

SCHOOLS: Section 11202 R. S. Missouri, 1929 is the proper section to remove a county Superintendent of Schools for cause.

---

July 20, 1939 7/22



Hon. Melvin Englehart  
Prosecuting Attorney  
Madison County  
Fredericktown, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of July 13th, 1939, which reads as follows:

"I am preparing to file in the Circuit Court of this County an action to remove a County Superintendent of Schools under the provisions of the above mentioned article. Before filing the petition, I would like to secure your opinion as to whether or not the provisions of the above mentioned article, especially Section 11202, applies to County Superintendent of Schools.

"You will note that the section reads, 'Any person elected or appointed to any county, city, town or township office in this state', except as to officers subject to removal by impeachment. It is my opinion that the words, 'any person' would apply to a County Superintendent of Schools. However, I would like to have your opinion in regard to this matter.

"I am quite sure that you have prepared briefs in this matter in regard to the case of State ex rel McKittrick vs. Wymore and State ex rel vs. Graves, and I would like to secure any information possible as to whether or not a hearing under the above mentioned article would be a matter for trial by jury or whether it is exclusively

a hearing before the court without the service of a jury.

"It is provided in Section 11207 Ann. St. 6145 that, 'All actions and proceedings under this article shall be in the nature of civil actions and tried as such.'"

Section 11202 R. S. Missouri, 1929, reads as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

Section 11203 R. S. Missouri, 1929, reads as follows:

"When any person has knowledge that any official mentioned in section 11202 of this article has failed, personally, to devote his time to the performance of the duties of such office, or has been guilty of any willful, corrupt or fraudulent violations or neglect of any official duty, or has knowingly or willfully failed or refused to perform any official act or duty which by law it was his duty to do or perform with respect to the

execution or enforcement of the criminal laws of this state, he may make his affidavit before any person authorized to administer oaths, setting forth the facts constituting such offense and file the same with the clerk of the court having jurisdiction of the offense, for the use of the prosecuting attorney or deposit it with the prosecuting attorney, furnishing also the names of witnesses who have knowledge of the facts constituting such offense; and it shall be the duty of the prosecuting attorney, if, in his opinion, the facts stated in said affidavit justify the prosecution of the official charged, to file a complaint in the circuit court as soon as practicable upon such affidavit, setting forth in plain and concise language the charge against such official, or the prosecuting attorney may file such complaint against such official upon his official oath and upon his own affidavit."

It will be noticed under the above section that the prosecuting attorney is given the power to remove by proper procedure any person elected or appointed to any county, city, town or township office. It will be specifically noticed that this power does not extend to state offices, and the exception is made as to such officers that may be subject to removal by impeachment.

Section 9454 R. S. Missouri, 1929, partially reads as follows:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; the qualified voters of the county shall elect said county superintendent at the annual district school meeting held on the first Tuesday in April, 1923, and every four years thereafter; \* \* "

Section 11202, supra, is not ambiguous and does not need a construction as to the intention of the legislature, although it will be noticed that the section only applies to any officer elected or appointed to any county, city, town or township office in this state. It does not apply to state or district offices which are subject to impeachment. Under section 9454, supra, the county superintendent of schools is elected by the qualified voters of the county at the annual district school meeting.

In the case of State ex rel Cobb v. Thompson, 5 S. W. 2d 57, l.c. 59, the Court said:

"The rule is well stated, as follows:

'A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.' 25 R. C. L. 957; Trefny v. Eichenseer et al, 262 Mo. 436, 171 S.W. loc. cit. 932; Grier v. Ry., 286 Mo. 523, loc. cit. 534, 228 S. W. 454; State ex rel. Brown v. Board of Education, 294 Mo. 106, loc. cit. 115, 242 S. W. 85; R. S. 1919, section 7058."

And the court further said in the same case:

"A standard text states the rule as follows:

'If the words (of the statute) are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation. The statute itself furnishes the best means of its own exposition; and if the

sense in which words were intended to be used can be clearly ascertained from its parts and provisions, the intention thus indicated will prevail without resorting to other means of aiding in the construction.' Lewis-Sutherland Stat. Const. vo. 2 (2d Ed.) p. 698."

The office of county superintendent is a county office, and the officer is not a state officer. All of his duties are confined to the county alone, and under such circumstances, can only be classed as a county office.

In the case of *Hasting v. Jasper County*, 282 S. W. 700, 1.c. 701, par. 3, the court said:

"Nor can it be said that probation officers are state officers. We have held that the words 'state officers' as used in the Constitution refer to such officers whose official duties and functions are coextensive with the government of the state. Following this rule, we have held that a sheriff, deputy sheriff, and a clerk of a circuit court are not state officers, for the reason that their jurisdiction is confined to a county. *State ex rel. Walker v. Bus*, 36 S. W. 636, 135 Mo. 325, 33 L. R. A. 616; *State ex rel. Holmes v. Dillon*, 2 S. W. 417, 90 Mo. 229; *State ex rel. Bender v. Spencer*, 3 S. W. 410, 91 Mo. 206; *State ex rel. Conway v. Hiller*, 180 S. W. 538, 266 Mo. 242, loc. cit. 262."

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that section 11202, R. S. Missouri, 1929, is the proper section under which a prosecuting attorney may proceed to remove a county superintendent of schools.

APPROVED:

TYRE W. BURTON  
(Acting) Attorney General.

WJB:RW

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General