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1. WORKMEN'S COMPENSATION LAW — COUNTY SUPERINTENDENT OF SCHOOLS — OFFICIAL — NOT EMPLOYEE, WORKMAN OR OPERATIVE — EXCLUDED FROM PROVISIONS OF LAW — SECTION 1465-61 G.C.
2. ASSISTANT COUNTY SUPERINTENDENT IS EMPLOYEE — ENTITLED TO BENEFITS OF SAID LAW.
3. MEMBERS, OFFICE FORCE, SECRETARY AND ATTENDANCE OFFICER OF COUNTY SUPERINTENDENT OF SCHOOLS, ARE EMPLOYEES, WORKMEN OR OPERATIVES — ENTITLED TO BENEFITS OF SAID LAW.

SYLLABUS:

1. A county superintendent of schools (appointed under the laws of Ohio) is an official and not an employee, workman, or operative within the terms of Section 1465-61, General Code, and is therefore excluded from the provisions of the Workmen's Compensation Law.

2. An assistant county superintendent of schools appointed under the laws of Ohio is an employee, workman or operative under the provisions of Section 1465-61, General Code, and not an official under the provisions of that section and is accordingly entitled to the benefits of the Workmen's Compensation Law.

3. The members of the office force of county superintendent of schools, including the secretary and attendance officer, are employees, workmen or operatives under the provisions of Section 1465-61, General Code, and not officials under the provisions of said section and are therefore entitled to the benefits of the Workmen's Compensation Law.

Columbus, Ohio, May 27, 1942.

The Industrial Commission of Ohio,
Columbus, Ohio.

Gentlemen:

I have for consideration and reply, your request for my opinion, which reads in part as follows:

“Please advise this Commission if a county school superintendent appointed under the laws of Ohio is an ‘employee,’ ‘workman’ or ‘operative’ under the provisions of Section 1465-61, Ohio General Code, or an official of the school district under the provisions of Section 1465-61, Ohio General Code, and exempt from the benefits of the Workmen's Compensation Law.

Please advise this Commission if an assistant county superintendent appointed under the laws of Ohio is an 'employee,' 'workman' or 'operative' under the provisions of Section 1465-61, Ohio General Code, or an official of the school district under the provisions of Section 1465-61, Ohio General Code, and exempt from the benefits of the Workmen's Compensation Law.

Does the office force of the county superintendent of schools which consists usually of a secretary and an attendance officer, come within the meaning of the term 'employee,' 'workman' or 'operative' as contained in Section 1465-61, Ohio General Code?"

Your request has to do with an interpretation or application of Section 1465-61, General Code, the pertinent portion of which reads as follows:

"The term 'employee,' 'workman' and 'operative' as used in this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein."

The questions in your request for my opinion, therefore, narrow down to this: Do county superintendents of schools, assistant county superintendents, and the office force of county superintendents of schools come within the exception contained in the above quoted excerpt as "officials," or do they, or any of them, comply with the requirements for participation in the public employes' insurance fund as "employees," "workmen" or "operatives?"

The pertinent code sections having to do with county superintendents of schools are Sections 4744, 4744-1, 4744-4, 4744-6 and 7706, General Code. The most important, if not the controlling provision to be found in these sections is that contained in Section 4744, General Code:

"He (the county superintendent) shall be in all respects the executive officer of the county board of education, and shall attend all meetings with the privilege of discussion but not of voting."
(Words in parenthesis, mine.)

In the sections noted I find also that the appointment of the county superintendent, the fixing of his term of office, his duties, and his salary

and expenses are provided for, and definite and detailed requirements for eligibility are set out.

In the case of *State, ex rel. Clarke v. Cook*, 103 O. S., 465, wherein were involved questions relating to the salary of a county superintendent of schools, it was assumed without extended discussion that a county superintendent of schools is a public officer. However, Judge Wanamaker in his opinion in the case, after referring to the statute which created the position, said: "The statute itself, providing for the appointment of such county superintendent, expressly designates him as 'in all respects the executive officer of the county board of education.'"

In the case of *State, ex rel. Srofe v. Vance*, 18 O.N.P. (N.S.) 198, affirmed by the Court of Appeals on the opinion of the lower court, March 12, 1915, it was held as stated in the syllabus:

"A county superintendent of schools, appointed by the county board of education under the act of the General Assembly passed February 5, 1914, is a public officer and as such his eligibility or title to the office can not be brought in question in a suit by a tax-payer to enjoin the payment of his official salary."

In an opinion of a former Attorney General published in *Opinions of the Attorney General for 1935*, page 853, it is held categorically as stated in the first branch of the syllabus:

"A county superintendent of schools is a public officer, the salary for whom when fixed, may not be changed during his term."

