

SCHOOLS:
STATE BOARD OF
EDUCATION:
COMMISSIONER OF
EDUCATION:

The plain and rational meaning of the word "administration" as used in Section 161.112, RSMo 1969, which sets forth the qualifications for the State Commissioner of Education, involves as an essential element the performance of executive duties. From the facts set forth in your telegram, the individual in question does not possess "breadth of experience in the administration of public education" as required by Section 161.112 and is, therefore, not qualified for appointment to the office of State Commissioner of Education.

OPINION NO. 524

October 7, 1970



Mr. F. Burton Sawyer
President
State Board of Education
919 West Adams
Kirkwood, Missouri

Dear Mr. Sawyer:

This is in response to your request for an opinion of this office with respect to the following inquiry:

"CONFIRMING TELEPHONE REQUEST PLEASE GIVE YOUR OPINION ON WHETHER STATE BOARD OF EDUCATION CAN APPOINT AS COMMISSIONER INDIVIDUAL WHO IS NOT A CERTIFIED TEACHER HE IS A MISSOURI STATE REPRESENTATIVE WITH SEVERAL YEARS EXPERIENCE AS MEMBER AND CHAIRMAN OF HOUSE EDUCATION COMMITTEE HE WAS A PART TIME PROFESSOR AT MISSOURI VALLEY COLLEGE FOR ONE YEAR AND MINISTER OF TWO CHURCHES HE HAS HIS MA DEGREE IN POLITICAL SCIENCE AND IS READY TO RECEIVE HIS PHD IN POLITICAL SCIENCE WITH SPECIAL FIELD EMPHASIS ON EDUCATION AND PUBLIC ADMINISTRATION"

Article IX, Section 2(b), Missouri Constitution, 1945, states as follows:

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"Commissioner of education--qualification, duties, and compensation--appointment and compensation of professional staff--powers and duties of State Board of Education.-- The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. The board shall prescribe his duties and fix his compensation, and upon his recommendation shall appoint the professional staff and fix their compensation. The board shall succeed the State Board of Education heretofore established, with all its powers and duties, and shall have such other powers and duties as may be prescribed by law."

Section 161.112, RSMo 1969, implementing Article IX, Section 2(b), provides the qualifications for the Commissioner of Education:

"Commissioner of education--appointment--qualifications--compensation--removal.-- The state board of education shall appoint a commissioner of education as its chief administrative officer. The commissioner shall be a citizen who has resided in the state for at least one year immediately preceding his appointment and who possesses educational attainment and breadth of experience in the administration of public education. The board shall prescribe the duties of the commissioner and fix his compensation, and may remove him at its discretion." (Emphasis supplied.)

From the information furnished in your telegram, we believe that the initial question to be answered is whether this individual "possesses. . .breadth of experience in the administration of public education." The primary rule of statutory construction is to ascertain from the language used the intent of the legislature and to put upon the language used its plain and rational meaning in order to promote its object. Donnelly Garment Co. v. Keitel, 354 Mo. 1138, 193 S.W.2d 577, 581 (1946). Primary emphasis must be placed on the language used and all words must be considered in their ordinary and plain meaning. Section 1.090, RSMo 1969, Christy v. Petrus, 365 Mo. 1187, 295 S.W.2d 122, 126 (1945); Playboy Club v. Myers, 431 S.W.2d 228, 231 (Mo., 1968). When the language of a statute is explicit and unambiguous and its meaning clear and unmistakable:

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". . . there is neither reason nor room for judicial construction. . . and, we find nothing in Section 443.430 (or in any related statute) which would indicate a legislative intent that the non-technical and commonplace language hereinbefore quoted from the cited statute should be construed otherwise than in its natural, plain and ordinary sense and meaning, or which would afford any legitimate basis for refusal to accept and apply that language honestly and faithfully. . . ." State ex rel. Hopkins v. Stemmons, 302 S.W.2d 51, 55 (Mo.App., 1957); State ex rel. Cobb v. Thompson, 319 Mo. 492, 5 S.W.2d 57, 59 (1928).

What is the "natural, plain and ordinary sense and meaning" of "breadth of experience in the administration of public education" as used by the legislature in Section 161.112? The crucial word in this phrase is "administration." Webster's Third New International Dictionary gives a number of meanings for "administration." However, in the context in which "administration" is used in Section 161.112, it is defined as "the performance of executive duties; MANAGEMENT, DIRECTION, SUPERINTENDENCE." The dictionary example of the use of "administration" in this context is the phrase "engaged in the administration of public affairs."

Ballentine's Law Dictionary (Third Ed., 1969) defines "administration" as follows:

"The execution of a law by putting it into effect, applying it to the affairs of men. The management, care, or control of anything; an executor's or administrator's management of the estate of a decedent; an officer's management of his office." (Emphasis supplied.)

Black's Law Dictionary (Fourth Ed., 1951) defines "administration" as:

"Managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like." (Emphasis supplied.)

This definition is based on the case of Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510 (1938). In the Webb case the Arizona State Tax Commission attempted to use moneys appropriated for the administration of certain tax statutes for remodeling its offices. Plaintiff, a contractor, had presented for payment a bill for equipment and the state auditor had refused to approve it. The Court,

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in analyzing whether funds appropriated for the administration of statutes could be used by the Tax Commission to remodel its offices, commented as follows on the meaning of "administration":

"Anything which may be considered as reasonably necessary and proper for the commission to do in the administration of the acts may be paid for out of the appropriation, but anything, no matter how desirable in itself, which is not reasonably to be classed as a cost of administration is not permissible. The word 'administration' means 'managing or conduct of an office or employment; the performance of the executive duties of an institution, business or the like.'" Id. at 514 (Emphasis supplied.)

In another case involving the definition of the word "administration", People ex rel. Elkind v. Rosenbloom, 184 Misc. 916, 54 NYS 2d 295 (1945), the question was whether a state or local law governed the appointment of members of the Board of Education of a certain class of cities in New York. In analyzing a constitutional provision crucial to this question, the Court stated:

". . . moreover, the Constitution expressly excluded from the power granted to cities to adopt local laws, whether adopted by local legislation, or by popular vote, any enactment which might apply to or affect the administration of the public school systems in such cities. Administration is generally understood to mean management, direction or supervision. . . ." Id. at 300. (Emphasis supplied.)

From the foregoing, we conclude that the plain and rational meaning of "administration" involves as an essential element the performance of executive duties. That the legislature, by using the word "administration" in Section 161.112, intended that the Commissioner of Education shall have had actual experience in the management, direction or superintendence of public education is emphasized by the nature of the duties imposed on the Commissioner of Education. The State Board of Education has the overall responsibility for the supervision of the public schools of Missouri. Article IX, Section 2(a), Missouri Constitution, 1945, and Section 161.092, RSMo 1969. The Commissioner of Education, as the Board's chief administrative officer, must supervise and direct the professional staff and other employees of the Board in the day-to-day implementation of the Board's policies. Furthermore, the Commissioner has certain specified duties imposed upon him by Section 161.122, RSMo 1969:

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"Duties of the commissioner.--The commissioner of education shall supervise the division of public schools. Either in person or by deputy, he shall confer with and advise county and school district officers, teachers, and patrons of the public schools on all matters pertaining to the school law; visit and supervise schools, and make suggestions in regard to the subject matter and methods of instruction, the control and government of the schools, and the care and keeping of all school property; attend and assist in meetings of teachers, directors, and patrons of the public schools; and seek in every way to elevate the standards and efficiency of the instruction given in the public schools of the state."

Executive experience in the field of public education, "experience in the administration of public education," would be invaluable, if not essential, in the performance of these duties.

Has the individual described in your telegram had any experience in the administration of public education? We note that he "is a Missouri State Representative with several years' experience as a member and chairman of House Education Committee." Although this legislative experience may have exposed him to certain administrative problems associated with public education, we do not believe this would constitute experience in the actual management, direction or superintendence of public education. The performance of executive duties in public education would not be the responsibility of a state legislator.

Examining the other facts set forth in your telegram, we find nothing which would constitute "experience in the administration of public education." Therefore, we conclude that the individual described in your telegram would not fulfill the qualifications for Commissioner of Education as contained in Section 161.112, RSMo 1969.

CONCLUSION

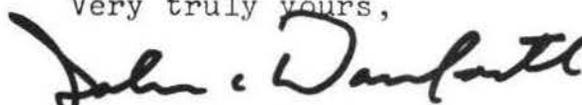
Therefore, it is the opinion of this office that the plain and rational meaning of the word "administration" as used in Section 161.112, RSMo 1969, which sets forth the qualifications for the State Commissioner of Education, involves as an essential element the performance of executive duties. From the facts set forth in your telegram, the individual in question does not possess "breadth of experience in the administration of public education" as

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required by Section 161.112 and is, therefore, not qualified for appointment to the office of State Commissioner of Education.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J".

JOHN C. DANFORTH
Attorney General