

SCHOOLS:
COUNTY COURTS:

RE: The county court must pay clerical help of
the superintendent of schools in Mississippi
County within the limits prescribed in HCSHB No.
770.

July 23, 1946

FILED

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Mr. Marshall Craig
Prosecuting Attorney
Charleston, Missouri

Dear Mr. Craig:

This will acknowledge receipt of your letter of recent
date requesting an opinion of this department as follows:

"Section 10622.1 Laws of Missouri June 1946,
states in part, " * * * the County Superin-
tendent of Public Schools shall be permitted
to employ clerical assistance, * * *".

"We would like to have the opinion of your
department with reference to whether or not
any descretion is left with the County Court
in the hiring of clerical help for the
County Superintendent. In other words does
the above section mean that the County Court
must pay a clerical for the Superintendent of
Schools if he desires that one be employed.

"The County Superintendent of Schools in the
County, which is a County of third class,
desires to have clerical help, but the County
Court feels that it is not necessary and
wants to know whether or not they have auth-
ority to refuse his request."

The statute relating to the clerical assistance of the
county superintendent of schools in third class counties, of
which Mississippi County is one, is Section 10618.2 of HCSHB
No. 770, passed by the 63rd General Assembly and approved by
the Governor, and effective ninety (90) days from April 2, 1946.
This section reads as follows:

"Sec. 10618.2 Traveling expenses--clerical
assistance

"The county superintendent of public schools

shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. The county superintendent of public schools shall be permitted to employ clerical assistance, to whom there shall be paid not less than seven hundred fifty dollars (\$750) nor more than one thousand five hundred dollars (\$1500) annually to be determined and fixed by the county court, seven hundred fifty dollars (\$750) of which shall be paid by the state out of state school moneys, the same to be included by the State Board of Education as a part of the apportionment made before August 31 of each year. The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasury for the payment of same. The county treasurer shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent and audited by the county court, draw a warrant each month for payment of same out of moneys provided by the state for such purpose, and the county court shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent, draw a warrant each month upon the county treasury for that part of the compensation for such purpose in excess of that provided by the state: Provided, when the county superintendent shall furnish his own conveyance the rate allowed for mileage shall be four cents per mile for each mile actually and necessarily traveled: Provided further, that all warrants in payment for clerical hire shall be drawn in favor of the person or persons who render such services, and in no case shall the county superintendent personally receive any part thereof."

The legal issue to be determined here is whether the word "shall" at the beginning of the second sentence in that section, is mandatory or directory.

In State ex rel. McKittrick v. Wymore, 119 S. W. 941, 343 Mo. 98, the court said, l. c. 109:

"* * *It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory. * * *"

Other courts of Missouri have stated the law to be that the construction of the words "may" and "shall" have to be determined by ascertaining the intent of the Legislature in passing the statute. *Kansas City v. J. I. Case Threshing Machine Co.*, 87 S. W.(2d) 195, 337 Mo. 913. This intent may be determined by bearing in mind the object of the statute and the consequences that would result from construing it in one way or the other. *State ex rel. Hay v. Flynn*, 147 S. W.(2d) 210, 235 Mo. App. 1003. Applying the above rules of construction we think the statute is mandatory for the following reasons: (1) The general rule is that the word "shall" is mandatory. (2) The effect of allowing the county court of a county to refuse a county superintendent clerical help might lead to the obstruction and embarrassment of the officer in carrying out his duties with relation to the schools of the county. Section 10618.2 insures that the county superintendent will not abuse this privilege because it provides a maximum which the clerical assistants of the superintendent will be entitled to receive. Therefore, if the county court were allowed to refuse the superintendent any clerical assistance the result would be that, while the superintendent is restricted by the statute in hiring assistance the county court would not be restricted in its exercise of authority over the superintendent. We are of the opinion that the statute did not so intend, and this is supported by the fact that the statute also provided that clerical assistants should receive not less than seven hundred and fifty (\$750) dollars per year. The latter indicates an intent upon the part of the Legislature that the superintendent be given the clerical assistance if he deemed it necessary to carry out his duties. (3) The object of the statute was that the superintendent carry out efficiently his duties with regard to the public schools and we think that this object might be thwarted if the county court was allowed to refuse to give him any clerical assistance.

We are, therefore, of the opinion that the first "shall" in the second sentence of Section 10618.2 of HCSHB No. 770 is mandatory.

CONCLUSION

It is, therefore, the opinion of this Department that the county court of Mississippi County must pay clerical assistance of the superintendent of schools of that county if the superintendent desires and requests that such assistance be employed. The county is, however, not authorized to pay such clerical assistance more than the fifteen

Mr. Marshall Craig

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hundred (\$1500) dollar maximum per year which is provided in Section 10618.2 of HCSHB No. 770.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw