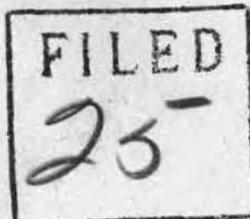


COUNTY TREASURERS: Dual capacity of county treasurer and treasurer of six-director school district is prohibited
SCHOOL DISTRICTS: by public policy and violates the rule against holding incompatible offices.

January 11, 1950

Honorable Ralph H. Duggins
Prosecuting Attorney
Saline County
Marshall, Missouri



1/19/50

Dear Sir:

The following is in reply to your recent request for an official opinion which reads as follows:

"The undersigned has been requested by the County Superintendent of Schools, Saline County, Missouri, to obtain an opinion from your office on the following question:

"Senate Bill #307 as passed by the 64th General Assembly, relates to the creation of County Boards of Education, defines their powers and duties and provides for the making of plans for the re-organization of school districts etc.

"Section 11 of Senate Bill #304 as passed by the 64th General Assembly provides as follows:

"For the election of school directors and officers of the various school districts and providing for the delivering to the board directors of the enlarged school districts all property, records, books, papers etc. All funds in the hands of the County Treasurer to the credit of the various districts composing such enlarged district, shall be immediately transferred to the credit of the Treasurer of such enlarged district. The six board of directors of one enlarged school district request the present County Treasurer to serve as treasurer of said enlarged district. Can the County Treasurer legally serve in his present capacity and also serve in the capacity as treasurer of such enlarged district if appointed or elected by the directors of such enlarged district whether it be without compensation or with compensation?"

The question posed in the request for an opinion presents the fact of a county treasurer desiring to take on the additional duties of treasurer of a school district operating under the general school law and more particularly under the statutes contained in Article 5, Chapter 72, R. S. Mo. 1939, as amended. A review of the 1945 Constitution of Missouri does not disclose any provision contained therein which would prevent a county treasurer from performing the additional duties imposed by law on treasurers of school districts. The law governing county treasurers will be examined to discover any prohibition which may be contained therein against such a dual capacity.

Section 13799, R. S. Mo. 1939, contained in the law relating to county treasurers, their duties and liabilities, presents the only statutory mandate disclosing what persons are ineligible to serve as county treasurers. This section reads as follows:

"No sheriff, marshal, clerk or collector, or the deputy of any such officer, shall be eligible to the office of treasurer of any county."

In the case of State ex inf. Noblet ex rel. McDonald v. Moore, 152 S.W. (2d) 86, 347 Mo. 1170, the Supreme Court of Missouri disclosed the liberality of construction to be accorded the statute just quoted in the following language found at 347 Mo., l.c. 1173:

" * * * It should be noted that when the statute was enacted all the officers made ineligible for office of treasurer were at least county officers. At the outset we should observe that statutes prescribing requirements of eligibility to an elective office must be given a liberal construction. This is so because in our democratic form of government the greatest possible freedom of choice in the selection of their officers is a natural right of the people and this right must be zealously guarded by the courts. * * * "

In the opinion just quoted, above, the court had occasion to make reference to a previous opinion rendered in the case of State ex rel. McAllister v. Dunn, 277 Mo. 38, 209 S.W. 110, which was an action involving the section with which we are now dealing, Section 13799, R. S. Mo. 1939. The respondent therein had been a deputy collector of the City of St. Louis and while such, he was elected city treasurer. The court held

that the respondent was ineligible to the office of treasurer and ousted him on the sole ground that the purpose of the statute was, as stated by the court in 347 Mo. 1170, l.c. 1174:

" * * * to obviate the situation where one could be chosen treasurer and take and hold the office when, in all probability, public money in his hands in his former official capacity would have to be received and receipted for by himself in his new official capacity."

In the Dunn case, just referred to, the applicability of Section 13799, R. S. Mo. 1939, to officers of the City of St. Louis was conceded because of the classification of St. Louis as a county rather than a city. Since Section 13799, R. S. Mo. 1939, does not specifically refer to treasurers of school districts as being ineligible to serve as county treasurers, such statute is not to be construed as a prohibition against the dual capacity we are considering.

Although our present Constitution and statutes do not bar a county treasurer from serving, at the same time, as treasurer of a school district operating under the special provisions of Article 5, Chapter 72, R. S. Mo. 1939, we must look further and ascertain whether there is any common law incompatibility in holding these two positions. In the case of State ex rel. McGaughey v. Grayston, 163 S.W. (2d) 335, 349 Mo. 700, we find the common law rule alluded to as follows, at 349 Mo. l.c. 708:

"The settled rule of the common law prohibiting a public officer from holding two incompatible offices at the same time has never been questioned. The respective functions and duties of the particular offices and their exercise with a view to the public interest furnish the basis of determination in each case. Cases have turned on the question whether such duties are inconsistent, antagonistic, repugnant or conflicting as where, for example, one office is subordinate or accountable to the other. The rule against holding incompatible offices is founded upon principles of public policy. * * *"

