

**Opinion No. 20-2739**

November 27, 1920

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. John V. Conway, Superintendent of Public Instruction Elect, Capitol Building.

County Superintendent of Schools Cannot Draw Salary and Act as School Teacher.

**OPINION**

In reply to your oral request for an opinion regarding the right and authority of a County Superintendent of Schools to occupy a position as teacher in the public schools in the county in which he was elected, and at the same time to attempt to perform the duties of County Superintendent, we wish to advise you as follows:

The law does not permit one person to hold two offices which are incompatible, that is, wherein the duties of one office might interfere with those of the other.

The County Superintendent of Schools is required to pass upon reports received from the various rural school teachers. In the double capacity then, as superintendent and teacher, he would be required to receive, correct and pass judgment upon his own reports.

By virtue of our laws, the County Superintendent is a member of the County Board of Education, and this Board is required by law to approve or disapprove the contracts between school boards of directors and school teachers. He, therefore, as a member of said board, would be required to pass upon his own contract for employment, and to approve or disapprove the same.

In our opinion, the duties of County Superintendent of Schools and of school teacher in the same county are absolutely incompatible, and no person can be permitted to hold the position of County Superintendent and at the same time teach in the public schools.

The question arises also as to whether or not the holding of the position of County Superintendent of Schools and that of school teacher and drawing salaries for both positions is not in conflict with Section 1 of Article X of the Constitution, wherein it is provided:

"And no county officer shall receive to his own use any fees or emoluments other than the one salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

A County Superintendent of Schools is a county officer within the meaning of this section, and he would certainly be receiving emoluments other than his one salary

provided by law, if he received a salary as a school teacher in addition to his salary as Superintendent. In our opinion, therefore, the County Superintendent of Schools could not draw the salary of a school teacher at the same time that he received the salary of School Superintendent.

Upon qualifying as County Superintendent of Schools, the person elected to that office would automatically cease to be a teacher and could not legally retain his position as such.

There are certain reasons of policy also, which would induce us to hold that a County Superintendent of Schools could not, at the same time, receive a salary as a school teacher. A person cannot perform his duties as Superintendent in the best manner, if a part or most of his time is devoted to teaching.

There are other reasons too numerous to mention, why we could hold that the same person could not hold the two positions.