

**OPINION NO. 77-014**

**Syllabus:**

The position of county superintendent of schools is not a public office for purposes of Article II, Section 20, Constitution of Ohio, and a person holding such a position is not subject to the prohibition therein against increases in an officer's compensation during his existing term. (1976 Op. Att'y. Gen. No. 76-034 modified)

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**To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio**  
**By: William J. Brown, Attorney General, March 17, 1977**

You have requested my opinion as to whether a county superintendent of schools is a "public officer" for purposes of Article II, Section 20, Constitution of Ohio. That provision prohibits in-term increases in compensation for public officers. While this issue was addressed in 1976 Op. Att'y. Gen. No. 76-034, a reconsideration is, as you have suggested, appropriate at this time as a result of the recent action of the Ohio Supreme Court in State, ex rel. Moore v. Oakley C. Collins, Case No. 76-588.

Article II, Section 20, supra, reads as follows:

"The General Assembly, in cases not provided for in this constitution, shall fix the terms of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office is abolished." (Emphasis added.)

The position of county superintendent of schools is provided for in R.C. Chapter 3319. Specifically R.C. 3319.01 states that:

"Except in an island school district, where the county superintendent may serve as superintendent of the district, the board of education in each county, city, local, and exempted village school district shall, at a regular meeting held not later than the first day of May of the calendar year in which the term of the superintendent expires, appoint a person possessed of the qualifications provided in this section, to act as superintendent of the public schools of the district, for a term not longer than five years beginning the first day of August and ending on the thirty-first day of July. . . .

". . . .

"The superintendent of a local, city, county, or exempted village school district shall be the executive officer for the board. Except as otherwise provided in this section for local school districts, he shall direct and assign teachers and other employees of the schools under his supervision, except as provided in section 3319.04 of the Revised Code, assign the pupils of the schools under his supervision to the proper schools and grades, provided that the assignment of a pupil to a school outside of his district of residence is approved by the board of the district of residence of such pupil, and perform such other duties as the board determines. The county superintendent shall exercise the responsibilities of this section with regard to the assignment of pupils and teachers for local school districts under the supervision of the county board."

As noted in Op. No. 76-034, supra, courts have in the past treated county school superintendents as public officers. This view has, however, not been without exception, and the Supreme

Court has recently had occasion to again consider the character of the position of county superintendent of schools.

In State ex rel. Moore v. Collins, Case No. 76-588, the Court considered an action in quo warranto, which challenged the right of a person to continue in the office of state senator, when he has assumed the position of county superintendent of schools. The complaint alleged that a county superintendent of schools was a public officer and that Article II, Section 4, Constitution of Ohio, prohibited members of the General Assembly from holding any other public office.

The defendant filed a motion to dismiss. The Court, upon consideration of the motion, sustained it and dismissed the complaint. The sole issue raised by the motion to dismiss was whether a county superintendent of schools is a public officer. With respect to the Court's grant of the motion to dismiss, it has been held that a court's dismissal of a complaint without any qualifying language in its order constitutes an adjudication on the merits. State, ex rel. Kopchak v. Lime, 44 Ohio St. 2d 3 (1975). See also Civil Rule 41(B). It appears then that the Supreme Court has now adopted the view that the position of county superintendent of schools is not a public office. Since Article II, Section 20, supra, also applies only to officers, it follows that it should be similarly construed so as not to prohibit in-term increases in compensation for a county superintendent of schools. To the extent that Op. No. 76-034, supra, is inconsistent with this construction it is modified.

In answer to your question it is, therefore my opinion and you are advised that the position of county superintendent of schools is not a public office for purposes of Article II, Section 20, Constitution of Ohio, and a person holding such a position is not subject to the prohibition therein against increases in an officer's compensation during his existing term. (1976 Op. Att'y. Gen. No. 76-034 modified)