

OPINION No. 568

Public schools—Salary—Increases—Incumbents—Public officers—County superintendents—Assistants—Special supervisors—District superintendents—Authority—Constitutional law.

Salary increases mandated by Act No. 515 approved July 5, 1947 may not be made effective for those county superintendents, district superintendents, assistant county superintendents, and supervisors of special education who were elected or appointed for terms beginning before the effective date of the act, but must be deferred until their next terms of office, or until successors are elected or appointed.

Superintendents of schools, and supervisors of education, whose offices are created by statute and whose duties involve judgment, discretion, intelligence and technical knowledge, have the status of public officers within the meaning of Article 3, Section 13 of the Pennsylvania Constitution prohibiting increases of salary of a public officer after election or appointment.

Harrisburg, Pa., September 3, 1947.

Honorable Francis B. Haas, Superintendent of Public Instruction,
Harrisburg, Pennsylvania.

Sir: Your inquiry of July 15, 1947 asks whether the salary increases provided for district superintendents, county superintendents, assistant county superintendents and supervisors of special education in the public school system by Act No. 515 approved July 5, 1947 may be made effective immediately or must they be deferred until their next terms of office.

The legislation in question amended the School Code, Act of May 18, 1911, P. L. 309, to establish minimum salaries and increments thereto for certain officers and employes of the public schools. A new section, 1228, was added which entitles the above-named officers to specified minimum annual salaries in excess of those mandated by the amendment of May 29, 1945, P. L. 1112, 24 P. S. § 1163.1.

Article 3, Section 13, of the Pennsylvania Constitution provides that:

No law shall extend the term of any public Officer, or increase or diminish his salary or emoluments, after his election or appointment.

If the officers in question are public officers within the meaning of article 3, section 13, it would appear that their salaries may not be increased by law during their present terms of office.

The definition of the term "public office" most frequently cited by our appellate courts is that contained in *Richie v. Philadelphia*, 225 Pa. 511, 515, 516 (1909), where it is said that:

* * * In every case in which the question arises whether the holder of an office is to be regarded as a public officer within the meaning of the constitution, that question must be determined by a consideration of the nature of the service to be performed by the incumbent and of the duties imposed upon him, and whenever it appears that those duties are of a grave and important character, involving * * * some of the functions of government, the officer charged with them is clearly to be regarded as a public one. * * * Where * * * the officer exercises important public duties and has delegated to him some of the functions of government and his office is for a fixed term and the powers, duties and emoluments become vested in a successor when the office becomes vacant, such an official may properly be called a public officer. The powers and duties attached to the position manifest its character. * * *

With this analysis in mind, let us examine the nature of the offices in question.

1. *County Superintendents.*

(a) Duties.

This office was created by the legislature "for the superintendence and supervision of the public schools of this Commonwealth", School Code, section 1101. These officers are required to visit the schools under their supervision, to note the courses and methods of instruction, give directions in the art and methods of teaching, and to report inefficiency found for the purpose of achieving uniformity of instruction (section 1123); and to inspect grounds and buildings for the purpose of informing the directors of the condition thereof (section 1124). They direct the activities of the assistant superintendents and the supervisors of special education (section 1131). And they are to see that there is taught in every district the branches required by the Code (section 1149).

They may call at any time a convention of school directors for the purpose of voting salary increases (Act No. 538 approved July 7, 1947), and must call such a convention every four years for the purpose of electing superintendents (section 1106).

In addition they are charged with other important functions not contained in the School Code, e. g., to see to the faithful performance of the provisions of the Act of April 27, 1927, P. L. 465, as amended, relating to the conduct of fire drills in the public schools.

(b) Election and Term of Office.

County superintendents are elected every four years (section 1104) by a convention of school directors of the county (section 1105).

If a vacancy occurs, the office is filled temporarily by an appointee of the county board of directors who serves until the Superintendent of Public Instruction appoints a successor for the unexpired term (section 1120).

(c) Salaries.

The minimum salary of county superintendents prescribed by the School Code is paid by the Commonwealth, but conventions of school directors may increase these salaries above the statutory amount. This increase is paid by the districts under the jurisdiction of the superintendent. These conventions may be called at any time by him (section 1121), as amended by Act No. 538, approved July 7, 1947.

2. *Assistant County Superintendents.*

(a) Duties.

These officers are also charged with the superintendence of the public schools of the Commonwealth (section 1101), and perform the duties of county superintendents when directed. They are the chief executive assistants of the superintendents (section 1131).

(b) Selection of Term of Office.

Assistant County Superintendents are selected by the county board of school directors from nominations of the county superintendent and serve for the duration of his term of office (section 1127).

(c) Salary.

The salary provisions are the same in substance as those for county superintendents (section 1130), but vary in amount (section 1228).

3. *Supervisors of Special Education.*

(a) Duties.

These officers are likewise charged with supervision of the public schools of the Commonwealth (section 1101).

They examine and investigate the abilities, disabilities and needs of the exceptional children in the schools, make recommendations for and supervise their instruction. They report as well to the judges of juvenile courts, and assist the assistant county superintendent in the preparation, administration and interpretation of examinations for promotion on graduation (section 1131).

Along with assistant county superintendents they meet and confer with the boards of school directors and report monthly to the county superintendents on the condition and progress of the schools, the needs of the pupils (section 1132).

