

VOCATIONAL EDUCATION:) Board of Education may
SUPERINTENDENT OF SCHOOLS, COMPENSATION:) employ State Superintendent
of Schools as State Director and compensate him for such services
if same are not a part of his duties as Superintendent and executive
officer of Board of Education. Payment for extra services or
additional duties does not violate constitutional provision against
increasing salary of officer during term.

December 30, 1942

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Honorable Lloyd W. King
Superintendent of Public Schools
Jefferson City, Missouri

Dear Sir:

On December 28, 1942, you requested an opinion upon the following:

"A question has been raised by an auditor of the United States Office of Education concerning the payment of \$300 per month additional compensation to the State Superintendent of Schools for added services rendered by him as Executive Officer of the State Board for Vocational Education and as State Director for Vocational Education in performing duties imposed in cooperating with the Federal Vocational Education program.

"A question also has been raised as to whether the above compensation amounts to a raise in salary for the State Superintendent of Schools during his term in office.

"May I recite the following facts and then ask your opinion on two specific matters.

"Article VIII, Revised Statutes of Missouri 1939, refers to vocational education and vocational rehabilitation. Section 10527 of Article VIII designates the State Board of Education as the

Board charged with the duty and responsibility of cooperating with the Federal Board for Vocational Education in the administration of the Federal Vocational Act and is given all power necessary to such cooperation.

"Section 10528 of Article VIII authorizes the State Board to incur expenditures in the administration of the program as far as Federal funds are concerned. Other sections in the Act authorize the State Board to incur expenditures necessary for the administration of the law and in short to administer the program in the state.

"For years the State Superintendent of Schools has served not only as the Executive Officer but as State Director for Vocational Education and as Executive Officer and Director of Vocational Education has been paid for the performance of the duties of these offices. These duties are additional duties. They were not contemplated by the Constitution. They consist of the actual administration of the whole program of vocational education which in this state now include the following divisions:

- "Vocational Agriculture
- Vocational Home Economics
- Trade and Industrial Education
- Distributive Education
- Occupational Information and Guidance
- War Production Training Program which consists of: (a) Vocational Program of Instruction Essential to the War Production Program for out-of-school Rural and Non-Rural Persons; (b) Vocational Training for War Production Workers

"The program involves the direction of the supervision of the many local programs in

these Divisions and involves the financial administration of the entire program.

"The questions I respectfully ask you to consider are:

- "1. May the State Board for Vocational Education vote to pay and may the State Superintendent of Schools receive the additional amount indicated as Executive Officer and Director of Vocational Education?
- "2. Does the payment of this sum for additional duties performed amount to a raise in salary for the State Superintendent of Schools during his term of office?"

The two questions submitted will be answered in order.

I.

The duties of the State Superintendent of Schools other than those relating to vocational education and vocational rehabilitation are in the main detailed by Articles 13 and 17 of Chapter 72, R. S. Mo. 1939. Other statutes place additional work upon the Superintendent. They are not here set out as no additional light would be cast thereby upon the propositions under consideration.

Article 8 of Chapter 72, R. S. Mo. 1939, and its amendments, undoubtedly place new and additional duties upon the State Board of Education and the State Superintendent of Schools. It was adopted many years after the office of Superintendent of Schools was established and his duties prescribed. The act and its amendments (Laws of 1941, pages 548, 549, 553-4 and 556) accepts the benefits of various congressional enactments with reference to vocational education and vocational rehabilitation and provides that the State Board of Education (of which the Superintendent of Schools is a member and president) is the Board responsible for and charged with the duty of

cooperating with the Federal Board for Vocational Education in the administration of such acts. It is also provided (Laws of 1941, page 556):

"That such state board of education is hereby authorized to incur such expenditures for the salaries of assistants and such office and other expenses as it may deem necessary to the proper administration of the funds allotted to the State of Missouri under the provisions of such acts."

The Missouri Constitution does not prevent the State Superintendent of Schools from acting as administrator or director of vocational education or vocational rehabilitation. Section 18 of Article IX bars a state officer from holding a county, city or other municipal office in counties of 200,000 and more inhabitants and prohibits one from holding two municipal offices at the same time, with certain exceptions. This section obviously has no application to the present question.

No statute has been found that would foreclose the State Superintendent of Schools from being executive officer of the Board in administering vocational education, but quite the contrary Section 10536, R. S. Mo. 1939, directs that the Superintendent shall be the executive officer of the Board in the administration of the vocational and rehabilitation educational law.

The common law doctrine of incompatibility of office has been followed in Missouri. See State ex rel. Walker v. Bus, 135 Mo. 325. By such rule one may not hold an office and accept a second one incompatible with the first and where there is an inconsistency in the function of the offices, as where one office has the supervision of the other. This common law rule, if applicable, would destroy the terms of Section 10536, supra, because the State Superintendent is a member of and president of the Board whose duty it is to supervise the administrative efforts of the State Superintendent. This rule cannot apply because it is in conflict with the statute.

Rules of common law do not prevail when repugnant to or inconsistent with the Constitution or statute laws of the

State, by virtue of Section 635, R. S. Mo. 1939. State v. Dalton, 114 S. W. 1132, 134 Mo. App. 517; Lines Music Co., v. Holt, 332 Mo. 749, 60 S. W. (2d) 32, 1. c. 34; and Roberson v. Jones, 136 S. W. (2d) 278, 345 Mo. 828.

Laws of 1941, page 556, authorizes the Board to incur expenditures for the assistants as deemed necessary to the proper administration of the funds allotted. The amount of such expenditures and the persons employed is thus left to the judgment of the Board.