Before discussing any incompatibility that may exist between the office of county treasurer and the position of

treasurer of a school district operating under the provisions of Article 5, Chapter 72, R. S. Mo. 1939, it is necessary to determine that the position of treasurer of such school district is a public office under the laws of this state and not merely an employment. In the case of State ex rel. Pickett v. Truman, 333 Mo. 1018, 64 S.W. (2d) 105, the Supreme Court of Missouri discussed the attributes of public office in the following language found at 333 Mo., l.c. 1021:

"Numerous criteria, such as (1) the giving of a bond for faithful performance of the service required, (2) definite duties imposed by law involving the exercise of some portion of the sovereign power, (3) continuing and permanent nature of the duties enjoined, and (4) right of successor to the powers, duties and emoluments, have been resorted to in determining whether a person is an officer, although no single one is in every case conclusive. It is the duty of his office and the nature of the duty that makes one an officer and not the extent of the authority, although designation by the law has some significance. * * * 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' * * * "

In the above case the court referred to State ex rel. v. Board of Commissioners (Ohio), 115 N.E. 919, 920, and spoke as follows at 333 Mo. l.c. 1022:

" * * * The Ohio decision states that it is no longer an open question in that state that to constitute a public office 'it is essential that certain independent public duties, a part of the sovereignty of the State, should be appointed to it by law.' Illustrative of what is meant by 'sovereignty of the State,' in the same opinion it is said: 'If specific statutory and independent duties are imposed upon an appointee

in relation to the exercise of the police powers of the State, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or State, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the State."

It is proper to denominate a school district as an arm of our state government since "a school district is a public corporation forming an integral part of the State and constituting that instrumentality of the State utilized by the State in discharging its constitutionally invoked governmental function of imparting knowledge to the State's youth" (Kansas City v. School District of Kansas City, 356 Mo. 364, 201 S.W. (2d) 930), and a school director has been held to be a public officer of a political subdivision of Missouri within the provisions of the anti-nepotism clause (Article XIV, Section 13) of Missouri's Constitution of 1875 (State ex rel. McKittrick v. Whittle, 333 Mo. 705, 63 S.W. (2d) 100). Although the anti-nepotism clause of Missouri's new Constitution of 1945, found at Section 6 of Article VII thereof, does not refer to a public officer or employee of a political subdivision of the State of Missouri, a deletion of the term "political subdivision" from the new clause should not be construed as a limitation when we are applying well recognized rules to determine who are public officers, but rather as referring to any public officer whose duties and responsibilities under the law cause him to be so classified.

Keeping in mind the principles above stated, we now turn to the statutes setting forth the qualifications, duties and responsibilities of a treasurer of a school district operating under the provisions of Article 5, Chapter 72, R. S. Mo. 1939, more commonly known as the six-director school law. It must be remembered that such a school district is also generally subject to the entire Missouri school law found in Chapter 72, R. S. Mo. 1939. Section 10470, Article 5, Chapter 72, R. S. Mo. 1939, as reenacted, Laws of Missouri, 1945, page 1650, provides:

"Within four days after the annual meeting, the board shall meet, the newly elected members, who shall be qualified by the taking

of the oath of office prescribed by Article VII, Section 11, of the Constitution of Missouri, and the board organized by the election of a president and vice-president, and the board shall, on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July; said secretary and treasurer may be or may not be members of the board. No compensation shall be granted to either the secretary or the treasurer until his report and settlement shall have been made and filed or published as the law directs. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor. When there is an equal division of the whole board upon any question, the county superintendent of schools, if requested by at least three members of the board, shall cast the deciding vote upon such question, and for the determination of such question shall be considered as a member of such board. The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the school boards of other districts."

The above statute creates the position of treasurer of a six-director district, provides for his election by members of the boards of directors, requires that he be elected annually on July 15, permits him to be chosen from the membership of the board and provides when his compensation shall be paid to him. Section 10501, Article 5, Chapter 72, R. S. Mo. 1939, as re-enacted, Laws of Missouri, 1945, page 1654, provides that no member of any public school board of a city, town or village in this state having less than twenty-five thousand inhabitants shall hold any office or employment of profit from said board while a member thereof except the secretary and treasurer, who may receive reasonable compensation for their services: Provided, the compensation of the secretary shall not exceed one hundred and fifty dollars, and that of the treasurer shall not exceed fifty dollars for any one year. This section provides a maximum limit on compensation to be paid the treasurer of a board of education in any city, town or village having less than twenty-five thousand inhabitants.

Section 10477, Article 5, Chapter 72, R. S. Mo. 1939, provides that the treasurer shall give a bond to the State of Missouri conditioned that he will render a faithful and just account of all money that may come into his hands as such treasurer, and otherwise perform the duties of his office according to law. After giving such bond the treasurer becomes the custodian of all school moneys derived from taxation for school purposes in the school district until paid out on the order of the board. It should be noted here that this section refers to duties of his "office." This section also authorizes any freeholder to bring suit on such bond in the name of the State of Missouri, at the relation and to the use of the proper school district.

