

OFFICERS: County superintendent is entitled to full compensation until date of resignation, although he was out of the county most of each week, inasmuch as his compensation is an incident to and attaches to the office.

December 5, 1950

Honorable Albert D. Nipper
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Potosi, Missouri



12/8/50

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"In this current problem I shall try and be as brief as possible, and equally fair to both parties concerned. The one being our County Court and the other our recently resigned County Superintendent of Schools. The main issue settles around the construction of #10617 of Revised Statutes of Missouri, 1939.

"Our past Superintendent on September 5, 1950 accepted a position in Riverview (North St. Louis) which he informed me is entitled 'Principal and Superintendent of Teachers,' that he did not teach and does not teach there, that he has performed all other duties incumbent upon him to so perform under the law; that he came back to Potosi every week end from St. Louis during September and worked and performed the duties of his office during that time; that he did not resign until October and that he is entitled to his full months pay for the month of September.

"Our County Court holds the view that during the month of September said Superintendent did 'engage in other employment that interferes with the duties of his office as prescribed by law.' However, if this contention be taken, what penalty, punishment

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or consequence is then provided, if any, by law?

"In short, the County Court believes that during this month the Superintendent was 'holding down two jobs' and that such is contradictory to the law. On the other hand the Superintendent states that he has fulfilled all his requirements as specified by law, even though Monday through Friday afternoon he spent in St. Louis because on Friday evening through Sunday he spent in his office in Posoti performing his duties.

"ISSUE: Is this County Superintendent entitled to all the full pay of his office for the month of September, including the Bus Transportation pay? Is he entitled to pay only for actual days worked? Has he forfeited any or all of his pay by the action above stated?"

Section 10609, Laws of Missouri, 1943, page 890, Mo. R.S.A., provides for the election of a county superintendent of schools for a specific term of office and the qualifications for said official. Without quoting the statute, we assume that the county superintendent in question was duly elected to his office and held said office up until the date of his resignation in October of 1950.

In view of the facts which you have related, indicating an absence from the county by the official in question during the month of September, 1950, you inquire whether or not said official is entitled to the compensation provided by law for said month, particularly in view of the provision in Section 10617, Laws of Missouri, 1945, page 1674, which, in part, provides:

"During his term of office the county superintendent shall not engage in teaching or in any other employment that interferes with the duties of his office as prescribed by law. * * *"

While the above-quoted statute sets out certain things that a county superintendent shall not do or engage in, we fail to find any specific statutory penalty should a county superintendent fail to comply with the above-quoted provision of the statute.

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In reading your letter it would appear that the county court is of the opinion that during the month of September the county superintendent neglected to fully perform the duties of his office and is therefore not entitled to compensation for that month.

The appellate courts of this state have on many occasions declared the rule by which a public official is entitled to the compensation for the office which he holds.

In the case of State ex rel. Nicolai v. Nolte, 180 S.W. (2d) 740, 352 Mo. 1069, the court, at S.W. l.c. 741, 742, stated the rule as follows:

"There is also a principle equally well fixed that so long as an officer holds his office the salary provided for the office belongs to him because the law attaches it to the office; because it is an incident to the office. * * *"

In the case of Cunio v. Franklin County, 285 S.W. 1007, 315 Mo. 405, suit was instituted by the plaintiff to recover salary allegedly due him as probation officer of the defendant county. At S.W. l.c. 1008 the court declared:

"The decision turns on the fact of plaintiff's appointment to said office. If he was appointed thereto, he is entitled to the emoluments thereof.

"It is a well-established principle that a salary pertaining to an office is an incident of the office itself, and not to its occupation and exercise, or to the individual discharging the duties of the office. * * *"

In the above case the plaintiff failed to prevail in recovering the salary due to the fact that he failed to prove that he had been duly appointed to the office, and was not therefore a de jure officer of the defendant county.

In the case of Bates v. St. Louis, 54 S.W. 439, 153 Mo. 18, we find a case somewhat similar factually to the situation which you have presented. A proceeding in equity was instituted to

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restrain the city treasurer from paying the mayor of the city his salary for three specified days, during which time it was alleged that he was absent from the city on personal business and therefore did not perform the duties of his office. In holding that the mayor could not be denied his salary the court, at Mo. l.c. 20, 21, said:

"It is well settled law that 'a public officer is not entitled to compensation by virtue of a contract, express or implied. The right to compensation exists, when it exists at all, as a creature of law, and as an incident to the office. . . . 'The salary belongs to him as an incident to his office, and so long as he holds it; and, when improperly withheld, he may sue for and recover it. When he does so he is entitled to its full amount, not by force of any contract, but because the law attaches it to the office.'"

* * *

"As is well said in Throop on Public Officers, sec. 500, quoting from Robinson, J., in People v. Green, 5 Daly (N.Y.), pp. 268, 269:

"The right of an officer to his fees, emoluments, or salary, is such only as is prescribed by statute; and while he holds the office, such right is in no way impaired by his occasional or protracted absence from his post, or neglect of his duties. Such derelictions find their corrections in the power of removal, impeachment, and punishment, provided by law. The compensations for official services are not fixed upon any mere principle of quantum meruit, but upon the judgment and consideration of the legislature, as a just medium for the services which the officer may be called upon to perform. This may in many cases be extravagant for the specific services, while in others they may furnish a remuneration which is wholly inadequate. * * * He accepts the office "for better or worse;" and whether oppressed with constant and overburdening cares, or enabled from absence of claim upon his services, to devote his time to his own pursuits, his fees, salary, or statutory compensation constitutes what he can claim

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therefor, and is yet to be accorded, although he performs no substantial service, or neglects his duties. . . . The fees or salary of office are "quicquid honorarium," and accrue from mere possession of the office."

CONCLUSION

Applying the foregoing authorities to the situations which you have presented, it is the opinion of this department that the county superintendent is entitled to the compensation allowed him by law up until the date of his resignation and including the month of September, 1950.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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RFT:ml