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PUBLIC OFFICERS:

Vacancies by resignation or
abandonment.

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August 1, 1933

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Honorable Morgan M. Moulder
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Mr. Moulder:

Your letter which you presented in person requesting an opinion from this Department as to the matter of a resignation of a county superintendent of schools of your county, has been handed to me for reply. Your letter is as follows:

"W. B. Allison, County Superintendent of Schools of Camden County, Missouri, presented and caused to be filed a written resignation as County Superintendent of Schools aforesaid, which written resignation was filed in the office of the County Clerk of Camden County, Missouri, a copy of which is hereto attached.

Mr. Allison has not been in his office during the past three weeks and when last heard from was in some Eastern state, and has vacated and absented himself from the office and has refused to perform the duties of the office during his absence. Considering the facts stated I would appreciate your opinion on the following questions:

First; Does the written resignation a copy of which is attached and which was addressed to the Presiding Judge of

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our County Court, together with the acts of Mr. Allison in vacating and abandoning his office and going to another state create a vacancy in the office of County Superintendent of Schools of Camden County, Missouri?

Second; Would a certified copy of the written instrument or resignation filed in the County Clerk's office presented to the Governor of this state, together with authenticated information that Mr. Allison has vacated his office and is in another state, be sufficient proof that there now exists on this first day of August, 1933, a vacancy in the office of County Superintendent of Schools of Camden County, Missouri?

Third; Does the County Court of Camden County, Missouri, have any jurisdiction or control or authority to appoint a temporary County Superintendent of Schools or to appoint the County Superintendent of Schools. Does the County Court have any authority whatever in connection with the resignation herein referred to or the vacancy created thereby?"

In answer to your first question as to whether or not the actions of the county superintendent, along with the inclosed copy of his purported resignation, constitute a vacancy of that office, we are of the opinion that a vacancy does exist in the office.

Section 9454 Revised Statutes Missouri 1929, omitting the parts which have no bearing on the question, is as follows:

"***All county school superintendents elected on the first Tuesday of April, 1927, and thereafter, shall hold said office for a term of four years from

and after the first Monday in July following their election, or until their successor is elected and qualified, and all vacancies caused by death, resignation, refusal to serve, or removal from the county, shall be filled by the governor by appointment for the unexpired term;***"

Words and Phrases defines resignation as follows:

"The resignation of an office is the act of giving it up and is synonymous with surrender, relinquishment, abandonment or renunciation."

In the case of *Jacobsen v. City of Chicago*, 191 Ill. App. 511, the court said:

"A resignation of a public office by implication may take place by abandonment of official duties without leave or absence or without good cause shown. A resignation of a public office may be made by parol, no written resignation being necessary."

Corpus Juris, Volume 46, page 979, states as follows:

"A resignation of a public office to be effective must be made with the intention of relinquishing the office, accompanied by the act of relinquishment. It is not necessary that a resignation from public office be cast in any particular words, it being only necessary that the incumbent evince a purpose to relinquish the office. Where no particular mode of resigning an office is provided by constitutional or statutory requirements no formal method is necessary. It may be by parol or it may be implied."

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The statutes of Missouri do not provide any particular mode or form for the resignation of any public officer. However, the general rule is that the resignation should be made to the person or party who has the power to fill the vacancy. In this case the county superintendent should have addressed his resignation to the Governor of the state. However, we recite the above as proof that by the purported resignation which was addressed to a member of the county court the county superintendent has shown clearly that he has abandoned the office, is evidently leaving the county, he is refusing to further carry out his duties as county superintendent, and that a vacancy now exists in your county in the office of county superintendent. He states that he desires to abandon and resign his office, to be effective August 1, 1933.

It is therefore the opinion of this Department in answer to your second question; that the evidence you will be able to offer to the Governor of the State of Missouri is sufficient proof that there is a vacancy in the office of county superintendent of schools of Camden County, Missouri.

In answer to your third question there is no statutory provision providing for the county court to have any jurisdiction or authority to appoint a temporary county superintendent. Therefore the county court has no authority whatever in the matter of the vacancy created.

Owing to the fact that you wish this opinion as quickly as possible, we have not had sufficient time to give the matter as complete and exhaustive study as we would desire.

Very truly yours,

OLLIVER W. NOLAN
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

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