In the case of State ex rel. School District of Sedalia v. Harter, 87 S.W. 941, 188 Mo. 516, the Supreme Court of Missouri was reviewing a suit on the bond of a treasurer of a six-director school district. A demurrer to the action was sustained and the plaintiff appealed. The point on which the decision rested was whether or not the action was barred by Section 4274, R. S. Mo. 1899, now Section 1015, R. S. Mo. 1939, which prescribes what actions must be brought within three years after the cause of action accrues. The section now reads as follows:

"Within three years: First, an action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution or otherwise; second, an action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state."

Defendants in the Harter case contended that under the statute just quoted, the action was barred. Plaintiff contended that the section did not apply since, as he stated, a treasurer of a school district was not an officer within the meaning of that section nor in the legal acceptation of that term. In ruling the point the court used the following language, found at 188 Mo., l.c. 528:

" * * * 'A public office is defined to be the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an

individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.' * * * "

Continuing, the court spoke as follows:

"Tested by these rules a treasurer of a school district must be held to perform 'some portion of the sovereign functions of the government to be exercised by him for the benefit of the public,' and must therefore be a 'public officer' within the meaning of the law. * * * "

It is not deemed necessary to cite additional authority to support the view that a treasurer of a six-director school district is a public officer.

County treasurers have numerous duties imposed by statute in relation to schools, and those duties are to be found outlined in various sections of Chapter 72, R. S. Mo. 1939, Missouri's school law. The close relationship between the office of county treasurer and treasurer of a six-director school district is readily apparent when we consider that the latter office was carved out of the office of county treasurer, which officer was the custodian of all school moneys until the act relating to city, town and village schools created a new office, and gave a portion of the county treasurer's official duties to the treasurer of the school district.

We recognize the statement of the court in *State ex rel. McAllister v. Dunn*, supra, heretofore quoted in this opinion, as a salutary rule by which to measure the degree of incompatibility of public offices, and a rule which will be applied in this instance to determine the right of a county treasurer to also serve as a treasurer of a six-director school district. In other words, if serving in this dual capacity will require the officer to receive public funds in one capacity and disburse a portion of those same funds to himself in another capacity, with the consequent duty to issue a receipt to himself in one capacity in order to acquit himself in the other capacity, his offices are wholly incompatible and he will not be permitted to serve in the dual capacity.

Notwithstanding the numerous duties of county treasurers in relation to school funds, we need only to point out the manner in which school taxes are collected and disbursed to a six-director school district in order to disclose incompatibility of the offices

with which we are dealing. Section 10398, R. S. Mo. 1939, makes it the duty of the county clerk to take a receipt from the county collector for the school taxes by him placed on the general taxbooks, and the collector is required to then proceed to collect the same in the same manner as state and county taxes are or may be collected; and the collector is required to pay over monthly to the county treasurer all such taxes collected and take his receipt therefor. Section 10400, R. S. Mo. 1939, as reenacted, Laws of Missouri, 1945, page 1708, provides that the county treasurer, in each county shall be the custodian of all moneys for school purposes belonging to the different school districts, until paid out on warrants duly issued by order of the board of directors of such school districts or to the treasurer of some town, city or consolidated school district, except in counties having adopted the township organization law, in which counties the township trustee is designated as a custodian of all school moneys belonging to the township and is also subject to corresponding duties as a county treasurer. Section 10479, Article 5, Chapter 72, R. S. Mo. 1939, provides that whenever any state or county school money apportioned to any town, city or consolidated school district shall have been paid to any county or township treasurer, as now provided by law, the same shall, on the application of the treasurer of the town, city or consolidated school district, be paid over to him by the county or township treasurer; and it further provides that the receipt of any such school district treasurer for such moneys shall be a lawful voucher for the disposition of such money by the county or township treasurer and shall be accepted as such by the county court or other body having authority by law to make settlements with the county or township treasurer. A consideration of the three statutes just enumerated and outlined clearly discloses that a county treasurer could not at the same time serve as treasurer of a six-director school district without being compelled to disburse school funds in his possession to himself while serving also in the capacity of treasurer of the school district. As outlined above the very nature of his duties and the manner in which he is compelled to carry them out relieves us of any doubt as to his right to enjoy the dual capacity. His duties are clearly incompatible.

CONCLUSION

It is the opinion of this office that the duties of a county or township treasurer are clearly incompatible with

Hon. Ralph H. Duggins

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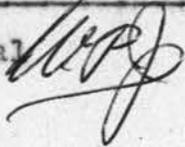
those of a treasurer of a six-director school district operating under the provisions of Article 5, Chapter 72, R. S. Mo. 1939, and it would be against the established public policy of this state to allow an officer to serve in such a dual capacity.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



JLO'M:VLM