Moreover, the Supreme Court in the cases of *Christman v. Coleman*, 117 O. S., 1, *State, ex rel. Westcott v. Ring*, 126 O.S., 203, and *State, ex rel. Rees v. Winchel et al.*, 136 O. S., 62, all of which cases were actions in quo warranto to test the right to the office of county superintendent of schools, recognized that the position of county superintendent of schools is a public office. In none of these cases was it questioned that quo warranto was not the proper action for the purpose and yet it is well settled that quo warranto will not lie to test the right to a mere employment as distinguished from a public office and will lie only in such cases where the title to a public office is involved.

The writ of quo warranto owes its existence and its scope in this

state to constitutional and statutory provisions. *State, ex rel. Price, v. Columbus*, 104 O. S., 120. Section 12303, General Code, which provides for actions in quo warranto, in express terms states that such actions may only be brought to test the right to an office. That section provides that quo warranto may be brought in the name of the state against a person who usurps, intrudes upon, or unlawfully holds or exercises a public office or a franchise within this state. *State, ex rel. Attorney General v. Hunt*, 84 O. S., 143. It has been held that quo warranto will not lie to determine a deputy coroner's right to the position because the position is not a public office. *State, ex rel. v. Hauck*, 11 C.C. (N.S.), 414. In the light of the authorities above noted, there can be no question but that a county superintendent of schools is a public officer, and therefore comes within the exception contained in Section 1465-61, General Code.

With reference to assistant county superintendents of schools, the pertinent statutory provisions are found in Sections 4739, 4743, 7706, 7706-1 and 7706-3, General Code.

From the provisions of the sections of the Code noted I can find nothing to indicate an intention on the part of the Legislature to delegate to assistant county superintendents any portion of the sovereign power. What meager indication the statutes do give as to the duties of assistant county superintendents of schools would indicate that such assistants act under the direction and control of and in conformity with the orders of the county superintendent of schools. That this probably was the intention of the Legislature is borne out by the fact that although an assistant county superintendent is elected by the county board of education, he must be nominated by the county superintendent. (See Section 4739, General Code). Furthermore, the county superintendent is the officer responsible for the calling of conferences and monthly meetings with assistants and teachers. (See Sections 7706-1 and 7706-3, General Code).

The case of *State, ex rel. Alcorn v. Bemen*, 34 O. App., 392, holds that deputy county officers are not officials within the meaning of Section 1465-61, General Code. The decision is based on a decision of the Supreme Court of Ohio in the case of *State, ex rel. Attorney General v. Jennings et al.*, 57 O. S., 415, wherein it is pointed out:

“To constitute a public office, against the incumbent of which quo warranto will lie, it is essential that certain independent public duties, a part of the sovereignty of the state, should be appointed to it by law, to be exercised by the incumbent, in virtue of his election or appointment to the office, thus created and defined, and not as a mere employe, subject to the direction and control of some one else.”

From the foregoing, therefore, it seems clear that an assistant county superintendent of schools is not an “official” but is an employe, workman or operative under the terms and provisions of Section 1465-61, General Code, and is therefore entitled to participation under the Workmen’s Compensation Law.

A fortiori, it follows that the members of the office force of the county superintendent of schools, including the secretary and the attendance officer, are not officials but are employes only. In the case of Board of Education v. State, ex rel. Parker, 35 Ohio App., 29, this conclusion was indicated. The syllabus of that opinion reads as follows:

“One employed as clerk and stenographer for county superintendent could not have mandamus to compel payment of salary accruing after discharge without notice (Sections 4744-1 and 7701, General Code).

Clerk of county superintendent is employe only, and clerk’s sole remedy for breach of contract of employment is action for damages (Sections 4744-1 and 7701, General Code).”

Wherefore, in specific answer to your questions, it is my opinion that:

1. A county superintendent of schools (appointed under the laws of Ohio) is an official and not an employe, workman or operative within the terms of Section 1465-61, General Code, and is therefore excluded from the provisions of the Workmen’s Compensation Law.

2. An assistant county superintendent of schools appointed under the laws of Ohio is an employe, workman or operative under the provisions of Section 1465-61, General Code, and not an official under the provisions of that section, and is accordingly entitled to the benefits of the Workmen’s Compensation Law.

3. The members of the office force of county superintendents of schools, including the secretary and attendance officer, are employes,

workmen or operatives under the provisions of Section 1465-61, General Code, and not officials under the provisions of said section and are therefore entitled to the benefits of the Workmen's Compensation Law.

Respectfully,

THOMAS J. HERBERT
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