COUNTY SUPERINTENDENT OF SCHOOLS:

How paid for performing duties as Supervisor of Transportation.

February 23, 1942

Mr. Raymond H. Patterson
County Superintendent of Schools
Galena, Missouri

FILE 69

Dear Sir:

This department has been requested by Mr. Frank Huffhines, Prosecuting Attorney of Stone County, to give you an official opinion upon the following question:

> "Please give me a ruling on the way to handle the salary of the County Supt. (House Bill 231) for transportation. Should the County Court put it in with their money and pay it over to the Supt. when the regular check comes in fact make it part of the regular check, or should the county Treas. make a separate fund and write the Supt. a check direct without it going through the County Court hands?
>
> "If the County Treasurer writes the check direct is it necessary for them to have anything to authorize them to write beside the state law?"

Laws of Missouri, 1941, pp. 546-548, provide that the county superintendent of schools in each county shall act as supervisor of school transportation. The act further sets forth the salaries to be paid to the county superintendents for these duties. As to the method of payment, it is said:

> " * * * On or before the 20th day of each month the State Superintendent of Schools shall issue his warrant payable to the treasurers of the several counties of the State of Missouri for one-twelfth part of the salaries herein provided, to be paid out of funds appropriated by the General Assembly for the support and maintenance of public schools under the provisions of Article XI, Section 7 of the Constitution of Missouri. The county treasurers of the several counties shall pay over such compensation monthly and at the same time he pays the county superintendent of schools his salary for the performance of his other duties."

It is well established in this state that a county superintendent of schools is a county officer and not a state officer. Hollowell v. Schuyler County, 322 Mo. 1230, 18 S. W. (2d) 498.

This department in an opinion rendered on January 2, 1942, to Hon. Charles B. Butler, Doniphan, Missouri, held the above act constitutional in that it did not increase the compensation of the county superintendent of schools during his term of office. A copy of this opinion is herewith enclosed.

It is the settled rule in most jurisdictions that a statute conferring certain additional duties on a public officer ex officio does not have the effect of appointing him to a second office. McCullers v. Board of Commissioners, 158 N. C. 75, 73 S. E. 816; People v. Leet, 13 Ill. 270; Moore v. Nation, 80 Kan. 672, 103 Pac. 107. See, also, annotation in Annotated Cases 1913D, p. 511. It will be seen, therefore, that the imposition of new duties upon the county superintendent of schools did not create another office, but said officer is entitled to his extra compensation by virtue of the fact that he is county superintendent of schools, and, as pointed out in Tayloe v. Davis, 212 Ala.

282, 102 So. 433, "it matters not that a name * * * is given to the body created."

Section 10618, R. S. Mo. 1939, provides that the county superintendent shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasurer. This office in an opinion rendered to Mr. Roy S. Dunsmore of Alton, Missouri, on October 2, 1935, held that the $400.00 appropriation made by the State to counties to be placed in the county revenue fund and applied on payment of the salary of the county superintendent was to be placed in a special fund. We believe the holding in that opinion is equally applicable to the state funds paid into the county for the county superintendent of schools for performing his duties as supervisor of transportation. This is also the interpretation given this section by the State Auditor of Missouri, which executive construction is entitled to great weight in interpreting any statute. Automobile Gasoline Co. v. St. Louis, 32 S. W. (2d) 281; State v. Freeland, 300 S. W. 675, 318 Mo. 560.

The ruling of the State Auditor is as follows:

> "We suggest that you open up in your fund ledger an account 'Supervisor of Transportation' and when you receive the monthly draft from the State, deposit said draft in county funds, crediting the account of the Supervisor of Transportation with the amount of the draft."

This money received from the State, although it is put in a special fund, is still a part of the countyrevenue fund and must be paid out like any other money in that fund. We believe it would be a more efficient procedure if two checks were drawn in paying the county superintendent of schools, because this breakdown would show more clearly the transaction.

CONCLUSION

It is, therefore, the opinion of this department that the funds received by the treasurer from the State in payment to the county superintendent of schools for his duties as supervisor of transportation should be placed in a special fund in the county revenue fund and paid as any other salary of a county official is paid.

Respectfully submitted

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APPROVED:

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