

COMPATIBILITY OF OFFICES:  
CONFLICT OF INTEREST:  
OFFICERS:  
COUNTY CLERKS:  
COUNTY SUPERINTENDENTS  
OF SCHOOLS:

(1) There is no automatic forfeiture of office by an incumbent county superintendent of schools who assumes the additional but compatible office of county clerk, such officer is entitled to statutory compensation during the term of his office as county superintendent of schools. (2) The employees of such office are entitled to their regular compensation for services rendered during the term of office of their superior as county superintendent of schools.

OPINION NO. 337

November 23, 1966

Honorable Haskell Holman  
State Auditor  
Jefferson City, Missouri



Dear Mr. Holman:

This is in answer to your request for an opinion of this office on the questions which you have stated as follows:

"1. When an individual serving in the official capacity as Superintendent of Schools was duly elected to, qualified for and assumed the office of clerk of the county court on January 1, 1963, does the office of superintendent of schools become vacant on January 1, 1963 even though there is no record found of the individual resigning from the office of superintendent of schools?

2. Would the then Clerk of the County Court be entitled, subsequent to January 1, 1963 and until his successor in office as superintendent of schools was elected or appointed and who assumed office on the first Monday in July 1963, to any compensation as set forth in Sections 167.065, 167.067, 167.200, 167.210 and 167.220 RSMo 1959 for that of superintendent of schools?

3. Would it be permissible for an individual to serve in the capacity of and receive compensation therefor, from state or county funds, as clerical assistant for the superintendent of schools during the period in question, that being January 1 to the first Monday in July 1963?"

Honorable Haskell Holman

A vacancy occurs in a public office whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. In *State ex inf. McKittrick v. Wilson, Mo.*, 166 S.W.2d 499, 502, the court said:

"\* \* \* It means empty, unoccupied, as applied to an office without an incumbent; an existing office without an incumbent is vacant. An incumbent of an office is one who is legally authorized to discharge the duties of that office. *State ex rel. Sanders v. Blakemore*, 104 Mo. 340, 15 S.W. 960 \* \* \*"

A person who holds two compatible offices simultaneously is entitled to the statutory compensation for each office. *State ex rel. Zevly v. Hackmann*, 300 Mo. 59, 254 S.W. 53; *Bruce v. City of St. Louis, Mo. App.*, 217 S.W.2d 744; *Coleman v. Kansas City*, 351 Mo. 254, 173 S.W.2d 572; *State ex rel. Koehler v. Bulger*, 289 Mo. 441, 233 S.W. 486; *United States v. Saunders*, 120 U.S. 126, 7 S.Ct. 467, 30 L.Ed. 594. This is true unless a statute, the common law or the Constitution forbids the holding of such offices by the same person. *State ex rel. Walker v. Bus, Mo.*, 36 S.W. 636, 637.

Therefore, the office of Superintendent of Schools would not become vacant upon the acceptance by the incumbent of the office of Clerk of the County Court on January 1, 1963, unless those two offices are incompatible at common law or pursuant to some constitutional or statutory provision. There is no such provision in the Constitution or statutes of Missouri with respect to the offices of County Superintendent of Schools and Clerk of the County Court.

The question remains whether the two offices are intrinsically incompatible so as to be held incompatible at the common law. Two offices are incompatible at common law when (a) one is subordinate to the other, (b) one has supervisory power over the other, (c) one has power of appointment or power of removal over the other, or (d) one audits the other's accounts. 67 C.J.S., Offices, Section 23, page 135; *State v. Wittmer, Mont.* 144 Pac. 648, 649; Opinion 167, issued April 19, 1963, to Daniel V. O'Brien (copy enclosed).

The County Superintendent of Schools has supervision over the schools of his county (Section 179.040, RSMo Cum. Supp. 1965). He is the school attendance officer (Section 167.070, RSMo Cum. Supp. 1965). He attends various meetings (Sections 179.050 and 165.657, RSMo Cum. Supp. 1965), and makes certain reports (Sections 179.080 and 179.090, RSMo Cum. Supp. 1965) in connection with schools and education, as well as other duties, such as the issuance of work certificates for minors (Section 294.045, RSMo).

Honorable Haskell Holman

The County Clerk is the clerk of the County Court, charged with keeping records and accounts of county business, issuing, attesting and affixing his seal to certain documents, accounting for certain moneys, and other duties with respect to the business of the county government, pursuant to the provisions of numerous statutes.

There are only two areas of impingement of the office of County Superintendent and that of County Clerk. It is the duty of the County Superintendent, pursuant to Section 179.040, RSMo Cum. Supp. 1965, to turn over to the County Clerk estimates and enumeration lists. Under Section 51.150, RSMo Cum. Supp. 1965, the County Clerk keeps accounts with all persons, including the County Superintendent, who may be entitled to receive money from the county and keeps lists of salaries, fees and expenses paid by the county. In connection with the duties set out in said Sections 179.040 and 51.150, no authority is conferred upon the County Clerk to verify, challenge or disapprove reports by or disbursements to the County Superintendent. Said statutes do not make one office subordinate to the other, give one supervisory power of appointment or removal over the other or constitute an audit of one's accounts by the other. The offices are not incompatible.

The individual in question was entitled to all compensation payable to the office until the first Monday in July, 1963, when his successor assumed the office of Superintendent of Schools. The Supreme Court said, *Coleman v. Kansas City, Mo.*, 173 S.W.2d 572, 577:

"During the time Murray held the office, he is entitled to the salary fixed by law as an incident to that office. 'Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.' *State ex rel. Evans v. Gordon*, 245 Mo. 12, loc. cit. 27, 149 S.W. 638, loc. cit. 741.  
\* \* \*"

Anyone duly appointed by the Superintendent of Schools as a clerical assistant would be entitled to compensation for services performed in that capacity. The fact that the Superintendent of Schools was also the Clerk of the County Court during the period January 1 to the first Monday in July, 1963, does not affect such person's status or rights.

#### CONCLUSION

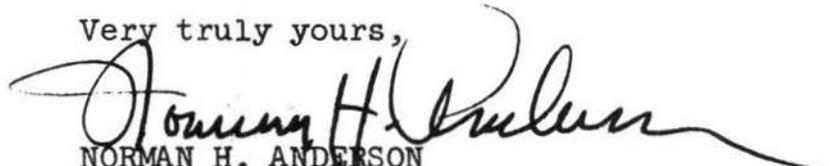
It is the opinion of this office that, since there is no automatic forfeiture of office by an incumbent county superintendent of

Honorable Haskell Holman

schools who assumes the additional but compatible office of county clerk such officer is entitled to statutory compensation during the term of his office as county superintendent of schools and his employees are entitled to their regular compensation for services rendered during the term of office of their superior as county superintendent of schools.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General

Enclosure: Opinion No. 167