

SCHOOLS: COUNTY SUPERINTENDENT OF SCHOOLS: County need not furnish office to one not properly qualified to hold office.

July 14, 1939

Mr. Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri



Dear Sir:

We acknowledge your letter of July 12th as follows:

"I have received your letter of July 7, 1939 containing a copy of the opinion written February 5, 1935 to Honorable T. Ansel Faucett, Prosecuting Attorney of Callaway County, Mo. I had previously received a copy of this opinion from Mr. J. E. Taylor of your Office on an occasion when I was discussing the matter with him in April, 1939.

I am especially interested in the inquiries under the last paragraph of Page 2 of my letter of June 30, 1939, to-wit:

Is the County Court of Madison County, Missouri required to furnish the elected superintendent, Mr. King, an office after he, Mr. King, has been commissioned, filed his bond and has qualified himself to hold the position as required in Sections 9455 and 9456 RS MO 1929? In other words, if the County Court can deny the office, they are passing upon the matter of qualifications of the candidate.

I am merely trying to get your opinion so as to better advise the court."

Section 9454, R. S. Mo. 1929, provides that county superintendents of public schools:

"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 * * *."

You state that Mr. King has been commissioned, filed his bond, and has qualified himself to hold the position.

In an opinion rendered by this department under date of February 5, 1935, to the Honorable T. Ansel Faucett, Prosecuting Attorney of Callaway County, a copy of which was furnished you, we held that "if such person does not have these necessary qualifications, then such person is not qualified to be superintendent of schools".

Mr. King, not having a state certificate or diploma from one of the state teachers' colleges or state university, as required by Section 9454, R. S. Mo. 1929, could not qualify for office, and hence the present incumbent, Mr. M. D. Robbins, would hold over until his successor is elected and qualified.

Section 9456, R. S. Mo. 1929, provides that the county superintendent shall "at the expiration of his term of office" turn over the same to his successor.

"Before entering upon the duties of his office, the county superintendent shall take and subscribe an oath to discharge faithfully and impartially the duties of his office; he shall give bond in double the amount of his salary, conditioned upon the faithful performance of his official duties, and the proper application and care of all moneys, books, records, papers, furniture and other property in his possession or under his control, with two or more sureties, who are resident freeholders and accepted by the county court or by the county clerk in vacation. He shall keep his office at the county seat, or at some other place in the county where a court of record is held and the county court, by order of record, shall designate where the superintendent

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shall keep his office, and for this purpose the county shall supply him with a suitable room, properly furnished, wherein all records, books, papers, furniture and other property thereto belonging shall be securely kept; and at the expiration of his term of office he shall turn the same over to his successor in good condition; and said county court shall supply the superintendent with all necessary record books, stationery and postage stamps for properly conducting the business of his office, and shall allow all necessary printing of notices and circulars of information, the same to be paid for by warrant drawn upon the county treasurer."

The county superintendent of schools is not required to turn over his office until the expiration of his term, and the county is not required to furnish an office to the county superintendent of schools until he be elected and qualified.

From the above it is our opinion that Mr. King, having failed to qualify himself as county superintendent of public schools, the county court is not required to furnish him an office.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

MW:VC