While a public officer is presumed to render his services gratuitously and he has the burden of pointing out statutory authority for the payment of compensation (Nodaway County v. Kidder, 129 S. W. (2d) 857), the last above mentioned enactment destroys such presumption. It authorizes the payment of assistants' salaries, which would include a State Director of Vocational Education, in amounts to be fixed by the Board, if that body deemed such assistants and a director were necessary to the proper administration of the law.

Although the request does not definitely so state, it is assumed that the State Director of Vocational Education performs duties other than those executed by the State Superintendent of Schools as the administrative officer. We understand that the State Director is primarily responsible to the Board and not the Superintendent of Schools as administrative officer. Thus the Superintendent of Schools does not in fact control his own activities as State Director. The State Director is likewise indirectly responsible to the United States Office of Education, we believe.

It is therefore concluded that the State Board of Education may employ the State Superintendent of Schools as State Director of Vocational Education to perform functions not a part of the duties of the Superintendent of Schools as executive officer of the Board and at such salary as the Board may deem proper.

II.

The second question presented is in effect: Does the payment of a salary to the State Superintendent of Schools for

services as Vocational Education Director violate the constitutional rule against increases in compensation during such official's term of office?

The salary of the State Superintendent of Schools is provided by Section 13389, R. S. Mo. 1939, which is as follows:

"The officers of state shall receive for their services, annually, the following sums: First, the governor, the sum of five thousand dollars; second, the judges of the supreme court, each four thousand five hundred dollars; third, the judges of the circuit courts, each, two thousand dollars; fourth, the secretary of state, three thousand dollars; fifth, the state treasurer, three thousand dollars; sixth, the state auditor, three thousand dollars; seventh, the attorney-general, three thousand dollars; eighth, the Superintendent of public schools, three thousand dollars; ninth, the commissioner of permanent seat of government, three hundred and fifty dollars: Provided, that this article shall not affect the operation of any special law now in force relating to the salaries of any of the officers herein named." (Underscoring added)

Section 24 of Article V of Missouri's Constitution,
is:

"The officers named in this article shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms; and they shall not, after the expiration of the terms of those in office at the adoption of this Constitution, receive to their own use any fees, costs, perquisites of office, or other compensation. All fees that may hereafter

be payable by law for any service performed by any officer provided for in this article shall be paid in advance into the state treasury."

By Section 1 of such article the State Superintendent of Schools is made a member of the Executive Department.

As has been pointed out above the appointment made under the Vocational Education and Educational Rehabilitation Act (Article 8 of Chapter 72, R. S. Mo. 1939, and amendments) fastens additional duties upon the State Superintendent of Schools. This being true the allowance of compensation for such additional services does not increase his salary contrary to the terms of the Constitution.

In the case of *Cunningham v. Ky. Co.*, 165 Mo. 270, the Supreme Court held that a statute requiring the payment of a docket fee to the Circuit Judge to which a case is sent on a change of venue did not violate the constitutional provision against increasing or diminishing a judge's compensation during his term of office. The following language was used, l. c. 277:

"The compensation mentioned in the Constitution means compensation paid by the State, or some subdivision thereof, in the way of an increase of salary or compensation, which can not be increased by legislation during the period for which the judge is elected, but does not mean that he may not be paid for extra services and expenses incurred in the performance thereof, even out of the State treasury."

The Supreme Court in *State ex rel. Harvey v. Sheehan*, 269 Mo. 421, sustained a statute that required prosecuting attorneys in certain counties to attend inquests and allowed an additional fee for such attendance. It was pointed out that such statute was not an unconstitutional increase in compensation. The following appears at page 429 of such opinion:

"Another contention made is that since the appellant was an officer at the time

of the passage of the act, it is inapplicable to him because the Constitution prohibits any increase in the pay of an officer during his term of office. We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (Cunningham v. Current River Railroad Co., 165 Mo. 270; State ex rel. v. Walker, 97 Mo. 162; State ex rel. v. Ranson, 73 Mo. 89; State ex rel. v. McGovney, 92 Mo. 428; County v. Felts, 104 Cal. 60; State ex rel. v. Board of Commissioners, 23 Mont. 250; State ex rel. v. Carson, 6 Wash. 250; Love, Attorney-General v. Baehr, Treasurer, 47 Cal. 364; Purnell v. Mann, 105 Ky. 87; Lewis v. State ex rel., 21 Ohio C. C. 410.)"

To the same effect is the ruling in State ex rel. Zevely v. Hackman, 254 S. W. 53, 300 Mo. 59, l. c. 66.

However, it has been decided that where an officer's compensation is not fixed by statute but is left to the judgment of some body, such as a county court, and that body determines the salary and no extra services are required after the salary is fixed, the officer's compensation may not be later increased during the term of office in which the salary was set. " * * * Those terms imply rather that this payment was in full of salary to that date, but as such a construction would increase the salary, which could not be done under the constitution, (art. 14, sec. 8,) we must infer that it was only intended to cover the salary for two years, leaving the additional period for future adjustment." Givens v. Daviess Co., 107 Mo. 603, l. c. 610.

Conclusion

It is the opinion of this Department that the payment of additional compensation by the State Board of Education to the State Superintendent of Schools for additional or extra duties as State Director of Vocational Education does not violate the constitutional provisions against increasing the compensation of such officer during the term for which he was elected. However, after the salary for such additional duties is fixed by the Board of Education for any one term, it may not be increased during that term for such services.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

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