

COUNTY  
SUPERINTENDENT  
OF PUBLIC  
SCHOOLS

: In determining qualifications of  
: county superintendent for public  
: schools as to whether this officer  
: has taught or supervised schools  
: as his chief work at least two of  
: the eight years next preceding  
: election or appointment, the sum  
: derived by adding one school year  
: to a number of days accumulated  
: during the course of eight years  
: is authorized by this statute.  
: Aggregate of teaching or supervis-  
: ion must be the total of two years  
: and must be taken from the eight  
: years preceding election or  
: appointment.

February 1, 1944

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Honorable Forrest C. Donnell  
Governor, State of Missouri  
Jefferson City, Missouri

Your Excellency:

This office is in receipt of your letter of recent date in which you request an opinion concerning the qualifications for county superintendent of schools as required in a recent enactment of the legislature. Omitting caption and signature, this request reads as follows:

"Section 1069 of H. B. 94 (Laws of Missouri of 1943, page 891), with reference to county superintendent of public schools, reads in part as follows:

'\* \* \* He shall have taught or supervised schools as his chief work during at least two of the eight years next preceding his election, \* \* \* and a vacancy caused by death, resignation, refusal to serve, or removal from the county, shall be filled by the governor by appointment for the unexpired term, subject to the same qualifications as if the appointee had been elected. \* \* \*'

"Your opinion, as soon as possible, is hereby respectfully requested on the following question:

"In determining whether a person has

taught or supervised schools as his chief work during at least two of the eight years next preceding his election (or appointment) is it legal to count as said two years the sum derived by adding (a) one school year and (b) a number of days, accumulated over the course of said eight years, which days aggregate more than the number of days in a school year?"

House Bill No. 94, was an act introduced in the 62nd General Assembly to repeal Sec. 10609 R. S. Mo., 1939. This section was repealed and reenacted as Sec. 10609, R. S. 1939, Laws of Missouri, 1943, at page 890. This new section relating to the election, qualifications and term of office of County Superintendents of Public Schools, considerably raised the professional requirements of this office and the Legislature insists on, in addition to a proper theoretical background, two years practical experience in teaching. The full text of the section reads as follows:

"The qualified voters of each and every county in this state shall elect a county superintendent of public schools at the annual district school meeting held on the first Tuesday in April 1943, and every four years thereafter. Said County school superintendent shall be a citizen of the county and at least twenty-four years old. He shall have taught or supervised schools as his chief work during at least two of the eight years next preceding his election, or shall have spent the two years next preceding his election as a regular student in a recognized college or university. At the time of his election he shall hold a certificate authorizing him to teach in the public schools of Missouri, and shall have completed at least one hundred twenty semester hours of college work, including at least fifteen hours in the field of education, not less than five of which shall have in school supervision and administration; or he shall be serving as county superintendent of public schools. Each and every county school superintendent elected on the first Tuesday in April, 1943,

and thereafter, shall hold said office for a term of four years from and after the first Monday in July following his election, or until a successor has been chosen and has qualified; and a vacancy caused by death, resignation, refusal to serve, or removal from the county, shall be filled by the governor by appointment for the unexpired term, subject to the same qualification requirements as if the appointee had been elected. The County school superintendent shall turn over all books, papers, certificates, stub-books and records in his possession to his successor. All acts and parts of acts conflicting with this section are hereby repealed. Approved March 3, 1943."

