

SCHOOLS:

COUNTY SUPERINTENDENT
OF SCHOOLS

) Person must possess certain qualifications
) at the time of his election, and if acquires
) them after his election but before he
) qualifies, such does not avail him of anything.

February 5, 1935.

Hon. T. Ansel Faucett
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Mr. Faucett:

This is to acknowledge your letter of January 29,
1935, wherein you inquire:

"Does a candidate for State Superintendent of Schools have to be qualified at the time of his election, or may he qualify after his election? Assume that a candidate does not have a certificate to teach at the time of his election but acquires one subsequently and before he assumes the duties of his office."

Section 9454, R. S. Mo. 1929,, in part provides as follows:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; * * * * * said county school superintendent shall be at least twenty-four years old, a citizen of the county, shall have taught or supervised schools as his chief work during at least two years of the eight years next preceding his election or appointment; or shall have spent the two years next preceding his election or appointment as a regular student in a state teachers' college or university, and shall at the time of his election hold a diploma from one of the state teachers colleges or state university, or shall hold a state certificate,

"authorizing him to teach in the public schools of Missouri, or shall hold a first grade county certificate authorizing him to teach in the county of which he is superintendent; * * * * *"
All county school superintendents elected on the first Tuesday in 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,* * * * *."

We invite your attention to the underscored part of the above statute as it determines the question presented.

Section 9454, supra, states, "and shall at the time of his election hold", and if a person did not hold a diploma or have the other certificates provided for at the date of his election, then, could it be said by judicial interpretation that the words "shall at the time of his election" be construed to mean "shall at the time of his taking office?" In other words, the statute prescribes qualifications and says that the candidate shall at the time of his election possess them, and as the person is elected in April and does not take office until July, would that person be permitted to qualify or obtain the certificate after the date of his election? We think not.

The words "shall at the time of his election" have been before the Supreme Court of Missouri for interpretation in the case of State ex rel. Weed v. Meek, 129 Mo. 431. We quote from said case (page 437):

"IV. This brings us to the merits of the controversy, and the question, was the defendant eligible to the office of county school commissioner to which he was elected, for the proper solution of which we must look to the statute governing such cases. The qualifications for that office are prescribed by section 8028, Revised

"Statute, 1889, which reads as follows:
'There is hereby created the office of county commissioner of public schools, who shall be at least twenty-one years of age, a resident of the county, when elected, for at least one year prior to such election, and shall hold a certificate entitling him to teach in the public schools of such county. * * *'

While this statute is rather awkwardly worded, and somewhat difficult of construction, according to strict grammatical rules, there can be no doubt that the legislature intended thereby to prescribe the essential qualifications which a citizen must possess, either to be elected legally to the office of commissioner of public schools or in order to hold that office after having been elected thereto. It prescribes three qualifications. He must be twenty-one years of age. He must have been a resident of the county not less than one year. He must hold a certificate entitling him to teach the public schools of the county. When must he possess these qualifications? The statute returns but one and the same answer to each and all of them--'when elected.'"

And further,

"The defendant admits that at the date of the election he did not hold a certificate entitling him to teach in the public schools of DeKalb county. He did not, therefore, possess the requisite qualifications to be elected and to hold the office by virtue thereof (State ex rel. v. Newman, 91 Mo. 445), and shows no legal right thereto against the inquiry of the state in this proceeding."

The dissenting opinion by Judge Walker in the case of State ex inf. Chinn, Prosecuting Attorney, ex rel. Botts v. Hollowell, 233 S. W. 405-703, contains apt language concerning the present question. We quote (page 704):

"We take no account of certificates granted, if any, subsequent to appellant's election as county superintendent, as the statute is mandatory and requires the qualification to exist at the time of her election. Section 11343, R. S. 1919; State ex rel. Weed v. Meek, 129 Mo. loc. cit. 438, 31 S. W. 913."

We also quote from the case of State ex inf. Burgess v. Hodge, 320 Mo. 877, wherein the Supreme Court of Missouri, en Banc, page 882, said:

"* * *, it follows that on April 5, 1927, the date respondent was elected, the full period of the third renewal granted him had not expired, and at the time he was elected he had a certificate entitling him to teach in the public schools of Barry County."

From the above it is our opinion that a person must at the time of his election hold a diploma from one of the state teachers' colleges or State University, or shall hold a state certificate authorizing him to teach in the public schools of Missouri, or shall hold a first grade county certificate authorizing him to teach in the county of which he is superintendent, and if such person at the time of his election does not have these necessary qualifications, then such person is not qualified to be superintendent of schools.

It follows from what has been said that the acquiring of a certificate after the election and before the taking of office would not qualify the person seeking office.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.
JLH:EG