Opinion Request No. 365 answered
by letter by Wayne W. Waldo

Sept 9-1963

Opinion No. 365

FILED
365

Honorable Frank L. Mickelson
State Representative
Cass County
Freeman, Missouri

Dear Mr. Mickelson:

This is in answer to your recent letter in which you inquire whether there has been any change in the opinions of this office concerning the practice of teaching by a member of the General Assembly. There has been a change.

On May 9, 1949, this office issued an opinion to Honorable Ealum Bruffett in which it was held that members of the Legislature may teach school while the Legislature is not in session. One of the grounds upon which that opinion was based was that a school district was not a municipality within the meaning of Section 12 of Article III of the 1945 Constitution of Missouri, which reads as follows:

> "No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this state which is created or the

> emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

On October 18, 1962, the 1949 opinion to Honorable Ealum Bruffett was withdrawn. The basic reason for withdrawing the opinion was because the last sentence of Section 12 of Article III of the Constitution of Missouri provides that such section shall not apply to members of school boards. Apparently the constitutional convention took the view that a school district is a municipality because they made an exception for school board members. If Section 12 of Article III of the Constitution did not apply to school districts, the exception would have been unnecessary. However, the exception does not apply to teachers who are employed by the school district, and under this interpretation Section 12 of Article III of the Constitution would prohibit a teacher employed by a school district from holding the office of senator or representative. For these reasons it was determined that the opinion to Honorable Ealum Bruffett of May 9, 1949, was incorrect and the opinion was withdrawn.

This conclusion is further supported by an opinion of this office issued on February 5, 1963, to Honorable Loicen O. Boyd, Prosecuting Attorney, Worth County, Grant City, Missouri, which held that school districts may be termed municipalities or municipal corporations. A copy of this opinion is enclosed for your information.

In view of the foregoing, this letter is to inform you that there has been a change in the opinions of this office and that it is our present conclusion that a teacher who is employed by a school district in Missouri may not hold the office of senator or representative.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

WW:BJ

Enclosure