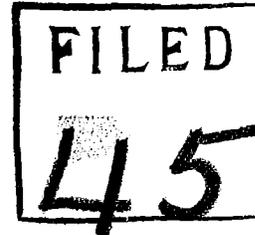


COUNTY COLLECTOR: Under Section 11068, R.S. Mo. 1939, County
PUBLIC OFFICER: Collector not in default may also hold the
office as member of Board of Directors of
said School District.

May 2, 1947



Honorable Duncan R. Jennings
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, which reads:

"I have been requested for a ruling on the interpretation of Sec. 11068, Art. 8, Chap. 74 of the Revised Statutes of Missouri, 1939.

"Is the County Collector of Montgomery County eligible to be elected and serve on the Board of Directors of the Montgomery City School District while holding office as said County Collector?"

You inquire if the County Collector, under Section 11068, R.S. Mo. 1939, may legally hold that office and at the same time be elected and serve on the Board of Directors of the Montgomery City School District. Section 11068, R.S. Mo. 1939, reads:

"No collector or holder of public moneys, or any assistant or deputy of such holder or collector of public moneys, shall be eligible or appointed to any office of trust or profit until he shall have accounted for and paid over all sums for which he may be accountable."

The foregoing statute is practically the same as when enacted and found in Laws of 1866, Page 146. In the Constitution of Missouri 1875, Section 19, Article 2, will be found practically the same provision, and while said constitutional provision was no doubt self-enforcing, the Legislature apparently passed such legislation to carry out the provisions of Section 19, Article 2, supra. No similar constitutional restriction was

carried in the Constitution of Missouri 1945, however, Section 11068, supra, has not been repealed. We believe, in the absence of Section 11068, R.S. Mo. 1939, that a county collector could in all probability hold at the same time the office of county collector and serve as a member of the Board of Directors of said School District, as the duties of both offices do not conflict and are not incompatible. That under the common law there was no limit to the number of offices one might hold at the same time so long as they were compatible and consistent. Furthermore, that our courts have defined "incompatible" as to not consist in a physical inability of one person to discharge the duties of two or more offices. (See Section 46, Page 941, Vol. 46 C.J.)

The courts in this state had an occasion to construe Section 11068, supra, one time, and that was in the case of State ex inf. v. Breuer, 235 Mo. 240. However, under that decision the courts were confronted with facts different from those contained in your request. In that case a county collector, during his term of office as collector, became a candidate for circuit judge and was elected. Prior to qualifying for the office of circuit judge he resigned, the Governor made an appointment to fill out his term as county collector, and he made a complete accounting of all funds and secured a receipt for paying over all funds in his custody. There was no allegation of fraud or default. He then assumed the office of circuit judge the following January. That case went off on a construction of the words "shall be eligible" in Section 11068, supra. Furthermore, the court in that case construed the constitutional provision, Section 19, Article 2, hereinabove referred to, along with Section 11446, R.S. 1909, which today is Section 11068, R.S. Mo. 1939. With regard to the word "eligibility" the court said at l.c. 248:

"* * * It may be conceded and it seems to be the fact that as stated in 29 Cyc. 1376, 'Most of the cases hold that the term "eligible" as used in a constitution or statute means capacity to be chosen, and that therefore the qualification must exist at the time of the election or appointment;' but there is respectable authority to the contrary, including a decision of this court and we think based upon the better reason. Besides, contemporaneous construction, as shown in the unquestioned recognition for forty years of the eligibility to

election to office of incumbents of the offices of county collector, county treasurer, state treasurer, sheriff, county clerk, circuit clerk, and many others that could be named, all collectors or receivers of public money, is a cogent reason for holding against relator's contention."

The court further held that such constitutional and statutory provisions should not be construed to prevent officers mentioned therein as in default and deny to them further political preferment while occupying such office. In so holding, the court said at l.c. 249, 250:

"It will be noticed that the catch-words of the section of the Constitution are: 'Collectors, receivers etc., in default, ineligible to office.' And the general rule of law upon the subject, as stated in 29 Cyc. 1385, is as follows: 'Statutes frequently disqualify for public office those who, having in their possession public funds, are in default. Such statutes disqualify only those who have been determined by legal authority to be in default, or admit that they are in default, and appear generally to be liberally construed in favor of eligibility to office. Thus "default" is said to mean a willful and corrupt omission to pay over funds.'