(b) Selection and Terms of Office.

These provisions are identical in effect with those applicable to assistant county superintendents (section 1127).

(c) Salary.

These provisions are identical in effect to those applicable to assistant county superintendents (sections 1130, 1228).

4. *District Superintendents.*

(a) Duties.

The duties of district superintendents are the same as those required of county superintendents and, in addition, include those required by the school board selecting them (section 1142). The distinction between the two offices is largely one of geographic jurisdiction. School districts of the first and second class must, and those of the third class may, select district superintendents. These officers operate within their districts only and therein replace the jurisdiction of the superintendent of the county in which the district is located (section 1133).

(b) Selection and Term of Office.

The manner of selection is the same as for county superintendents except that the electors are the school directors of the district only (section 1134). In districts of the first class they are appointed by the Boards of Public Education (section 2223).

(c) Salary.

Their salary is determined by the district boards of directors and paid out by the funds of the district (section 1135). These salaries are, however, subject to the minimum salary provisions of the School Code (section 1228).

It is significant that these four offices, together are given the responsibility of supervising the public schools which the General Assembly is required to provide and maintain by Article 10, Section 1 of the Pennsylvania Constitution.

The conclusion, which results from the application of the test prescribed by the *Richie* case, *supra*, to the foregoing, is that all four officers are public officers within the meaning of the Constitution, Article 3, Section 13.

That these officers exercise important public duties need not be argued unless the position is taken that supervision of the public schools is not important. Certainly there is delegated to each of such officers a substantial part of the governmental function of providing

a public school system. Each serves for a term fixed by statute. The powers, duties and emoluments become vested in a successor when the office becomes vacant.

A Formal Opinion issued by this Department on September 6, 1917 reaches a similar conclusion: Salaries of Superintendents of Public Schools, 1917-1918 Op. Atty. Gen. 541. That opinion holds that two acts amending Sections 1121 and 1130 of the School Code to increase the salaries of county superintendents and assistants could not operate to increase the salaries of the incumbents.

More recently in *Foyle v. Commonwealth*, 101 Pa. Super. 412 (1931), the court specifically determined that assistant county superintendents were public officers and therefore, not employes entitled to the benefits of the workmen's compensation laws. The reasoning in this case is derived from the *Richie* case, *supra*. The conclusion of the opinion, speaking of the assistant county superintendent is as follows (p. 422):

* * * His office is created by the legislature, his minimum salary is fixed by law, he takes and subscribes to an oath, receives a commission, and cannot be removed in any method other than that provided by statute. His duties are prescribed by statute and involve judgment, intelligence, discretion and technical knowledge, and are of such consequence to the public as to place him in a position of such dignity and responsibility that he must be considered a public officer as distinguished from an employe. * * *

The same reasoning is applicable to supervisors of special education. Certainly it applies with even greater force to county superintendents. And since district superintendents, in their districts, occupy a position identical to the latter, they may likewise be included.

Furthermore, *Weiss v. Ziegler*, 327 Pa. 100 (1937) indicates that district superintendents have the status of public officers because it applies to that office the provisions of Article 6, Section 4, and Article 12, Section 1 of the Constitution. These sections deal with the selection and removal of officers and would have had no application if district superintendents were regarded as mere employes. See *Malone v. Hayden*, 329 Pa. 213, 230 (1938); *Hetkowski v. Dickson City School District*, 141 Pa. Super. 526, 529 (1940).

We are, therefore, of the opinion that the salary increases mandated by Act No. 515 approved July 5, 1947 may not be made effective for those county superintendents, district superintendents, assistant county superintendents and supervisors of special education who were elected

or appointed for terms beginning before the effective date of the act but must be deferred until their next terms of office, or until successors are elected or appointed.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,

Attorney General.

JOHN C. PHILLIPS,

Deputy Attorney General.

OPINION No. 569

Townships—Second class townships—Responsibility for private sewers.

The Sanitary Water Board has no authority to require supervisors of second class townships to abate the pollution of waters caused by the discharge of sewage therein by private persons through private sewer lines, irrespective of whether said lines lie wholly in private property, partly in township property or under State highways or township thoroughfares, or to require such supervisors to submit plans to the board with the ultimate view that the board will subsequently order the construction of a sewage system or treatment works or both in accordance with such plans when approved by the board.

Harrisburg, Pa., September 11, 1947.

Honorable Norris W. Vaux, Secretary of Health and Chairman of the Sanitary Water Board, Department of Health, Harrisburg, Pennsylvania.

Sir: This department is in receipt of your communication reinstating a former request for an opinion as to whether the Sanitary Water Board has the authority to require the supervisors of a second class township, the population of which discharges sewage into the waters of the Commonwealth, to abate such discharge or to submit for the approval of the Board plans for the construction of sewers or a sewer system and a sewage disposal works or a plant for the treatment of such sewage. In the latter instance, it would follow that after the approval of the submitted plans, the Board would issue a subsequent order to such supervisors either to construct the sewer system and the plant called for by the plans designed to render the discharge of such sewage innocuous or to abate the discharge. It is our understanding that the sewers of the second class townships discharging sewage into the waters of the Commonwealth to which you refer are not municipal sewers but are private sewerage systems which fall into three general