

COUNTY SUPERINTENDENT OF SCHOOLS:
COUNTY COURT:
COUNTIES:
SCHOOLS:

When office of county superintendent of schools vacant, clerical assistant to county superintendent may not be employed nor may any other person be employed to perform duties of county superintendent.

October 23, 1959



Honorable Bill Davenport
Prosecuting Attorney
Christian County
Ozark, Missouri

Dear Mr. Davenport:

This is in response to your request for opinion dated September 24, 1959, which reads as follows:

"We have an unusual situation in this County. The County Superintendent of Schools has resigned and left the country. His Clerk or Secretary has been retained to keep the office open pending appointment. At first this was strictly temporary but we now understand that the Governor has indicated that he may not make any appointment of a County Superintendent of Schools in this County in the foreseeable future. We have a need for the office to be kept open and certain routine duties to be kept to date.

"A part of the Secretary's salary is paid by the State of Missouri.

"Our questions are:

"1. Can the County Court legally retain the services of the Secretary and keep the office open where no County Superintendent of Schools occupies office?

"2. Will the State of Missouri pay its part of the salary of such Secretary under these conditions."

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Christian County being a county of the fourth class, the applicable statute is Section 167.270, RSMo Cum. Supp. 1957, which reads as follows:

"The county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. The county superintendent of public schools shall be permitted to employ clerical assistance, to whom there shall be paid not less than seven hundred and fifty dollars nor more than one thousand five hundred dollars annually to be determined and fixed by the county court, seven hundred and fifty dollars of which shall be paid by the state out of state school moneys, the same to be included by the state board of education as a part of the apportionment made before August thirty-first of each year. The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasury for the payment of same. The county treasurer shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent and audited by the county court, draw a warrant each month for payment of same out of moneys provided by the state for such purpose, and the county court shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent, draw a warrant each month upon the county treasury for that part of the compensation for such purpose in excess of that provided by the state; provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage, shall be seven cents per mile for each mile actually and necessarily traveled; provided further, that all warrants in payment for clerical hire shall be drawn in favor of the person or persons who render such services, and in no case shall the county superintendent personally receive any part thereof."

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It is to be noted that by the above statute the county superintendent of schools is permitted to employ clerical assistance. In the presentation of a bill by such a clerical employee of the county superintendent, it is further provided that such bill shall first have been approved by the county superintendent before a warrant is issued. Since only the county superintendent of schools and not the county court is permitted to employ such an assistant and the bill for services of such employee must be approved by him, we see no way that a clerical assistant to the county superintendent of schools can be employed when there is no one holding the office of county superintendent of schools.

The next question would be whether the county court could employ a person not designated as clerical assistant to the county superintendent of schools to perform the duties imposed by law upon the county superintendent of schools. In that connection, we are enclosing herewith a copy of an opinion of this office issued to J. W. Thurman, dated March 22, 1951, wherein it was concluded that there was no authority for the county court to appoint a person to carry out part of the duties imposed by law upon the county highway engineer. Also in the enclosed opinion issued to Edward V. Long, dated February 24, 1939, it was held that the county court could not appoint a person to perform duties imposed by law upon constables even though all the constables had resigned and refused to serve.

A county court is only the agent of the county with no powers except those granted and limited by law and, like other agents, it must pursue its authority and act within the scope of its powers. *Bradford v. Phelps County*, 357 Mo. 830, 210 S.W. 2d 996, 999 [5-7]. The routine duties to which you refer in your letter are those imposed upon the county superintendent of schools and not upon the county court. There is no statute authorizing the county court to appoint or employ some person to carry out the duties imposed upon the county superintendent of schools nor may such authority be reasonably implied from any power expressly granted to the county court. Therefore, we are of the opinion that the county court may not employ and pay some person to perform duties imposed by law upon the county superintendent of schools.

The State Board of Education is directed by Section 167.270, RSMo Cum. Supp. 1957, to include in its August apportionment of school moneys the sum of \$750.00 as the state's portion of the salary of the county superintendent's clerical assistance. This obligation is imposed upon the State Board of Education regardless

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of the fact that in some instances this sum cannot or may not be used for the purpose. Consequently, the amount of \$750.00 thus provided will be included in the August apportionment of school moneys but, as shown in the enclosed opinion to Haskell Holman, dated August 11, 1958, if it is not used for the purpose of paying a clerical assistant to the county superintendent of schools, it should be returned to the state at the end of the fiscal year.

CONCLUSION

It is the opinion of this office that when there is a vacancy in the office of county superintendent of schools, there is no authority for the county court to employ a clerical assistant to the county superintendent of schools, nor is there any authority for the county court to employ any other person to carry out duties imposed upon the county superintendent of schools. The \$750.00 provided by statute for clerical assistance to the county superintendent of schools will continue to be sent to the county as part of the August apportionment of school moneys, but if it cannot be used for the purpose of paying for clerical assistance to the county superintendent of schools, it is to be returned to the state at the end of the fiscal year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:mc
Enclosures