SCHOOLTEACHERS:
PUBLIC SCHOOLS:
SCHOOL DISTRICT EMPLOYEES:
SCHOOLS:
STATE REPRESENTATIVE:
STATE SENATOR:
CONFLICT OF INTEREST:

Article III, Section 12, Missouri Constitution 1945, prohibits teachers and other employees of a public school district from holding the office of State Senator or Representative.

February 25, 1966

OPINION NO. 16 (1966)
Opinion No. 214 (1965)

FILED
16

Honorable Marvin E. Proffer
State Representative
P. O. Box 191
Jackson, Missouri 63755

Dear Representative Proffer:

This opinion is in response to your request that this office reconsider and withdraw its ruling in Opinion 365 to Frank L. Mickelson, issued September 9, 1963.

Opinion 365 construed Article III, Section 12, Missouri Constitution 1945, which provides:

> "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."

Opinion 365 considered the same Constitutional provision and ruled that a teacher employed by a school district may not hold legislative office. This ruling was based primarily on the meaning of "municipality" used in the first sentence of Section 12, Article III above.

The determining question is: Is teaching school an employment "under this state or any municipality thereof" within the meaning of Article III, Section 12?

An examination of legal encyclopediae and lexicons quickly reveals that school districts have been considered both to be municipalities and not to be municipalities in varying circumstances. 78 C.J.S., Schools and School Districts, § 25; 27A Words and Phrases, "Municipality", pp. 538 et seq.; Black's Law Dictionary, Fourth Edition, "Municipality," p. 1170.

Webster's dictionary defines municipality as a town, city or other district having powers of local self-government. The Supreme Court of Missouri, considering the term - its etymology and denotations - stated: "Municipality now has a broader meaning than 'city' or 'town' and presently includes bodies public or essentially governmental in character and function. . . ." St. Louis Housing Authority v. City of St. Louis, Mo., 239 S.W.2d 289, 294. The court held that the housing authority was a municipality within the provisions of Article VI, Section 16, Missouri Constitution 1945. The Supreme Court has considered school districts to be municipalities or municipal corporations in the following cases: Laret Investment Company v. Dickmann, 345 Mo. 449, 134 S.W.2d 65; Russell v. Frank, 348 Mo. 533, 154 S.W.2d 63, 67. Other cases holding that a school district is a municipal corporation are: Harrison v. Hartford Fire Ins. Company, 55 F. Supp. 241, Stroh v. Casner, 201 Ill. App. 281. The term "municipality" has also been held to include school districts. Seebee v. Board of Education of Clark County, 163 S.W. 472, 473; Joint School District v. Dabney (Okla), 260 P. 486.

A school district is clearly within the meaning of municipality as defined by the Supreme Court of Missouri.

This office has also considered school districts to be municipal corporations in ruling upon other official inquiries. Opinion 12 to Boyd issued 2-5-63; Opinion 284 to Gepford issued 10-14-63.

Often a generic term, because of frequent use in connection with a specific category within the genus, develops a specific as well as a generic meaning. The term "municipality" can include any local governing unit. However, the word also has a common specific usage; viz., as a synonym for city. This dual usuage explains the apparent variance in legal authorities.

Under the St. Louis Housing Authority case, supra, school districts are within the meaning of "municipality" as used in Article III, Section 12. Even if there were ambiguity as to whether the generic or specific meaning of the term is used, this ambiguity is resolved by the further provisions of Section 12. Members of school boards are expressly excluded from the prohibition of Section 12. As we reasoned in Opinion No. 365, this express exclusion of boards of school districts indicated that other school district offices and employments are included

within the term "municipality."

Turning now to the meaning of the phrase "employment under . . ., this state. . . ." Article IX, Section 1(a) of the Constitution provides:

> "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. . . ."

While employees and teachers of public school districts are clearly not direct employees of the State yet are they "employees under the state" as used in Article III, Section 12, of the Constitution?

The Constitution has clearly imposed the duty upon the legislature to provide the widest possible dissemination of knowledge by requiring the establishment of free public schools. The legislative method chosen to do this has been the authorization of various types of local school districts.

The Supreme Court in State v. Whittle, 63 S.W.2d 100, l.c. 102, said " * * * 'Under the Constitution of 1875, the public schools have been entrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function. . . .'"

We think that the language "employees under the state" is intended to have a somewhat broader meaning than "employees of the state." Because public schools are subject to such far-reaching controls, financial and otherwise, of the legislature and because by Constitutional mandate the legislature has responsibility for the establishment and maintenance of public schools, this language must be considered as applicable to employees of public schools, including teachers.

In State ex rel Walker v. Bus, 135 Mo. 325, the Court considered the provision of the Constitution of 1875 equivalent to Article III, Section 12, here considered. The court stated that, "Under this section all officers (except those under the United States) are divided into two classes, viz.: 'officers under the state' and officers 'under a municipality thereof.' * * *"

Since the two divisions are all-encompassing we need not resolve here whether a schoolteacher is an employee under the State or under a municipality. In either case the prohibition of Section 12 applies.

Honorable Marvin E. Proffer

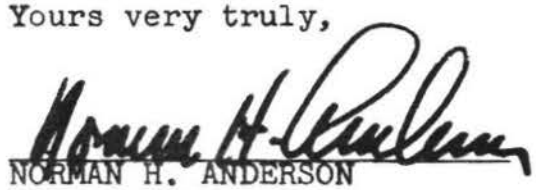
We fully appreciate the need for competent schoolteachers; especially in rural areas. Also, the qualities of a schoolteacher obviously make informed and dedicated legislators. The weighing of these benefits against the potential dangers of dual public employment is a matter of public policy which, in this case, has been resolved by the people through the adoption of Article III, Section 12, of their Constitution.

CONCLUSION

Therefore, it is the opinion of this office that Article III, Section 12, Missouri Constitution 1945, prohibits teachers and other employees of a public school district from holding the office of State Senator or Representative.

The foregoing opinion, which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,



NORMAN H. ANDERSON
Attorney General