superintendent, but this is purely optional with the applicant. Section 9474 reads in part as follows:

'Provided, that the County Superintendent must endorse without examination second grade certificates from other counties in this state on the payment of a fee of One Dollar and Fifty Cents, (\$1.50); and such second grade certificate, when thus indorsed by the

the County Superintendent, shall entitle the holder thereof to all the rights and privileges granted under and by a teacher's certificate issued by such superintendent under a regular examination; etc.'

I am utterly unable to find any support for the State Superintendent's contention that County Superintendents are required to endorse only second grade certificates issued on so-called state grades.

Unless you can see fit to issue an opinion contrary to the opinion set forth by the State Superintendent in the circular issued under date of June 16, to all County Superintendents, hundreds of applicants from the several counties in this state who have taken the examinations in good faith and have secured second grade certificates will be compelled to give up teaching positions already secured in other counties for the school year beginning next September."

The State Superintendent in his bulletin undertakes to give his interpretation on the following questions:

" * * 1. Is the second grade county certificate valid only in the county in which it is issued?

2. Must a second grade county certificate be endorsed in counties other than the one in which it was issued?

In answer to these questions this Department advises as follows: Section 9470, Revised School Laws of Missouri 1931, in part says:

"A third grade shall be valid for one year and second grade for two years in the county for which they are issued and the first grade for three years in the state."

From this statement it seems evident that the second grade certificate referred to is not valid in other counties in the state. If it were, the law would have included it in the statement along with the first grade certificate. This Department holds that the above is true when the second grade county certificate is issued on county grades.

Section 9474, Revised School Laws of Missouri 1931, says in part:

Provided, that the county superintendent must indorse without examination second grade certificates from other counties in this state on the payment of a fee of one dollar and fifty cents;"

The Department holds that this section is not in conflict with Section 9470. When a person holds a second grade certificate which has been issued on state grades the above section applies, and said certificate must be endorsed in other counties than the county in which it was issued. The seeming conflict of the above sections disappear when in the one case the certificate is issued on county grades and in the other case when the certificate is issued on state grades."

In the last analysis you desire to know whether the State Superintendent is correct in his contention that the County Superintendents of other Counties are required to endorse only second grade certificates issued on state grades. To begin with we quote Section 9470 R. S. Mo. 1929, insofar as it is pertinent:

"The county superintendent of public schools shall have authority to examine teachers and grant certificates of qualification to teach in their respective counties or in the state. Three public examinations of two days each shall be held during the year on the first Fridays and the succeeding Saturdays in March, June and August, at such place or places in the county as the county superintendent of schools may designate. Said

examinations shall be conducted by said county superintendent of public schools, or by some one duly authorized by him to conduct them. All questions given in said examination shall be prepared and furnished by the State superintendent of public schools. Certificates issued by said county superintendent of public schools shall be of three grades. Third grade shall be valid for one year and second grade for two years in the county for which they are issued and first grade for three years in the state.* * *

We then consider Section 9471 R. S. Mo. 1929, entitled 'Grading of examination papers by state superintendent of public schools,' which is as follows:

"The county superintendent of public schools shall, in accordance with a system prepared and submitted by the state superintendent of public schools, give each applicant writing in the examination a number by which number alone the papers of said applicant shall be marked and designated. Said county superintendent shall keep an accurate record of the number given to each applicant. Within three days after the close of each regular examination, the county superintendent of public schools shall forward to the state superintendent by express or registered mail, all the papers of all applicants for first grade certificates and of all other applicants who shall request their papers to be sent to the state superintendent." * * *

From this section we find that the county superintendent may grade the papers or if the applicant so desires he may request that the State Department grade his papers. The supposed object of this being that in the event the applicant prefers or does not have faith in the county superintendent's ability to grade the papers or to treat him fairly, he then has the right to request

the State to grade his papers. The question arises, what advantage or what disadvantage accrues to the applicant by reason of the State grading his papers? We have examined the statutes thoroughly and we find no advantage or disadvantage in the papers being graded by the State. The County Superintendent issues a second grade certificate irrespective of whether or not he or the State Superintendent's office grades the papers. Then the holder of a second grade certificate is in the same position as the applicant whose papers have been graded by the county superintendent.

