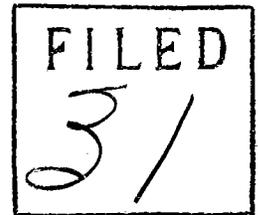


SCHOOLS:

COUNTY SUPERINTENDENT:

County Superintendent in Fourth Class county: (1) is entitled to his actual necessary traveling expenses; (2) can employ a clerk without the consent of the county Court; (3) can employ a teacher as clerk who performs the duties of clerk outside his teaching hours.

October 19, 1946



27 Mrs. John
Smith
Hon. Edwin Frieze
Prosecuting Attorney
Greenfield, Missouri

Dear Sir:

We have your letter of recent date in which you submit the following questions regarding the county superintendent of schools in a county of the fourth class:

1. Upon what basis are the traveling expenses of the county superintendent calculated?
2. Can the county superintendent employ a clerk without the consent of the county court?
3. Can a teacher who is regularly teaching be employed as a clerk of the county superintendent and perform the clerical duties outside the hours he teaches?

We shall take up your questions in the order listed above.

Section 10618.5 Mo. R. S. A. 1946 (H. C. S. H. B. No. 771 L. 1945) deals with all of the above questions. We shall quote portions of said section in connection with each of the above questions.

Said Section 10618.5 reads in part as follows:

"The county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. * * * The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasury for the payment of same. * * * Provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage shall be four cents per mile for each mile actually and necessarily traveled. "

By the first sentence quoted above, the county superintendent is to be allowed not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. Said section does not allow the superintendent a set amount for his traveling expenses, but he is allowed whatever his actual and necessary traveling expenses are, not to exceed twenty-five per cent of his annual salary. He is required to present a bill to the county court setting forth his actual and necessary expenses for traveling. These expenses would include transportation, food, lodging, telephone calls, postage and any other items necessarily expended by him when traveling in connection with the duties of his office and in doing the things required of him by law. If he traveled by public conveyance, his transportation expense would be the fare paid by him on such conveyances, but if he used his own car, he would be entitled to four cents per mile for his transportation expense. What are actual and necessary traveling expenses is always a question of fact, except the amount of mileage for use of his own car which is set by the statute at four cents per mile. If the county court refuses to pay the actual and necessary traveling expenses, it can be made to do so by proper legal proceedings. The law clearly contemplates that the superintendent shall be reimbursed for his actual and necessary traveling expenses.

Section 10618.5, supra, provides in part as follows:

"The county superintendent of public schools shall be permitted to employ clerical assistance, to whom there shall be paid not less than seven hundred fifty dollars (\$750) nor more than one thousand five hundred dollars (\$1500) annually to be determined and fixed by the county court, seven hundred fifty dollars (\$750) of which shall be paid by the state out of state school moneys, the same to be included by the State Board of Education as a part of the apportionment made before August 31 of each year. * * * The county treasurer shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent and audited by the county court, draw a warrant each month for payment of same out of moneys provided by the state for such purpose, and the county court shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent, draw a warrant each month upon the county treasury for that part of the compensation for such purpose in excess of that provided by the state."

On July 23, 1946, this office gave an opinion to Mr. Marshall Craig, Prosecuting Attorney, Charleston, Missouri, on a statute which has identical provisions as Section 10618.5 and in that opinion we held that the county superintendent could employ a clerk without the consent of the county court. A copy of that opinion is enclosed herewith, and we adopt the same reasoning as to employing a clerk by the county superintendent under Section 10618.5 as is contained in said opinion, and, therefore, hold that a county superintendent in a fourth class county can employ a clerk without the consent of the county court.

Your third question is whether a teacher who is regularly employed by a school can be employed as clerk of the county superintendent in a fourth class county and do his work as clerk during hours he is not teaching. It will be noted that the statute above quoted prescribes no qualifications for the clerk to be employed. The county superintendent is merely granted the right and power to employ a clerk. Of course, a clerk does not determine policies, but merely does routine work under a supervisor. For that reason the legislature undoubtedly concluded that it was unnecessary to prescribe any qualifications for such clerk. Neither does the statute prescribe how many hours or what hours such clerk shall work. If the clerk does the work in a manner satisfactory to the county superintendent, that is all that is required. Since the state pays the first \$750.00 of the clerk's salary, it could make no difference to the county court how, or in what manner, the clerk performed his duties so long as the salary did not exceed that amount. If the superintendent proposes to pay more than \$750.00 annual salary to his clerk, the county court would have the right to determine whether it will bear any of such salary above said amount and if so, how much. If a clerk is employed at a salary of no more than \$750.00 per year, it is evident that the superintendent would have to get a part-time clerk only, as it would probably be impossible to secure a full time clerk at that salary. We see nothing against public policy in a school teacher doing clerical work for a county superintendent outside of his teaching hours.

CONCLUSION

It is, therefore, the opinion of this office that:

(1) The county superintendent of schools in a ~~city~~^{County} of the fourth class is entitled to be reimbursed for his actual and necessary traveling expenses, including transportation, board, lodging and other expenses necessarily expended by him while traveling in the performance of the duties of his office, not to exceed for any one year one-fourth of his annual salary, and if he uses his own car for traveling his transportation expense is set by law at four cents per mile;

(2) The county superintendent of schools may employ a clerk at a salary not to exceed \$750.00 without the consent of the county court; and

(3) A teacher who is regularly teaching may be employed as clerk of the county superintendent and perform the clerical duties outside the hours he teaches.

Yours very truly,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HHK/vlv