

SCHOOLS: Teacher cannot serve as secretary of consolidated school district.

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Honorable Jeremiah Nixon
Assistant Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

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Dear Sir:

This department is in receipt of your recent letter requesting an official opinion, which letter reads in part as follows:

"The County Superintendent of Schools in Jefferson County has requested an opinion as to whether the six man school board of Consolidated School District #1 of Jefferson County, Missouri, would be authorized to appoint a teacher in that district to the post of secretary of the school district. As stated before, this teacher teaches in the consolidated school in this district."

Sections 165.163 to 165.260, RSMo 1949, relate to common school districts. Among these sections we find Section 165.213, RSMo 1949, which section provides for the appointment of a clerk of a county school district. This section reads in part as follows:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. * * *"

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Within the afore-mentioned sections there are further provisions relating to the duties and liabilities of the clerk of such school districts.

Section 165.320, RSMo 1949, is applicable to consolidated school districts such as the one under discussion. This section reads in part as follows:

"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.
* * *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."
(Emphasis ours.)

We therefore see that while within common school districts there is a clerk appointed to perform various duties, the legislature has provided that within consolidated school districts a secretary rather than a clerk be appointed to perform these same duties. It is our conclusion that the legislature has intended by Section 165.320, supra, that the secretaries of consolidated school districts be subject to the same statutory provisions which are applicable to the clerks of the school boards of common school districts. This has been recognized by the Supreme Court of the state of Missouri in the case of *Hudgins v. Consolidated School District*, 312 Mo. 1, l.c. 9, 278 S.W. 769, in which case we find the following:

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"The statutes (Sec. 11240, R. S. 1919) authorizing the board of directors of a consolidated school district to elect a clerk or, as therein designated, a secretary, does no more in the creation of that position than to confer the power upon the board to elect; the only limitations contained in the section being in regard to the time of payment of the compensations of the secretary and treasurer. Nor does the law defining the duty and power of a board of directors of a common school in the election and control of a clerk or secretary, made applicable by reference (Sec. 11240) to consolidated schools, do more than to prescribe the duties of such clerk (Sec. 11215), and to confer power upon the board to remove him for dereliction of duty (Sec. 11217). It appears, therefore, that these statutes, in so far as concerns the clerk or secretary of a board are clearly directory. * * *"

Section 163.080, RSMo 1949, is a general provision applying to all schools and school districts. This section, providing for the employment of teachers, reads in part as follows:

"* * * The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of such board member, is necessary to the selection of such person; nor shall the teacher serve as a clerk of the district. * * *"

(Emphasis ours.)

Therefore, since the statutory provisions applicable to clerks of common school districts are also applicable to the secretaries of consolidated school districts and since Section 163.080 provides that no teacher shall serve as a clerk of the school district, it is our opinion that the school board of a consolidated school district is without authority to appoint a teacher in that district to the post of secretary of the school district.

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CONCLUSION

It is, therefore, the opinion of this department that the school board of a consolidated school district cannot appoint a teacher in that district to the post of secretary of the school district.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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