

SCHOOLS: Vacancies filled by appoint-
COUNTY TEXTBOOK COMMISSION: ment by Governor.

May 15, 1943



Honorable Roy Scantlin, Chairman
State Board of Education
Jefferson City, Missouri

Dear Mr. Scantlin:

We have received your request for our opinion by your recent letter which states:

"This question arose during our conference May 1:

"Who has the legal right to make appointments to the County Textbook Commission, the Governor of Missouri, or the State Board of Education?"

On May 10, 1943, you advised us in a telephone conversation that the real question is "Who has authority to make appointments to fill vacancies on said commission?"

The County Textbook Commission was created by Section 10636 R. S. Mo., 1939, which provides:

"There is hereby created a county textbook commission, which shall be the county board of education in all counties in which such a board exists. In counties where there is no county board of education the school textbook commission shall consist of the county superintendent

of schools and two teachers, who shall be selected in the following manner: One member to be appointed by the County Court in each county and one member to be appointed by the state board of education, the appointments to be made in April, 1939, and every two years thereafter: Provided, that no person shall be appointed to serve on the said commission who has been in the employ, as a traveling salesman or otherwise, in this state, of any publisher of school textbooks within the period of two years prior to this article. Vacancies on the commission, resulting from death, resignation, removal from the county, disqualification, or otherwise, shall be filled as prescribed by law. A majority of the commission shall constitute a quorum for the transaction of all business of the commission." (Underscoring ours)

The vacancies are to be filled "as prescribed by law." There is no special statute providing for the filling of vacancies on this commission. The only statute of general application providing for the filling of vacancies is Section 11509 R. S. Mo., 1939. It is expressly limited in its terms to "any state or county office originally filled by election by the people * * *." Except for the county superintendent of schools, memberships on this commission are filled by appointment. Therefore, said Section 11509 is not applicable.

Section 10637 R. S. Mo., 1939, provides that, "The county superintendent shall be ex officio president of the commission." Of course, where a vacancy occurs in the office of county superintendent, the Governor is authorized

to fill the vacancy by appointment. Section 10609 R. S. Mo., 1939. This does not settle the question as to members of the commission other than the county superintendent.

There is a general provision of the Constitution of Missouri which governs this case. Article V, Section 11 of the Constitution of Missouri provides:

"When any office shall become vacant, the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law."

As stated in State ex inf. Wayland v. Herring, 106 S. W. 984, 208 Mo. 708, 732, said constitutional provision "gave to the Governor the power to fill these vacancies when they were not otherwise provided for by law * * * when no other provision is made by law." Membership on this commission is an office within the meaning of Article V, Section 11, supra.

Definitions of the term, office, are found in State ex inf. McKittrick v. Whittle (Mo. Sup.), 63 S. W. (2d) 100, which was decided under Article XIV, Section 13 of the Constitution of Missouri, and applied to "Any public officer or employee of this State or of any political subdivision thereof who shall, by virtue of said office, * * *" In that case, at page 102, the Court said:

"Thus it appears that a school district is a political subdivision of the state within the meaning of section 13, art. 14, of the Constitution.

"Respondent next contends that a school director is not a public officer within the meaning of said section of the Constitution. We have ruled the question as follows:

"'A public office is defined to be "the right, authority, and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public."Mechem, Pub. Off. 1. The individual who is invested with the authority, and is required to perform the duties, is a public officer.

"'The courts have undertaken to give definitions in many cases; and while these have been controlled more or less by laws of the particular jurisdictions, and the powers conferred and duties enjoined thereunder, still all agree substantially that if an officer receives his authority from the law, and discharges some of the functions of government, he will be a public officer.' State ex rel. v. Bus, 135 Mo. 325, loc. cit. 331, 332, 36 S. W. 636, 637, 33 L. R. A. 616. To the same effect, State ex rel. Zevely v. Hackmann, 300 Mo. 59, loc. cit. 66, 67, 254 S. W. 53; Hasting v. Jasper County, 314 Mo. 144, loc. cit. 149, 150, 282 S. W. 700.

"Thus it also appears that a school director is a public officer within the meaning of said section of the Constitution."

A large number of other definitions are contained in State ex rel. Zevely v. Hackmann, 254 S. W. 53, 300 Mo. 59.

Members of the County School Textbook Commission serve for a fixed period or term. They are compensated. Their duties are fixed by law. Section 10638 R. S. Mo., 1939, in part provides:

"Said commission shall adopt from the authorized state list, as hereinafter provided, a uniform series of textbooks for use in the schools of all the districts of the county, * * * * *"

In exercising the important function of selecting books to be used in the schools, the members of the commission exercise an important portion of the sovereign functions of the government for the benefit of the public.

It was held in the quoted portion of the opinion in State ex inf. McKittrick v. Whittle, that a director of a single school district within a county is a public officer. The members of the County Textbook Commission act for their entire county. Their position is analogous to that of a director of a school district.

Members of the commission serve with the county superintendent, who is, of course, a public officer. In view of the foregoing propositions, it is our opinion that membership on the commission is clearly an office within the meaning of Article V, Section 11.

Unless said constitutional provision applies to this case, there would be no provision of law for filling vacancies on the commission, and the provision in Section 10636,

supra, that vacancies "shall be filled as prescribed by law," would be meaningless. We believe the Legislature intended to have vacancies filled and intended for the statutes pertaining to the commission to have effect. This view is supported by well established principles of statutory construction. In *Graves v. Drainage District*, 345 Mo. 557, 134 S. W. (2d) 70, 78, the Court said:

"Moreover, it is presumed that the Legislature intended every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect.' State ex rel. Dean v. Daves, 321 Mo. 1126, 1151, 14 S. W. 2d 990, 1002. * * * * *"

It is well settled that appointees hold office for the unexpired term. State ex inf. *Wayland v. Herring*, l. c. 726 of 208 Mo. Upon the expiration of the unexpired term the new appointment would be made in the manner provided by Section 10636, which was quoted at the outset of this opinion.

For the sake of clarity, it is noted that Section 10636, supra, provides that the textbook commission "shall be the county board of education in all counties in which such a board exists." That statute, in its present form, was first enacted in Laws of Missouri, 1907, page 434.

Then, there was in existence a county board of education, created in Laws of Missouri, 1901, pps. 246-249, and having authority to "adopt a course of study for use in all the public schools in the county," and "to examine teachers and grant certificates of qualification to teach in their respective counties." The provision for the board was carried forward

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as Revised Statutes of Missouri, 1909, Sections 10939 to 10949, Article IX, Chapter 106.

It was repealed and the county board of education was abolished by Laws of Missouri, 1911, pps. 407-412. By that Act functions previously vested in the county board of education were given to the county superintendent of public schools, and those provisions now are found in Sections 10625 to 10635, R. S. Mo., 1939.

There is no county board of education in Missouri. Therefore, membership on the county school textbook commission and vacancies in such membership are filled in the manner heretofore stated and the references in the statutes to the county board of education should be disregarded.

CONCLUSION

In view of the above authorities it is the opinion of this office that vacancies on the County School Textbook Commission are to be filled by appointment by the Governor. Membership on said commission is a public office. The person appointed to fill said vacancy serves for the remaining portion of the unexpired term.

There is no county school board under existing Missouri law.

Very truly yours,

APPROVED:

ERNEST HUBBELL
Assistant Attorney-General

ROY McKITTRICK
Attorney-General

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