

PUBLIC HEALTH: Deputy State Commissioner of Health - - Effect of Laws of 1933, page 271 on right to office under R. S. Mo. 1929, Section 9025.

SCHOOLS: Salary of County Superintendent of Schools as changed by Laws of 1933, page 304.

3-26
March 19, 1934.



Honorable Dockery Wilson,
Prosecuting Attorney, Harrison County,
Bethany, Missouri.

Dear Sir:

A request for an opinion was received from you under date of January 3, 1934, such request being in the following terms:

"The County Court of Harrison County has asked me to get an opinion from your office on the following questions:

1. The present County Health Physician or Deputy State Commissioner of Health was appointed by the County Court in February 1932 for a three year term.

Question: Does his term of office expire in February 1934 and it become the duty of the County Court to appoint a County Health Physician at its next regular February term under Sec. 9025 (p. 271) Laws of Missouri, 1933?

2. The term of office of the County Superintendent of Schools of Harrison County expires in 1935. His salary under the old law is \$2100.00 per year. Under Sec. 9463 (p. 304) Laws of Missouri 1933 his salary would be \$1800.00 per year (the population of Harrison County according to the last census was slightly over 17,000).

Question: Should the County Superintendent of Schools be paid the old salary or \$1800.00 per year as presented by new law.

Will you kindly furnish opinion so the Court may have same by February 5th, 1934."

The above request was supplemented by additional information contained in a letter from you under date of February 28, 1934, as follows:

"On or about the 5th day of January, 1934, at the request of the County Court of Harrison County, Missouri, I wrote your office asking for an opinion as to the interpretation of Sec. 9025 Laws of Missouri 1933, which repeals Sec. 9025 of Article 1, Chapter 52, R. S. of Missouri 1929. I received no answer and the Court has asked me to write again.

The situation as to Deputy State Commissioner of Health in this County is as follows:

At the regular February term of the County Court 1932 the Court

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appointed Dr. D. G. Reid of Bethany, Missouri, for a term of three years and entered into a contract with him fixing his compensation and expenses and reciting that the duties of such Deputy State Commissioner of Health as prescribed by Statute were made a part of the contract. The contract was accepted by Dr. Reid and duly approved by the Court. The present County Court would like an opinion from the Attorney General as to whether or not the contract made by the old Court under the old law is binding on them.

Opinion of the Court is divided. One view is that when the old law was repealed by the new Sec. 9025 that the appointment and contract entered into under the old law is at an end and another appointment should be made. The other view is that the contract entered into by the Court in February, 1932 does not expire until February, 1935, and that there is no occasion to make an appointment at this time.

The Court will meet again March 5th. If you have an opinion covering this matter or can give us an opinion as to the effect of the new law on the old appointment and contract we will appreciate it."

I.

As to your question about the Deputy Commissioner of Health, this matter has already been ruled on in an opinion by the Attorney General signed by the Attorney General and William Orr Sawyers, Assistant Attorney General, rendered on February 13, 1934 to Honorable W. W. Crockett, Prosecuting Attorney, Hall's County, New London, Missouri. In the course of that opinion the Attorney General ruled as follows:

"It is our opinion that by virtue of the new act repealing Section 9025 R. S. 1929 that one who rightfully claimed title by appointment under the old law is by the new act legislated out of office, and is not entitled to the honor and emoluments of the new office unless he receive his appointment under the provisions of the new law. Under the new law, it is not compulsory for any county court to employ a deputy State Commissioner of Health. In counties where the Court deems such an officer necessary, the Court has to follow the provisions of the new act."

We are enclosing a copy of such opinion which more fully elaborates the reasoning upon which this ruling was based.

II.

As to your question regarding the County Superintendent of Schools it is our opinion that this question is also governed by the above opinion. The County Superintendent of Schools is, like the Deputy Commissioner of

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Health, an official whose office is created by statute and whose salary is fixed thereby, and if an office holder acquires no vested right to his office but, on the contrary, holds it subject to the implied condition that the Legislature may abolish his office so likewise would an incident of such office such as salary be subject to change by the Legislature which originally fixed the salary. It is, therefore, our opinion that Laws of 1933, page 384, which repealed Revised Statutes Missouri, 1929, Sections 9463, 9464 and 9465 and added three new sections in lieu thereof having the same numbers have the effect of reducing the salary of a county superintendent of schools in a county containing 17,000 inhabitants according to the last decennial census of the United States to \$1,500.00 per year if such salary had previously been \$2,100.00 per year, and that such such change has been in force from the effective date of such statute of 1933.

Very truly yours,
EDWARD H. MILLER

APPROVED:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.