

Opinion No. 6

County Superintendent of Schools—
Teachers—Schools, Superintendent.

Held: A county superintendent of schools cannot occupy such office and also hold the position of teacher.

January 4, 1947.

Mr. Cecil N. Brown
County Attorney
Prairie County
Terry, Montana

Dear Mr. Brown:

You have requested my opinion as to whether the newly elected county superintendent of schools may continue in her job as a primary grade teacher.

Section 955, Revised Codes of Montana, 1935, provides:

“The county superintendent shall have the general supervision of the Public schools in his County.”

This supervisory power precludes the county superintendent of schools from being also a teacher in the schools in her county. In the case of *Klinck v. Wittmer*, 50 Mont. 22, 144 Pac. 648, our Court said:

“Offices are ‘incompatible’ when one has power of removal over the other . . . when one is in any way subordinate to the other . . . when one has power of supervision over the other . . . or when the nature and duties of the two offices are such as to render it improper, from

considerations of public policy, for one to retain both."

It is apparent that, under the above rule given us, the two positions are incompatible. However, the County Superintendent is an officer and a teacher is an employee and thus the application of the above rule might be questioned. In State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 Pac. 411, and in State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 Pac. (2d) 685, our Court considered similar situations and the determining point in each case was whether the second position was in fact an office. In the Hawkins case the Court held the auditor of the board of railroad commissioners was not a civil officer and therefore the position could be held by a member of the legislature. In the Kelsey case the Court held that a member of the Montana Relief Commission was an officer and therefore the office could not be held by a member of the legislature. In neither of the cases was there a conflict as to the time element necessary to the performance of the duties involved and a violation of the rule of public policy stated in the above quoted portion of the case of Klinck v. Wittmer.

Section 430, Revised Codes of Montana, 1935, requires all officers to take an oath of office which is in part: "I will discharge the duties of my office with fidelity." Section 974, Revised Codes of Montana, 1935, provides:

"The county superintendent of schools shall keep his office open every day when he is not engaged in the supervision of schools except holidays, provided when he has a deputy or clerk, his office shall be kept open every day in month except holidays."

If the county superintendent maintains her office as required, then she would not be able to teach because of her inability to be in two places at once. Also the supervisory duties of the superintendent conflict with the duties of the teacher as a superintendent cannot, with logic, supervise herself in the performance of the work of a teacher. The conflict in duties renders it "improper, from consideration of public policy, for one to retain both."

It is therefore my opinion that a county superintendent of school cannot occupy such office and also hold the position of a teacher.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.