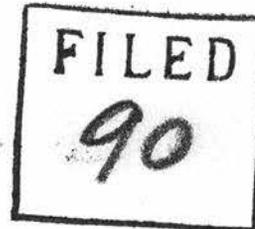


STATE MERIT SYSTEM ACT:

The State Merit System Act prohibits a person employed under this act from becoming a candidate for election to the office of member of a local school board.

May 1, 1951

5-4-51



Mr. Ralph J. Turner, Director  
State Department of Business and  
Administration  
630 Jefferson Street  
Jefferson City, Missouri

Dear Sir:

You have requested an opinion from this department which request reads as follows:

"A part of Section 36.150(5), Missouri Revised Statutes, 1949, regarding election to any public office, reads as follows:

"'. . .No such employee shall be a candidate for nomination or election to any public office except he resign or obtain a regularly granted leave of absence from such position. . . .'

"We respectfully request an opinion as to whether or not an individual employed under the State Merit System can be a candidate for nomination or election to the office of Member of a Local School Board."

Section 36.150, paragraph 5, RSMo 1949, to which you have made reference and which is the basis of the above stated question more fully provides:

"No employee selected under the provisions of this law shall be a member of any national, state, or local committee of a political party,

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or an officer of a partisan political club. He shall take no part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen to express his opinion and to cast his vote. No such employee shall be a candidate for nomination or election to any public office except he resign, or obtain a regularly granted leave of absence, from such position."

The first question presented and which must be answered is whether or not a school board member is a public officer. Although we have been unable to find any reported Missouri case in which the court has in clear and concise terms stated that a school board member is a public officer, we have sufficient reason to believe that the courts have always considered him as such.

In the case of State ex rel. v. Bus, 135 Mo. 325, 36 S. W. 636, the court was called upon to decide whether a person could be at the same time deputy sheriff and school board director. In holding that this could be done the court based their decision upon the proposition that at common law a person could occupy more than one public office at the same time if they were not incompatible, and upon a constitutional provision prohibiting a person from holding two public offices. To verify this conclusion we quote from the opinion of the court.

"Where the holding of two offices by the same person, at the same time, if forbidden by the constitution or a statute, the effect is the same as in case of holding incompatible offices at common law. \* \* \*"

It is noted that in this case the court was called upon to decide whether a deputy sheriff is in fact a public officer but no question was raised as to whether a school director is a public officer. By failure to specifically state that a school director was not a public officer and by basing their opinion on the above stated grounds the court impliedly held that a school director is a public officer, for if this is not true, then there is no basis for the opinion. To further strengthen our conclusion that the court deemed a school director a public officer, we find the court in conclusion saying:

"The two offices then being neither repugnant to the constitutional or statutory prohibitions, nor incompatible, they may properly be held by one person. Judgment of ouster is denied. \* \* \*"

(Underscoring ours.)

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The Supreme Court of Missouri has consistently adhered to the view that quo warranto is the proper remedy to oust a school board member. Quo warranto being defined in 44 Am. Jur., page 100, as follows:

"Quo warranto is generally regarded as an appropriate and adequate remedy to determine the right of title to a public office \* \* \*."

In the case of State v. Ellis, 329 Mo. 124, 44 S. W. (2d) 129, a suit in the nature of quo warrant was brought to oust a school director. On appeal the question of jurisdiction was raised and in its opinion the court said:

"The office of school director is an office under this state and hence the appeal should have been to the Supreme Court. \* \* \*"

Section 11, Article VII, of the Constitution of Missouri 1945, provides that a person shall take a prescribed oath before entering into the duties of a public office. Section 165.320 RSMo 1949, sets forth the qualifications of a school board member for a city, town or consolidated school district and has prescribed an oath pursuant to the constitutional provisions above referred to.

"Within four days after the annual meeting, the board shall meet, the newly elected members, who shall be qualified by the taking of the oath of office prescribed by article VII, section 11, of the constitution of Missouri, \* \* \*"

There are similar provisions for members of a school board for a common school district and a district in the City of St. Louis thereby covering all possible board members. See Sections 165.210 and 165.567, RSMo 1949.

Although the above cited authority is not deemed to be exhaustive of the source, we believe that it is adequate to support our conclusion that a school board member is an individual invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public and is therefore a public officer within the general accepted meaning of the term.

Having reached the conclusion that a school board member is a public officer, we must refer to Section 36.150, RSMo 1949, to see if such an officer falls within its terms. We note that there are no specific exceptions to the operation of the statute and in fact, the language of the statute is quite general. Since section 36.150 by its express terms is made applicable to the nomination or election to any public office, we believe that a school board member being a

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public officer is subject to the provisions thereof.

CONCLUSION

Therefore it is the opinion of this department that the State Merit System Act prohibits employees under this Act from becoming a candidate for election to the office of member of a local school board except that he resign or obtain a regularly granted leave of absence from such position.

Respectfully submitted,

D. D. GUFFEY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

DDG:hr