We next come to the question of reconciling that portion of Section 9470 which is as follows:

"* * *Third grade shall be valid for one year and second grade for two years in the county for which they are issued.***"

With Section 9474 R. S. No. 1929, which pertinent portion reads as follows:

"Provided, that the county superintendent must indorse without examination second grade certificates from other counties in this state on the payment of a fee of one dollar and fifty cents; and such second grade certificate, when thus indorsed by the county superintendent, shall entitle the holder thereof to all the rights and privileges granted under and by a teacher's certificate issued by such superintendent under a regular examination, and shall not be revoked****"

In the case of State ex rel. Gorman v. Offutt, Superintendent of Public Schools, 26 S. W. (2nd) 831, wherein the question of a demurrer was raised as to the sufficiency of the petition, the Court really decided the question presented by the two sections quoted. The opinion by the court is in part as follows:

"* * *We think an examination of the whole act discloses that the first portion of section 11363 is not, as a matter of fact, in conflict with the proviso because it only requires the county superintendent to grade the applicants for certificates to teach in the schools under his jurisdiction, or, in other words, that the

superintendent is to grade those who may apply for authority to teach in his jurisdiction or who may apply for certificates in the jurisdiction of which he is the superintendent in charge, evidently intending that the applicants need not go to some other jurisdiction where perchance they may subsequently be employed. It nowhere requires such an examination be made by the superintendent of schools located where the teacher may actually teach. This construction is borne out by the provision of section 11358 that 'the county superintendent of public schools shall have authority to examine teachers and grant certificates of qualification to teach in their respective counties or in the state.' If they have authority to examine and grant certificates of qualification in the state, how can it be said that they are limited to granting certificates to applicants who may teach within the jurisdiction of the respective superintendents? This construction is also sustained by the provision of section 11361 that second-grade certificates shall be renewed once without examination. If the respondent's contention were correct, it would make little difference whether the proviso was construed as it previously read or as it now reads, because the county superintendent within whose jurisdiction a teacher might be engaged to serve would be privileged to decline to indorse in every instance and thus render nugatory the provision for indorsement of second-grade certificates issued from other counties of the state.

The foregoing view renders the whole section harmonious, and would seem to account both for the change of 'may' to 'must' in the proviso and the additional provision that 'such second grade certificate

when thus indorsed by the county superintendent, shall entitle the holder thereof to all the rights and privileges granted under and by a teacher's certificate issued by such superintendent under a regular examination, and shall not be revoked unless specified charges be made and filed with the county superintendent, notice thereof be given and an impartial hearing be had thereon, as is fully provided for in section 11364.'

Respondent says, however, that this construction would work an absurdity, because it would of necessity require the superintendent of one county to accept, against his judgment, the judgment of the superintendent of another county, and therefore that it is reasonable to believe that the change from 'may' to 'must' was through a clerical error. But that is entirely speculative and is not in accord with what seems to have been the intention of the Legislature when considered in the light of the other provisions of the statute. We are bound to construe statutes as written, without regard to the results of the construction or the wisdom of the law as thus construed. *State ex rel. v. Wilder*, 306 Mo. 541, 549, 105 S. W. 372.

But, further, the statute in section 11364 prescribes a remedy if the superintendent to whom the certificate is presented for indorsement is not satisfied as to the qualifications or moral character of the applicant.

Respondent further contends that the meaning to be ascribed to the word 'must' in the proviso is that without indorsement it shall not be effective in the county where the teacher is about to engage in her work. If the respondent is correct in this contention, then the entire effect of the proviso is destroyed because in every case the superintendent to whom such certificate was presented, as we have already stated, would have the privilege of refusing to indorse the same unless the applicant took the prescribed examination under him."

Hon. Thomas A. Mathews.

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From the foregoing opinion it is the opinion of this department that the County Superintendent of a county should not make any discrimination in indorsing a second-grade certificate, issued by the school superintendent in another county, insofar as the question of whether the applicant's examination papers have been graded by the State or a County Superintendent.

Yours very truly,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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