SCHOOLS: Election and qualification of Directors.

May 17th, 1939.

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Hon. L. Cunningham, Jr.,
Prosecuting Attorney,
Camden County,
Camdenton, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of April 21st, last, requesting an opinion from this office and from which letter we quote as follows:

> "One of the members of the board of directors of the Oak Hill school district in this county, which is a common school district, request that I secure an opinion from your office concerning the legalities of a school board meeting and of contracts for the employment of teachers and bus drivers hired at such meetings, the facts are as follows.
>
> "At the annual meeting of the school district, April 4th, one new school director was elected for a term of three years. He defeated one of the then members of the board. At the close of the annual meeting the president of the board of directors announced that the next meeting of the board of directors to be on Friday April 7th, at 3:30 o'clock, P. M. and further announced that such meeting the board would organize and qualify the new director and contrary to the announce-

ment, the old board met on Thursday, April 6th, including the defeated director, and at that meeting the board with the vote of the defeated director voted to hire teachers and bus drivers for the 1939-1940 term of school in the district, also at the meeting of the board, I understand, hired the son of the then existent president of the board, who is still on the board, in one of the positions.

"No doubt the last act was nepotism, this board has been doing such acts for the past several years. Before I was Prosecuting Attorney of this county I tried out an injunction suit to restrain the board from expending the money erroneously and from calling numerous bond elections. The court admonished the board to refrain from calling the elections as often as they had been calling them but were unable to get sufficient evidence to provide actual misappropriation of the funds. I advised the tax payers of the district to consult you concerning the nepotism matter however, to my knowledge, they did nothing concerning it. The board is trying to operate a high school in the district and have from two to five students above the eighth grade. It, of course, necessitates a very heavy expenditure on the tax payers to benefit the children who could be easily transported to some adjoining consolidated district having high school. I would appreciate your office's opinion as to the legality of the meeting and of the employment of the teachers and bus drivers and your advice as to what proceedings should be taken upon the nepotism proposition.

> No doubt the president voted against the employment of his son, however, I have no doubt that that is a mere subterfuge to avoid the anti-nepotism laws."

Answering your questions in order, we say as follows:

I

Section 9287, Revised Statutes of Missouri, 1929, provides for the election of members of a board of directors of a school district, and said section says, in part, as follows:

> "* * * * shall hold their office for the term of three years, and until their successors are elected or appointed and qualified, * * "

Section 9288, Revised Statutes of Missouri, 1929, provides for and requires an oath to be taken by a director within four days after election. The form of which oath is set forth in the statute.

The rule with respect to qualifying for an office to which a person has been elected is stated in 46 C. J. Section 86, p. 960, as follows:

> "One of the usual neces ary formalities for the qualification of an officer is the taking of the official oath. Where an oath is required, it is a prerequisite to full investiture with the office."

Reading the aforesaid sections of the statute together it is reasonably clear that a newly elected director does not qualify for the office until he takes the required oath, and as a consequence, his predecessor in office holds over until the newly elected director does qualify.

While, in the case you state, the president of the board may have inadvertently or purposely misled the newly elected director into believing he could wait until the announced meeting of April 7th to take the oath and thus become a qualified member of the board, yet we find nothing in law or fact which prevents a newly elected director from immediately, upon election, taking the oath before anyone authorized to administer oaths so as to immediately or promtly qualify himself and thus displace his predecessor on the board. In any event, we find nothing in the school law which would justify us in saying the president's action, as stated, sets aside the prerequisite of the oath to be taken in order for a newly elected officer to qualify, and the mandatory provision of Section 9287 that school directors "shall hold their office * * * * * until their successors are elected * * * * * and qualified."

Hence, our conclusion is that the meeting of the so called "old board" on April 6th, if held within the district, was a valid one and that they were authorized to transact the business indicated.

II

Relative to the question of nepotism, we note you say at the conclusion of your letter as follows:

> "No doubt the president voted against the employmmnt of his son, however, I have no doubt that that is a mere subterfuge to avoid the anti-nepotism laws."

In the late case of State v. Becker, 336 Mo. 815, l. c. 819, the court, speaking on the question of nepotism, says as follows:

> "The essence of the provision and likewise of said decision is the power of appointment vested in one and the successful exercise thereof by him in accomplishing the appointment of his relative. Action, direct or indirect, not inaction is prohibited. The only correlation expressed or implied is a specific kinship existing between two individuals, specifically indicated, and none other. No implication may properly be drawn from what has just been said that one clothed with a power of selection or appointment, might not through connivance or confederation with his associates who share in such power, bring himself within said prohibition."

Hence it can be seen by the above pronouncement of the court that if the president of the board, in your case, neither voted for, nor undertook to exercise any influence, directly or indirectly, before or during the board meeting, upon the other two members thereof, to vote for the son of the president of the board, then the president could not be charged with nepotism. On the other hand, even though the president refrained from voting on, or voted against, the election of his son, yet, if through connivance or confederation, directly or indirectly, with his associates, he brought about the election of his son as a teacher, he could be charged with nepotism.

Consequently, you will first have to ascertain the facts in your particular case before we could definitely say whether or not the president can be charged with nepotism. If the facts should justify such charge, then quo warranto would be the proper procedure to follow.

Very truly yours,

J. W. BUFFINGTON,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

JWB/rv