

SCHOOL DIRECTORS: Quo Warranto is proper proceeding to oust a school director who does not have the necessary qualifications.

6-12

June 11, 1935.



Mr. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"Section 9287 provides in detail the qualifications for a common school director. Yet there are registered complaints after complaint with the county school superintendent and the prosecuting attorney about directors who are elected and who do not have the necessary qualifications. Yet the surviving members of the board, hold a meeting, and invest the newly elected candidate for director to the board, and the oath of qualification is administered, and subscribed in the minutes of the board of directors of the district.

"The county superintendent of school has found no law, but in the past if a man is elected and has not qualified by taking the oath and subscribing thereto, has ordered the elected director not to qualify unless he has the qualification. In most of the cases the residence is not long enough, but the most common complaint that the newly elected director has not paid a state and a county tax, the year preceding his or her election.

"Suppose a man has attempted to qualify and has made the oath and comes to the meetings to transact business, how is the best way for the unqualified director to be ousted?

The School superintendent informs me that after the newly elected director has qualified, he has no authority whatever to oust an unqualified director. Is that true.

"It would seem from the law, that a quo warranto proceedings would be the legal way to contest the right of such a director to such an office, when he has been seated and attempted to qualify. Now that means is too slow and too cumbersome, to institute such a proceedings in the circuit court. The Cost would be excessive. Is there another way to oust the member who does not belong on the board? Has the school superintendent any right to oust an unqualified member either before they have attempted to qualify, or after they have attempted to qualify?"

We are enclosing a copy of an opinion given to Honorable Wallace Cooper, Prosecuting Attorney, Warrensburg, Missouri, under date of May 9, 1935, in regard to the qualifications of a school director, same having been written by J. E. Taylor, Assistant Attorney-General, and approved by Attorney-General Roy McKittrick.

If we understand your questions correctly, you desire to know how an unqualified member of a board of directors of a school district may be ousted from office; and if the county superintendent of schools has the authority to oust such a director. A search of the statutes fails to show any authority in the county superintendent of schools to oust a member of the board of directors of a school district who does not have the necessary qualifications. The only method provided by statute for ousting such a school director is Section 1618, R. S. Mo. 1929, which provides in part 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.

51 Corpus Juris, Section 8, page 313, provides:

"Except where the facts are undisputed, or, by virtue of the express wording, or construction placed upon, statutes, quo warranto and statutory remedies are cumulative, quo warranto proceedings are the only proper remedy in cases in which they are available. Thus, subject to the foregoing limitations, quo warranto, or a proceeding in the nature thereof, is the sole and exclusive remedy and method by which the right and title to a public or corporate office may be tried and determined, ****. In the absence of a valid statute conferring equitable jurisdiction, there is no concurrent remedy in equity when quo warranto is available and affords an adequate remedy."

In the case of Arthaud v. Grand River Drainage District, 232 S. W. loc. cit. 268, the Court said:

"(6) It is contended that, if Schmitz is secretary by the provisions of section 25 of the act, he is likewise treasurer, and that Eicher is unlawfully acting as treasurer. Plaintiffs in this proceeding cannot have Eicher restrained from acting as treasurer of the district, for that could only be done by quo warranto. State ex rel. v. May, 106 Mo. 488, 509, 17 S. W. 660; State ex rel. v. Gordon, 236 Mo. 142, 159, 139 S. W. 403. ****"

In State v. Waldo, 5 S. W. (2d) loc. cit. 658, the Court said:

"It is clear that in any event the title to the office is involved, which may not be determined in a proceeding by mandamus, such as this, but can only be determined by a proceeding in quo warranto."

In view of the above, it is the opinion of this department that a proceeding in quo warranto is the proper and exclusive method for ousting a member of a board of directors of a school district who does not have the necessary legal qualifications.

Very truly yours,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

JET/afj