

SCHOOLS: School director may take his oath of office before a notary public. Failure of a director to meet with the other directors within four days after annual meeting for purpose of organization does not create a vacancy on said board.

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April 24, 1935.

Mr. R. B. Wilson  
County Superintendent of Schools  
Jefferson County  
Hillsboro, Missouri



Dear Sir:

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

"If a man is duly elected a school director, but refuses to meet with the other two members of the board to organize within the four days as prescribed by law, but instead takes his oath of office as director before a Notary Public, is he a qualified director or does a vacancy exist on that particular board.

"Would appreciate your advice in this matter."

Section 9387, R. S. Mo. 1929, provides that the government and control of the district shall be vested in a board of directors composed of three members and specifies their qualifications.

Section 9388, R. S. Mo. 1929, provides that the directors shall within four days after their election take and subscribe an oath or affirmation to faithfully and impartially discharge the duties of their office. Said section reads as follows:

"The directors shall, within four days after their election or appointment, take and subscribe an oath or affirmation to faithfully and impartially discharge the

duties of their office, which oath may be administered by each other; and the district clerk shall enter the same, with the date thereof, upon the records of the district, and the oath administered shall be as follows:

" I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of Missouri, and that I will faithfully and impartially discharge the duties of school director in and for district No. \_\_\_\_\_, county of \_\_\_\_\_, state of Missouri, to the best of my ability, according to law, so help me God.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The above section provides that the directors may administer to each other the oath required to be taken but said section does not require that the oath shall be so administered. In this connection we call your attention to Section 1721, R. S. Mo. 1929, which provides:

"Whenever any oath or affirmation is required by law to be taken before a particular court or officer, the same may be done before any other court or officer empowered to administer oaths, unless it is expressly prohibited; and when no court or officer is named by whom an oath may be administered or affidavit taken, the same may be done by any court or officer authorized to administer oaths."

A Notary Public has the power and authority, under the provisions of Section 11739, R. S. Mo. 1929, to administer oaths. It is therefore the opinion of this office that, if a school director takes and subscribes an oath before a notary public within four days after his election, he has complied with the terms of the statute.

## II.

Section 2289, R. S. Mo. 1929, provides that the directors shall meet within four days after the annual meeting and organize. Said section reads as follows:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business: Provided, each member shall have due notice of the time, place and purpose of such meeting; and, in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all the meetings of the board. No member of the board shall receive any compensation for performing the duties of a director."

The above section, while requiring the directors to meet and organize within four days after the annual meeting, does not provide any result that will follow if they or one of their members fail to so meet. Said section does not provide that the failure of a member of the board to meet with the other directors shall work a forfeiture of his office. The statute does provide that a majority of the board shall constitute a quorum for the transaction of business. This clearly indicates that the statute contemplates that a member of said board might be absent from said meeting.

In State v. Consolidated School Dist. No. 1, 238 S. W. loc. cit. 820, 821, the Court said:

"The laws affecting the organization, functions, and powers of the respondent district are not to be strictly construed. State ex inf. Carnahan v. Jones, 266 Mo. 191, 181 S. W. 50. \*\*\*\*\*"

In the case of State v. Bird, 244 S. W. 938, loc. cit.

939, the Court said:

"(3) Under a more general rule, this construction may be sustained, in that, if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be directory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by the law. *State v. Cooke*, 14 Barb. (N. Y.) 259. By this we mean that if a fair consideration of the statute shows that, unless the Legislature intended compliance with the proviso to be essential to the validity of the proceeding, which nowhere appears, then it is to be regarded as merely directory. *People v. Thompson*, 67 Cal. 637, 9 Pac. 833; *Kenfield v. Irwin*, 53 Cal. 164; *Westbrook v. Roseborough*, 14 Cal. 180; *Jones v. State*, 1 Kan. 273."

And further at loc. cit. 940, the Court stated:

"This court has held, however, in construing the intent and purpose of school laws, that they were designed as a workable method to be employed by plain, honest, and worthy citizens, not especially learned in the law; and that no strict and technical construction should be given to them. *State ex rel. Carnahan v. Jones*, supra; *State ex inf. Sistrall v. Clardy*, 287 Mo. 371, 185 S. W. 184."

In view of the above, it is the opinion of this department that the statute, requiring the directors to meet within four days after the annual meeting and organize, is directory and not mandatory; and since the statutes do not provide that a member who fails to so meet with the other directors for the purpose of organization shall forfeit his office; it is our opinion that such failure to so meet would not work a forfeiture of his office or create a vacancy on the board of directors.

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However, we call your attention to Section 9290, R. S. Mo. 1929, which reads as follows:

"If a vacancy occur in the office of director, by death, resignation, refusal to serve, repeated neglect of duty or removal from the district, the remaining directors shall, before transacting any official business, appoint some suitable person to fill such vacancy; but should they be unable to agree, or should there be more than one vacancy at any one time, the county superintendent of public schools shall, upon notice of such vacancy or vacancies being filed with him in writing, immediately fill the same by appointment, and notify said person or persons in writing of such appointment; and the person or persons appointed under the provisions of this section shall comply with the requirements of section 9288, and shall serve until the next annual school meeting."

It is plain from a reading of the above section that if a director refuses to serve or repeatedly neglects the duties of his office, a vacancy would exist which should be filled in the manner provided in Section 9290, supra.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JET/afj