"The Reasonable and salutary interpretation given to the Constitution and statutory provisions under consideration, by this court, is not that those holding the offices mentioned shall be treated as in default and denied further political preferment while occupying such office, but rather that the door of the same office for another term, or of another office, shall be barred to them until, and only until, they shall have shown themselves eligible and worthy by a full settlement and payment of all public funds in their hands."

Furthermore, in State ex rel. McAllister v. Dunn, 277 Mo. 38, l.c. 43, the Supreme Court, in concluding that there was no

reason receding from the position taken by the court in *State ex inf. Breuer, supra*, said:

"* * * This seems to us the correct conclusion. To apply to the word eligible in every case a fixed meaning without regard to the context, the law in pari materia, the evil to be remedied or averted, would be to overturn vital rules of construction and miss the legislative intent in each case in which the law-making body happened to use the word in another, though legitimate, sense. Upon this question this court has already declared itself. In *State ex inf. v. Breuer*, 235 Mo. l.c. 250, 251, in a concurring opinion by Valliant, J., this court, six judges concurring, held that whether the word eligible, used in a statute, is used with reference to the election or the time of taking office 'depends on the context and on the subject.' We had before us in that case most of the authorities cited in this. After a re-examination of these and others now brought to our attention, we see no reason for receding from the position taken in that case."

There are several well established rules of statutory construction to keep in mind. A primary rule for construing statutes is to ascertain the lawmakers' intent from words used, if possible, and give it that effect. See *Cummins v. Kansas City Public Service Co.*, 66 S.W. (2d) 920, 334 Mo. 672. Also, that statutes should receive a sensible construction such as will effectuate legislative intent, if possible, so as to avoid an unjust or absurd conclusion. See *Chrisman v. Terminal R. Ass'n of St. Louis*, 157 S.W. (2d) 230. Another rule is that the Legislature will not be presumed to have intended to use superfluous or meaningless words. See *Dodd v. Independence Stove and Furnace Co.*, 51 S.W. (2d) 114, 330 Mo. 662.

Certainly we must consider a member of the Board of Directors of said School District as an office of trust. In *State ex rel. Milligan et al. v. Jones*, 224 S.W. 1041, l.c. 1042, the Supreme Court of Tennessee, in holding the office of school director to be an office of trust, said:

"The public school system has developed into a great plan of the state government to educate its citizens and is based upon the thought that an educated citizenry is essential to a free government. The government has undertaken this trust, and for this purpose spends hundreds of thousands of dollars every year. The system is a great system and has many features, all of which may well be said to be essential. Included within this system is the school director, and we must hold that it is an office of the highest trust. It is not an office of profit, and it should not be made so, because usefulness of the office would be lessened if the cupidity of men were aroused over its possession. The motive which men are expected to exercise in seeking it is one of patriotism and disinterestedness. It is none the less an office of trust. The directors have within their control the employment of teachers, the payment of their salaries, the care and custody of school property, and many other things of financial interest, which would be sufficient, standing alone, to declare the office one of trust; but in addition the director has the decision of the character and nature of the school by the selection of teachers and other matters of great moral and spiritual trust. An examination of the sections of the Code cited will show that it was intended to make the director an important and essential part of the school system."

County collectors are required under the law to make regular settlements and turn over funds in their custody. Certainly if the Legislature had wanted to prevent such officers from holding other offices of trust at the same time, it would have been an easy matter to have enacted such a law in words that would need no construction, such as Section 13799, R.S. Mo. 1939, which reads:

"No sheriff, marshal, clerk or collector, or the deputy of any such officer, shall be eligible to the office of treasurer of any county."

That was not done. So apparently the Legislature, in passing 11068, R.S. Mo. 1939, only wanted to restrict such public officers from holding another office of trust at the same time when in default. That seems to be the only reasonable construction to place upon said act.

CONCLUSION

Therefore, it is the opinion of this department that, since the office of county collector and member of Board of Directors of said School District are not incompatible, and assuming the County Collector in question has made all settlements required under the law and is not in default, the said County Collector may serve as Member of said Board of Directors in said School District at the same time.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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