

SCHOOL: House Bill 94 increasing qualifications of county superintendent does not apply to those elected at April 6, 1943, school election.

March 10, 1943

3-11

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Honorable Macye Maness
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Madam:

This will acknowledge receipt of your letter of March 9, 1943, as follows:

"Our present superintendent of schools has 65 hours of college work and has taught twenty years in public schools. It has been questioned whether or not she can qualify under the new law.

"It seems to me that the phrase 'or he shall be serving as county superintendent of public schools' clearly qualifies her, but I would like to have your opinion. She has an opponent, or one announced, who does not qualify, and he is causing her many anxious moments about her qualifications."

We have also received a telegram from Mr. Ray E. Swindel, Doniphan, Missouri, under date of March 8, 1943, as follows:

"I failed to ask whether this bill about the county superintendent would affect the April 6, election. I am the Democratic candidate for the office, my Republican opponent was appointed by Governor Donnell last October, neither of us has a degree. If elected, can I take office even if the bill becomes effective before July. Will those now in office be affected too."

House Bill 94, passed by the General Assembly and approved by the Governor on March 3, 1943, increases the qualifications

of county superintendent of schools. Under this law, said officer must be at least twenty-four years of age, 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 and twenty semester hours of college work, including at least fifteen hours in the field of education, not less than five of which shall have been in school administration; or he shall be serving as county superintendent of public schools."

The part just enclosed with quotation marks are the new requirements.

Under Section 10609 R.S. Mo. 1939, the superintendent of schools is elected at the annual school meeting held on the first Tuesday in April 1943, and his term is four years from the first day of July next following his election.

This section is expressly repealed by House Bill 94, but said bill fixes the date of elections and commencement of the term the same as Section 10609.

Under Section 36, Article IV of the Constitution, House Bill 94 will not take effect until ninety days after the adjournment of the 62nd General Assembly (the present session). Since the General Assembly is still in session, it is not known just when House Bill 94 will become effective. Until it does become effective, Section 10609 R.S. Mo. 1939 is the law and governs the qualifications of county superintendent of schools.

Since the school election is now less than one month away, it is not possible for House Bill 94 to become effective before April 6, 1943. However, if the General Assembly should adjourn at any time before or on April 2, 1943, then House Bill 94 would be in effect on July 1, 1943 at the time the superintendent of schools, elected April 6, 1943, takes office, by qualifying. If this were to occur (and it is only a remote probability) then the question arises as to whether one elected superintendent of schools on April 6, 1943, who does not have the qualifications

prescribed by House Bill 94, can qualify and hold said office.

It is first to be noted that the new qualifications prescribed relate to the time of election.

Section 15, Article II of the Constitution provides:

"That no * * * law, * * * * retrospective in its operation, * * * * can be passed by the General Assembly."

In *Gast Realty & Investment Co. v. Schneider* 296 Mo. 687, 696, it is said:

"Sutherland speaks of retrospective statutes as those which 'relate to past acts and transactions,' * * * * *"

"Sedgwick defines a retrospective law to be: 'A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.' * * * *"

In *Willhite v. Rathburn* 61 S. W. (2d) 708 Mo. Sup. at l. c. 711, it is said:

"* * *The constitutional inhibition against laws retrospective in operation (section 15, article 2, Constitution of Missouri) does not mean that no statute relating to past transactions can be constitutionally passed, but rather that none can be allowed to operate retrospectively so as to affect such past transactions to the substantial prejudice of parties interested. A law must not give to something already done a different effect from that which it had when it transpired.* * * *"

In *Graham Paper Co. v. Gehner* 59 S.W. (2d) 49 (Mo. Sup.)
at l. c. 50, it is said:

"* * * A new or an amendment of an existing statute which reaches back and creates a new or different obligation, duty, or burden which did not exist before the new law itself became effective, or which makes the obligation or burden begin at a date earlier than the date of going into effect of the law itself, is retroactive in its operation and unconstitutional. A law is retroactive in its operation when it looks or acts backward from its effective date, and if it has the same effect as to past transactions or considerations as to future ones, then it is retrospective. * * *"

Clearly, House Bill 94, under the above authorities, even if it should become effective on or before July 1, 1943, cannot constitutionally apply to prevent a person having the qualifications prescribed in Section 10609 R. S. Mo. 1939, from being elected to and qualifying for the office of County Superintendent of Schools on July 1, 1943.

The above view makes it unnecessary to consider that part of House Bill 94 which apparently permits one "serving as County Superintendent of Public Schools" to be elected even though he may not have the new qualifications prescribed in said bill.

CONCLUSION

It is our opinion that House Bill 94 of the 62nd General Assembly has no effect upon a present incumbent, seeking re-

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election to the office of County School Superintendent, or upon any other person seeking election to said office at the April 6, 1943 school election.

Respectfully submitted

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APPROVED:

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