Whether a county superintendent of schools is a county or state officer has been answered in the affirmative in

Hollowell v. Schuyler County, 323 Mo. 1230, 18 S. W. (2d) 498:

"It is further claimed by the appellant that the superintendant of schools is not a county officer within the purview of article 14 of the Constitution, and therefore the constitutionality of the emergency clause is immaterial. We are unable to understand how that could affect the situation, since the sections upon which appellant depends, 11352 and 11354, apply to superintendents of schools. The superintendent of schools is a county officer, though not specially mentioned in the Constitution. Article 9, Sec. 14, of the Constitution provides that the "General Assembly shall provide for the election or appointment of such other county, township and municipal officers as public convenience may require. \* \* \*"

"He (the county superintendent of schools) shall have taught or supervised schools as his chief work during at least two of the eight years next preceding his election, \* \* \*"

Before proceeding with a construction of this part of the statute, we deem it necessary to refer to the decisions in our courts for a rule to be used in such construction. In passing upon the intention of the Legislature in its enactments, we find this rule announced.

"The intention of the Legislature is to be obtained primarily from the language used in the statute."

Greer v. K. C. Ry. Co. 228 S. W. 454, 286 Mo. 523  
St. Louis Ry. v. Clark, 53 Mo. 214  
59 C. J. 952, Par. 569 et seq.

Adopting the foregoing rule in the present instance, we conclude that the sentence under scrutiny is clear, concise and unambiguous and needs no construction on our part.

One qualification imposed by the Legislature upon this officer in this new section is this: "He shall have taught or supervised schools as his chief work\* \* \*." (Emphasis ours).

It will be both pleasant and profitable to examine authorities and some other jurisdictions, with a view to discovering what the term "chief work" means with respect to the teaching profession.

As defined by Funk and Wagnalls New Std. Dictionary, 1937 Edition, we find these definitions:

Chief--Principal, most important, foremost, leading main.

Work--Opportunity for labor; employment as a means of gain or livelihood; occupation.

Turning now to other authorities we find at 46 C. J. 896, at note 5, paragraph (b) the following:

"An occupation, in a legal contemplation, means that which practically takes up one's time and energies, especially one's regular business or employment. The word 'Occupation' does not necessarily mean the present occupation but it means that which principally takes up one's time, thought and energy, especially one's regular business or employment. For illustration: A man might have a regular occupation, such as that of a painter, and be out of employment, and might temporarily engage in other business, yet, if he was questioned as to what was his occupation, he would give it in as a painter, that being his general occupation, whereas at that moment he might be engaged in other business as a general occupation."  
Supreme Lodge K & L H v. Baker, 163 Ala. 518, 522. 50 S.958.

Also in 12 C.J. S. 791, note 92.

"The chief occupation or business of one, so far as worldly pursuits are concerned, is that which is of principal concern to him, of some permanency in its nature, and on which he chiefly relies for his livelihood, or as the means of acquiring wealth, great or small."

Washburn v. Commissioner of Internal Revenue, C. C. A. 51 F. 2d 949. 952-- In re Mackey, C. C. Cel.110 F. 355, 358.

Du Pont v. Du Pont, Super., 179 A. 500, 503.

And again at 29 Words & Phrases, 158.

"\* \* \* The word 'occupation' \* \* \* must be held to have reference to the vocation, profession, trade or calling which the assured is engaged in for hire or for profit, and not as precluding him from the performance of acts and duties which are simply incidents connected with the daily life of men in any or all occupations, or from engaging in mere acts

of exercise, diversion or recreation.  
Evans v. Woodman Acc. Ass'n. 171 P. 643, 644,  
102 Kan. 556, L. R. A. 1918 D. 122.

Two leading cases involving the teaching profession have come to our attention, the first, McSherry v. City of St. Paul is a Minnesota case involving a distinction between casual and regular employment. We refer also to a Kansas case, Evans v. Insurance Company, a situation involving the question of a change of employment. The portions of these decisions as they apply in the instant case are as follows:

McSherry v. City of St. Paul, 277 N. W. 541.

"Whether a teacher is 'regularly employed' within meaning of teachers' tenure law must be determined with principal reference to scope and purpose of hiring rather than with sole regard to duration and regularity of service, and where there is a continuing engagement to serve employer at such times as particular and essential service may be needed, employment is not 'casual' but 'regular.' Mason's Minn. St. 1927, Sec. 2935-1.

