

PROSECUTING ATTORNEY: Duty to bring quo warranto proceedings against persons not qualified to hold public office.



5-13  
April 30, 1935

Honorable F. C. Bollow  
Prosecuting Attorney  
Shelbyville, Missouri

Dear Sir:

This Department is in receipt of your letter of April 17, wherein you state as follows:

"I have been considerably harassed in my office by country school district troubles. I am willing to and have been giving free advice to the Directors of country school districts regarding school affairs. But in my county in two or three instances directors are holding directorships when they were not qualified at the time of their election by reason of the fact that they were not tax payers. Their opponents in the district have been beseegeing my office to get me to bring proceedings to oust those directors. If it is the duty of my office to so act in those cases I presume that I will have to do so. However, I am unable to find any provision in the law directly requiring the prosecuting attorney to act in those cases or in any way making it a part of his official duties to so act. Of course I have no desire to meddle into affairs of this kind and am entirely content

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to let them alone; they generally arise from personal antagonisms rather than from any question of real merit. Please advise if it is a part of the duties of my office to maintain action to oust directors of school districts now holding office who were not qualified at the time of their election by reason of not being tax payers."

Section 9287 Revised Statutes Missouri 1929, provides as follows:

"The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding his, her or their election or appointment, and shall be at least twenty-one years of age. Said directors shall be chosen by the qualified voters of the district at the time and in the manner prescribed in section 9283 of this article, and shall hold their office for the term of three years, and until their successors are elected or appointed and qualified, except those elected at the first annual meeting held in the district under the provisions of this chapter, whose term of office shall be for one, two and three years, respectively. A qualified voter within the meaning of this chapter

shall be any person who, under the general laws of this state, would be allowed to vote in the county for state and county officers, and who shall have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote."

Under the above section, a school director must have been a taxpayer within a year preceding his election.

Section 1618 Revised Statutes Missouri 1929, provides as follows:

"In case any person shall usurp, intrude into or unlawfully hold or execute any office or franchise, the attorney-general of the state, or any circuit or prosecuting attorney of the county in which the action is commenced, shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil cases, an information in the nature of a quo warranto, at the relation of any person desiring to prosecute the same; and when such information has been filed and proceedings have been commenced, the same shall not be dismissed or discontinued without the consent of the person named therein as the relator; but such relator shall have the right to prosecute the same to final judgment, either by himself or by attorney. If such information be filed or exhibited against any person who has usurped, intruded into or is unlawfully holding or executing the office of judge of any judicial circuit, then it shall be the duty

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of the attorney-general of the state, or circuit or prosecuting attorney of the proper county, to exhibit such information to the circuit court of some county adjoining and outside of such judicial circuit, and nearest to the county in which the person so offending shall reside."

In the case of State ex inf. Norman v. Ellis 325 Mo. 154, our court held that a prosecuting attorney of a county had the authority to bring a quo warranto proceeding against a person unlawfully holding a public office.

From the foregoing, it is seen that school directors must at the time of their election be taxpayers, and if such are not taxpayers they are not qualified. The statutes and cases are to the effect that a prosecuting attorney may bring a quo warranto proceeding to oust an unqualified director. The prosecuting attorney being charged with the duty of enforcing all laws pertaining to matters civil, quasi civil and criminal in the county, it is our opinion that you not only have the authority but it is also mandatory and your duty to bring quo warranto proceedings against persons not qualified to hold public office.

Respectfully submitted,

Wm. ORR SAWYERS  
Assistant Attorney General

APPROVED

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ROY McKITTRICK  
Attorney General.

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