

**School Trustee, County Commissioner Cannot Be—County Commissioner Cannot Be School Trustee.**

The offices of school trustee and county commissioner are incompatible and cannot be held by the same person.

April 17, 1920.

Miss May Trumper,

Superintendent of Public Instruction.

My Dear Miss Trumper:

You have submitted to me the question of whether a County Commissioner is entitled to hold the office of school trustee while holding the office of County Commissioner. A brief examination of the statutes prescribing the duties of these two offices will, I believe, conclusively show that they are incompatible.

“An office is said to be incompatible when one has the power of removal over the other.” Atty. Genl. vs. Counsel, 112 Mich. 145, 29 Cyc. 1382.

Also:

“When one is in any way subordinate to the other, or when one has power or supervision over the other, or when the nature and duties of the two offices are such as to render it improper from consideration of public policy for one person to retain both offices.”

Meecham on Public Officers, Section 422.

State ex rel Klick vs. Whittmer, 50 Montana, 25.

Section 2894 of the Revised Codes, as amended by the 1919 Session Laws, on page 25, defines the duties and powers of County Commissioners, which are:

“First, to supervise the official conduct of all County officers and officers of all districts and other subdivisions of the County charged with assessing, collecting, safe-keeping, management of or disbursement of public revenues; to see that they fulfill and perform their duties; to direct prosecutions for delinquencies; when necessary require them to renew their official bonds, make reports and present their books of account.”

2. “To divide counties into townships, school, road and other districts required by law; change the same and create others.”

19. “To fill by appointment all vacancies that may occur in county, township or precinct offices.”

Under this latter provision the Board of County Commissioners might fill the office of County Superintendent of Schools, while the County Superintendent of Schools has the authority to fill any vacancy on the school board.

Subdivision 7 of Section 502 of the General School Laws provides that any school trustee may be removed from office by a court of competent jurisdiction, etc., provided, however, “That upon charges being

preferred and good cause shown, the Board of County Commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof." Under this section, a trustee holding the office of County Commissioner might be called upon to suspend himself from the office of trustee.

Under the provisions of Section 408 joint districts are dissolved upon the joint action of the Boards of the various Counties upon recommendation of the Superintendents of the Counties concurred in by the trustees. Also under Section 404, reorganization of new districts, an appeal may be taken from the order establishing a district made by the County Superintendent, to the County Commissioners. Under Subdivision 2, Division of Districts, "any three resident taxpayers of either the proposed new district or the remaining portion of the original district may within thirty days appeal from the decision of the said Board of Trustees granting or denying said petition to the County Superintendent of Schools and may within thirty days appeal from any decision or order made by the County Superintendent to the County Commissioners whose decision will be final.

The above provisions are, in my opinion, sufficient to show that the two offices are incompatible and, therefore, cannot be held by the same person.

Respectfully,

S. C. FORD,

Attorney General.