SCHOOL DISTRICTS: Where Circuit Court renders judgment of
APPEAL AND SUPERSEDEAS: ouster against director, appeal and filing of bond does not act as supersedeas; ousted director is not member of board pending the termination of appeal.

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August 15, 1934.

Mr. Sam M. McKay,
Prosecuting Attorney,
De Soto, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

> "A few days ago our Circuit Court, in a Quo Warranto proceedings, rendered a judgment of ouster as to the respondents, holding that they were unlawfully usurping the offices of School directors of Consolidated School District No. 1 of this County. These respondents were never elected directors, but claimed their rights by appointment by the County Superintendent of Schools, under the provisions of Section 9290, R. S. Mo. 1929, and the Court held their appointment was illegal, in that the elected directors had never refused to serve, and therefore, there was no vacancy justifying an appointment.
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> "Said respondents, after said judgment of ouster, took an appeal to the Supreme Court, with leave to file bond within ten days after adjournment of court. The bond has not been filed as yet, neither has the docket fee been paid, but I desire your opinion as to whether the appeal and the giving of the bond, after said judgment of ouster, would operate to suspend said judgment and continue the respondents in office. I find no statute in Missouri to the contrary, and according to 51 C. J. page 363, Note 56, the taking of the appeal and filing of the bond would not operate to suspend the judgment, which I presume is because of the rule that the burden is on the respondent to show his title to the office he claims. State ex rel. v. McCann, 13 M. A. 588; 51 C. J. page 355, note 65.

> "If the bond does operate to suspend said judgment and continue the respondents in office, the terms of the elected directors will have expired before the case can possibly be decided by the Supreme Court."

Section 1022, R. S. Mo. 1929, among other things, provides:

> "Upon the appeal being made, the court from which an appeal is prayed, shall make an order allowing the appeal, and such allowance thereof shall stay the execution in the following cases, and no others: First, when the appellant shall be an executor or administrator, guardian or curator, and the action shall be by or against him as such, or when the appellant shall be a county, city, town, township, school district or other municipality; second, when the appellant, or some responsible person for him, together with two sufficient securities, to be approved by the court, shall, during the term at which the judgment appealed from was rendered, enter into a recognizance to the adverse party in a penalty double the amount of whatever debt, damages and costs, have been recovered by such judgment, * * *."

Under the foregoing section it is apparent that the allowance of the appeal shall act as a supersedeas in the instances set out under the first subdivision dealing with cities, administrators, etc., and where an appeal bond has been filed. Whether or not an appeal, where a bond is filed, under the foregoing section, will operate as a supersedeas depends, as we understand, on whether or not the judgment appealed from is self-enforcing. If the judgment is not self-enforcing and requires no action upon the part of the court, then the appeal and bond does act as a supersedeas, but if the judgment is self-enforcing, then the appeal and bond does act as a supersedeas. It is said in State ex rel. v. Hennings, 194 M. A. 545, 549, as follows:

> "It is true that certain judgments are held not to be within this statute, and remain in operation and effect notwithstanding the allowance of an appeal and the giving of the statutory bond. But these are judgments which may be termed self-enforcing, or which, at any rate, are of such character as to require the aid of no writ, process or proceedings to

> make them operative or effective. Thus it is said that a judgment suspending an attorney from the practice of his profession is not suspended, during appeal, by the giving of an appeal bond (State ex rel. v. Woodson, 128 Mo. l. c. 518, 31 S. W. 105, citing Walls v. Palmer, 64 Ind. 493); and that the operation and effect of a judgment revoking a saloon license is not stayed or suspended pending an appeal with bond (see State ex rel. v. Denton, 128 Mo. App. l. c. 314, 107 S. W. 446). And it is held that an appeal, with bond, from a final decree granting an injunction which does not affirmatively command something to be done, but which restrains the commission of an act or acts, does not have the effect of dissolving the injunction or suspending the operation of the decree, pending the appeal (see State ex rel. v. Dillon, 96 Mo. 56, 8 S. W. 781); though the court rendering the decree may be called upon to take positive action, by way of contempt proceedings, to prevent a subsequent violation thereof."

A judgment of ouster in which an official is ousted from office has been held to be self-enforcing and, therefore, an appeal and bond will not act as a supersedeas. The Supreme Court, in the case of State ex rel. v. Woodson, 128 Mo. 497, 517, has the following to say on this subject which we believe correctly states the law:

> "Furthermore, when a judgment of ouster is rendered, whatever may be the form of procedure, whether by quo warranto or information in that nature, or some special statutory method, the result reached is the amotion of the then tenant of the office, and the party thus ousted is divested of all official authority so long as the judgment remains inforce.
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> "And when a judgment is self-enforcing, a supersedeas does not alter the state of things created by the judgment from which the appeal is prosecuted. Elliott, App. Proc., sec. 392, and cas. cit. This doctrine finds striking illustration in a case where a judgment suspended an

attorney from practice, and it was ruled that the judgment executed itself, except as to collection of costs and that granting a supersedeas only suspended the right of such collection and did not allow the attorney to practice pending the appeal. Walls v. Palmer, 64 Ind. 493.

"In Mayor, etc., v. Shaw, 14 Ga. 162, where Shaw, the marshal of Macon, had been removed by the mayor and council on charges preferred, it was held that a writ of certiorari did not reverse that judgment, nor supersede the execution of it.

"And in State ex rel. v. Meeker, supra, it was ruled that where an officer has been removed for misconduct by a county board, that the removal by the judgment of ouster having been accomplished, the filing of a supersedeas bond did not reinstate the removed officer.

"For the reasons aforesaid, we hold that the appeal taken and bond given by relator, after judgment of ouster pronounced against him, did not vacate, supersede or in any manner affect that judgment, and therefore the trial court very properly issued an attachment against him. In consequence of this view, we deny the writ of prohibition."

While our statute does not expressly make provision for this kind of a case, yet the above decisions do not construe the statute as applying to all judgments, but to only those judgments which are not self-enforcing. We believe, under the foregoing quotations, that the judgment declaring the school director not legally elected is self-enforcing, and since it is self-enforcing the appeal and bond will not act as a supersedeas. Subh being true, the ousted director, while the judgment of the Circuit Court stands, is no longer an official member of the board.

It is therefore the opinion of this Department that under the foregoing facts and authorities, where the judgment of the Circuit Court was for the ouster of the director, that an appeal by him, where the required statutory bond is filed, will not act as a supersedeas. Subh being true, he cannot hold the office pending the appeal.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.