

COUNTY TEXTBOOK COMMISSION: Statute creating county school textbook commission imposes mandatory duty on county court to appoint members of the commission. This duty may be enforced by mandamus action.

October 11, 1943

10/16

Honorable J. M. Wilson, Superintendent
Cole County Schools
Jefferson City, Missouri



Dear Mr. Wilson:

This will acknowledge receipt of your letter of recent date in which you request an opinion from this office, the full text of this request, omitting caption and signatures reading as follows:

"In Cole County there has not been a County School Text Book Commission or County Board of Education for about 13 years or more. Text books have been selected and specified by the former Superintendent of Schools throughout this period, without services of any such Commission or Board.

"The State Board of Education has appointed a member of the Text Book Commission and I have requested the County Court to do so. The County Court has deferred, saying that it does not believe such Commission is necessary and that the former Superintendent said one was not needed.

"I desire to know what I should do under these circumstances. Section 10636, R. S. Mo. 1939, provides for the appointment of such a Commission and it is my belief that there is no authority in me as County Superintendent of Schools to perform the duties of such Text Book Commission.

"I desire an opinion stating whether or not the Statutes make it mandatory for the County Court to appoint a member of such Commission and what remedy is available to me under the above circumstances."

In order to maintain and establish a uniform course of study and to provide for and establish uniform textbooks in the State of Missouri our Legislature passed an act providing for the textbooks to be used in the schools of this State. This act originally was passed in 1891 and has been revised in certain respects in 1909, 1929 and 1939. Section 10636, R. S. Mo. 1939, creating a textbook commission, reads as follows:

"There is hereby created a county school 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."

Section 10637, R. S. No. 1939 reads as follows:

"The county textbook commission shall meet at the county seat to organize within thirty days from the date of the taking effect of this article. The county superintendent shall be ex officio president of the commission, and a secretary shall be elected from its own membership. Said commission shall meet annually thereafter, and special meetings may be called by the president, or on the written request of the other two members. The president shall preside at all meetings of the commission, and the secretary shall keep the records of the meetings, and all contracts shall be signed by both the president and secretary. Members of said commission that do not receive an annual salary from the county shall receive five dollars per day for their services, with such additional amount as shall be necessary to cover their actual traveling expenses: Provided, that they shall receive pay for not to exceed six days in any one year, the same to be audited and paid by the county court."

This statute is clear and its terms are unambiguous and need no construction on our part. The Legislature obviously intended the creation of this commission and, in very definite terms, set out the duties in connection with the administration of this section.

Concerning ourselves now with the powers and functions of the county court as such, we find in 15 C. J. 456, Par. 102, this language:

"Except as otherwise provided by law, a board of county commissioners or county supervisors ordinarily exercises the corp-

orate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction over all matters pertaining to county affairs. Within the scope of its powers, it is supreme, and its acts are the acts of the county. While acts outside their statutory powers are without validity, yet, within the limits of the jurisdiction conferred on them by law, county boards have a wide, or at least a reasonable, discretion; and courts will not interfere with such boards in the lawful exercise of such jurisdiction, on the sole ground that their actions are characterized by lack of wisdom or sound discretion, it being permissible for equity to interfere only in cases of fraud or a clear abuse of discretion. The county board cannot exercise its constitutional jurisdiction within the territorial limits of another county, nor can it justify its failure to perform a statutory duty, on the ground that obedience to the law is not necessary."

A county court is a political subdivision of the State of Missouri and as such is a corporation which may sue and be sued.

CONCLUSION

The statutes creating a county school textbook commission imposes a mandatory duty on the county court to appoint the member of this commission. The terms of the statute leave nothing to the discretion of the court and its duty with respect to this commission is imposed by statute. As a court it shall perform certain acts. Because these acts are manda-

Hon. J. M. Wilson

-5-

10-11-43

tory they may be enforced by mandamus proceedings in our courts.

Respectfully submitted,

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Assistant Attorney-General

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APPROVED:

ROY McKITTRICK
Attorney-General