

OPINION NO. 1

Public Schools—County Superintendent—Salary—Population—Decennial Census—Act of 1911, P. L. 309, Sec. 1210.

The change in population of any county of this Commonwealth, became effective on Dec. 13, 1930, the day on which the 1930 census figures were officially promulgated.

No increase may be allowed in the salary of any county superintendent of schools who was elected or appointed prior to Dec. 13, 1930.

Department of Justice,
Harrisburg, Pa., January 30, 1931.

Honorable James N. Rule, Acting Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: We have your request under date of January 23, 1931, to be advised whether the minimum salaries prescribed by the Act of May 18, 1911, P. L. 309, Section 1210, (8), for county superintendents of schools are affected where there has been an increase in population in any county of this Commonwealth, as evidenced by the last decennial census, and if affected thereby, the date when such change became effective.

In our view of the law it is not necessary for the determination of the question submitted to decide when any such change in population became effective. In view, however, of the necessity of determining this question in many instances in the administration of the school law by your department, you are advised that it is not the mere existence of the fact of population which will govern its application, but its legal and official ascertainment. A county once having its status as to population settled retains it until it is legally and officially ascertained to have been changed. Such change in population of any county of this Commonwealth became effective on December 13, 1930, the day on which the Census Bureau of the United States Department of Commerce officially promulgated the 1930 census figures for Pennsylvania:

Lewis v. Lackawanna County,
200 Pa. 590, reversing
Lewis v. Lackawanna County,
17 Superior 25;
Commonwealth, ex rel. v. Walter,
274 Pa. 553, 556.

County superintendents of schools were elected pursuant to the Act of May 18, 1911, P. L. 309, as amended, on the second Tuesday of April, 1930, to serve from the first Monday of July, 1930 for a term of four years from that date. Their duties are fixed by statute. After qualifying by subscribing to or taking a prescribed oath or affirmation, they may not be removed from office, except in the manner therein set forth and for statutory cause.

Under the principles stated by the Supreme Court in *Commonwealth, ex rel. v. Moore*, 266 Pa. 100, they are public officers within the meaning of Article III, Section 13, of the Constitution of Pennsylvania, which 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."

The salary of a public officer is fixed as of the date of his election and if the change in a classification affecting his office postdates his election, an increase in salary cannot be allowed. This has been flatly determined by the Supreme Court in a number of cases, among which are *Commonwealth, ex rel. v. Walter, supra*; *Commonwealth, ex rel. v. Moore, supra*.

Therefore, no increase may be allowed in the salary of any county superintendent of schools who was elected or appointed to office prior to December 13, 1930.

Very truly yours,

DEPARTMENT OF JUSTICE,
S. M. R. O'HARA,
Deputy Attorney General.

OPINION NO. 2

Public Schools—Asst. Co. Supt.—Appointment—Removal—Expiration of term—Act of 1911, P. L. 309, Secs. 1129, 1131, 1132.

The term of an assistant county superintendent of schools does not end automatically with the resignation of his county superintendent; he is entitled to serve until the end of the term for which the county superintendent was elected unless sooner removed under the provisions of Section 1129 of the School Code.

Department of Justice,
Harrisburg, Pa., February 20, 1931.

Honorable James N. Rule, Acting Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: We have your request to be advised whether an assistant county superintendent of schools holds office during the entire term for which the county superintendent who appointed him was elected or whether the term of the assistant superintendent expires if and when the county superintendent resigns during the term for which he was elected.

Assistant county superintendents are appointed under Section 1127 of the School Code (Act of May 18, 1911, P. L. 309), which provides that they shall be nominated by the county superintendents, and that the nominations, when confirmed as therein provided by the officers of the county school directors' association, shall be appointments "until the end of the county superintendent's term of office."

Section 1129 of the School Code deals with the removal of assistant superintendents. It provides that:

"Upon the written charges and recommendation of the county superintendent, or of the majority of the members of each of three boards of school directors whose schools are under the jurisdiction of the county superintendent, assistant county superintendents of any county, may, after a hearing be removed by the Superintendent of Public Instruction, for the same cause and in like manner as a county superintendent is removed."

The removal of county superintendents is governed by Section 1119 of the School Code, which is as follows:

"Any county superintendent may be removed by the Superintendent of Public Instruction, at any time for neglect of duty, incompetency, intemperance, immorality, or other improper conduct as well as for the violation of any of the provisions of this act: Provided, That before any county superintendent shall be removed, he shall be given a hearing, of which he shall have reasonable notice, together with a statement of the charges preferred against him."

Does the language of Section 1127 mean that the appointment of the assistant county superintendent ends with the incumbency of the county superintendent making the appointment, or does it mean that the assistant's term is that for which the appointing county superintendent was elected as provided by Section 1105 of the School Code, as amended by the Act of April 23, 1923, P. L. 349?

While the office of assistant county superintendent is filled by conditional appointment by the county superintendent, nevertheless, the power vested in the county superintendent to appoint, in this instance, does not imply the power to remove such assistant county superintendent. Such removal must be in accord with the provisions of Sec-