"The word 'regular' means that which is arranged; symmetrical; steady; uniform; not subject to unexplained or irrational variation; that which is orderly; methodical. The word 'regularly' means in a regular manner; in a way or method accordant to rule or established mode; in uniform order; methodically; in due order; and such is the signification attached to the word in its common and ordinary use. \* \* \*

"The employment of substitute teacher who was required to keep herself in constant readiness to go to any school in city when called upon to do so, and who could therefore take no other job, was not 'casual' but was 'regular' within meaning of teachers' tenure law, and teacher was entitled to benefits thereof. Mason's Minn. St. 1927, Sections 2935-1 to 2935-14. \* \*

"That teacher in city schools was designated as a 'casual substitute' during portion of



her three years' probationary service did not prevent teacher from being entitled to tenure rights after having rendered three years' probationary service. Mason's Minn. St. 1927, Sections 2935-1 to 2935-14.

"The teachers' tenure law is based upon public policy of protecting educational interests of state, and not upon policy of granting special privileges to teachers, and it should not be strictly construed against a teacher, but should be construed literally to effect general purpose, in view of interest of public at large. Mason's Minn. St. 1927, Sections 2935-1 to 2935-14; Const. art. 8 Sections 1-7. \* \* \*

"A court should construe statutory enactments so as to give effect to obvious legislative intent. \* \* \*"

Evans v. Woodman Association. 102 Kan, 556; 171 Pac. 643; L. R. A. 1918 D, 1. c. 125.

"Although there is some conflict of authority the general trend of the cases is that casual or incidental acts pertaining to another employment than that named do not constitute a change of employment within the meaning of clauses like that under consideration; neither do they operate as a forfeiture or reduction of the amount of benefits. In a note in 7 Ann. Cas. 568, many authorities are collected in support of the rule, which is stated as follows: 'In construing insurance policies which contain provisions for changes in the occupation of the insured, or which classify risks according to occupation, it is the general rule that to be engaged in a certain occupation or employment is not inconsistent with the incidental performance of acts, either of service or pleasure, which do not come within the stated vocation of the insured, and that the doing of such acts does not operate to remove the insured from the vocation in which he is classed.'"

From our reading of the statute involved, the decisions as announced and all other matter in any way pertinent to the question, we believe it to be true that the Legislature intended the "chief work", "employment" or "occupation" of a County Superintendent of Schools in the State of Missouri to be that of TEACHING. In order to qualify for the office, an individual must show that in a period of eight years preceding election or appointment, two years were spent in teaching or supervising schools. You will note that the statute does not require the last two years prior to election or appointment, but says, "during at least two of the eight years next preceding his election."

What constitutes two school years within a period of eight years would seem to be a matter of adding together the days, weeks, or months while so engaged, and if the answer to be had constitutes two years, then the qualifications have been met. We further believe that if the Legislature contemplated that the two preceding continuous years be devoted exclusively to teaching, it would have said so. The language of the statute clearly states that, if in the eight year period, two years have been devoted to teaching, then the individual is qualified.

In situations involving this office, each case will stand or fall upon the peculiar facts as proven. Each person, whether candidate for election or applicant for appointment, must as a matter of proof offer facts to constitute valid qualifications for the office.

#### C O N C L U S I O N .

It is, therefore, the opinion of this office that in determining whether an individual has taught or supervised schools as his chief work, for a period of two years during the last eight years next preceding election or appointment, the statute imposing qualifications on this officer, authorizes the



Gov. Donnell

-9-

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computation of time necessary, by the addition of periods of teaching and supervising, performed during the eight year period preceding election or appointment, and after such calculation of the periods of time, if the total sum is two years, then the statutory requirements have been met.

The obvious intention of the Legislature was to require two years teaching or supervising, within the eight year period preceding election or appointment, and not to require the said period of two years to be continuous and immediately preceding his election or appointment.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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