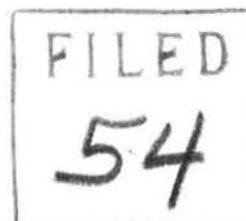


SCHOOLS: When vacancy exists, which will not be
ATTENDANCE OFFICER: filled in office of county superintendent
SUPERINTENDENT OF of schools of third class county, County
PUBLIC WELFARE: Court of such county may, in its discretion,
THIRD CLASS COUNTIES: by following procedure of Section 205.850
RSMo 1959, appoint a county superintendent
of public welfare, who shall assume all
powers and duties of school attendance of-
ficer of said county.

Opinion No. 54 (1966)
Opinion No. 413 (1965)

April 27, 1966

Honorable Charles A. Weber
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri
63670



Dear Mr. Weber:

This office is in receipt of your request for an opinion, reading in part as follows:

"Section 164.040 RSMo 1959, provides that the County Superintendent of Schools shall act as School Attendance Office for the County. Our Superintendent of Schools retired in July of 1965, and the office will not be filled.

"Section 205.850 RS Mo 1959 provides for the appointment by the County Court in Class 3 and 4 counties of a Superintendent of Public Welfare who shall have the powers and duties of the Attendance Officer in the County.

"I would like to know if this is the procedure (205.850) which must be followed when the County Superintendent's Office is vacated."

Honorable Charles A. Weber

Section 164.040 RSMo 1959, was repealed in 1963, and what is now Section 167.071 RSMo Supp. 1965, was enacted in lieu of the former section. The latter section provides the county superintendent of schools in each county is the school attendance officer for the county except in school districts with six or more directors, the school board may appoint and remove at pleasure, one or more school attendance officers. If the board fails to appoint an attendance officer, the county superintendent shall act in the district.

You have failed to state whether or not any of the six-director school districts of your county have appointed attendance officers in their districts. Because of the vacancy in the office of County Superintendent of Schools, there is no school attendance officer for the entire County of Ste. Genevieve. This gives rise to the present inquiry as to whether the procedure set out in Section 205.850 RSMo 1959, must be followed when the County Superintendent's office is vacant, in the appointment of one to serve as county attendance officer.

Section 205.850 RSMo 1959, reads in part as follows:

"The county court in counties of the third and fourth classes may in its discretion, with an order of the juvenile court showing approval, appoint a county superintendent of public welfare, and such assistants as it may deem necessary. Whenever the county court of any county has appointed a superintendent of public welfare such officer shall assume all the powers and duties now conferred by law upon * * * the attendance officer in any incorporated town or village having a population of more than one thousand inhabitants, and no other or different * * * attendance officer or officers shall be appointed * * * by the county superintendent of public schools, or by the school board or any incorporated city, town, or village school district or consolidated school district."

Honorable Charles A. Weber

From the language used in Section 205.850, supra, obviously it was not the intent and purpose of the lawmakers to enact a statute imposing a mandatory duty upon the county court of every third and fourth class county not having a county superintendent of public welfare, to appoint such officer, regardless of the need of the county for one, as well as the available county funds with which to pay the salary of such officer. If it had been the legislative intent to impose such a mandatory duty upon the county courts, then surely said section would have provided what the consequences would be, if a county court failed to make the appointment. We also find no express provisions from which it must necessarily be implied this was the intent of the legislature. We do find in said section evidence of a legislative intent to the contrary, in the specific provision, "The County Court in counties of the third and fourth classes may in its discretion * * * appoint a county superintendent of public welfare and such assistants as it may deem necessary," which clearly indicates the matter of making such appointments has been left to the sound discretion of the county courts. Consequently, the county court must, in each instance decide whether it will or will not make the appointment, and the section is directory and not mandatory in nature.

In the event the county court of the third class county of Ste. Genevieve desires a superintendent of public welfare for the county, the Court must follow the procedure provided by Section 205.850, in making such appointment.

If the Court does make the appointment, then as soon as same becomes effective, in addition to other duties, the appointee shall immediately assume all the powers and duties of attendance officer of the county, as well as all the powers and duties of attendance officer in any incorporated town or village having a population of more than one thousand inhabitants. As long as such appointment of county superintendent of public welfare remains in effect, no attendance officer shall be appointed by the county superintendent of public schools of any incorporated city, town, village or consolidated school district of the county.

CONCLUSION

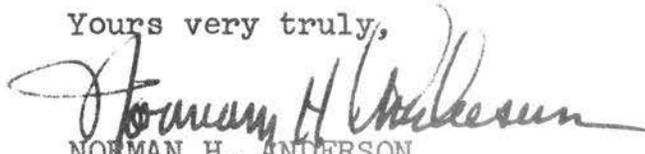
Therefore, it is the opinion of this office that when a vacancy exists in the office of superintendent of schools of a third class county, the county court of such county, may in

Honorable Charles A. Weber

its discretion, by following the procedure provided by Section 205.850 RSMo 1959, appoint a county superintendent of public welfare, who shall assume all the powers and duties of school attendance officer of said county.

The foregoing opinion which I hereby approve was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,



NORMAN H. ANDERSON
Attorney General