



GENTNER DRUMMOND
ATTORNEY GENERAL

March 7, 2023

Via Hand Delivery and Email

The Honorable Greg Treat
President Pro Tempore of the Oklahoma Senate
2300 N. Lincoln Blvd., RM 422
Oklahoma City, OK 73105

Dear Senator Treat:

This correspondence is in reference to Ryan Walters and the positions he holds as Secretary of Education and State Superintendent of Public Instruction (“State Superintendent”).

I have had numerous conversations with legislators who have expressed their concern that Mr. Walters is in violation of the prohibition against dual office holding. Consequently, I tasked my Office to research this issue. I also personally reviewed the applicable statutes, case law and prior opinions addressing this issue. For the reasons set forth below, it is my conclusion that each of these positions constitutes an “office” as that term is used in OKLA. STAT. TIT. 51 § 6, and as such, Mr. Walters is statutorily prohibited from serving in both capacities.

Oklahoma prohibits state officers and deputies from simultaneously holding another state office or serving as the deputy of any other state office. OKLA. STAT. TIT. 51 § 6. As of the time of writing, the legislature has enumerated thirty (30) exceptions to this prohibition. However, none of these exceptions applies to the Secretary of Education or State Superintendent.

In *Oklahoma City v. Century Indemnity, Co.*, the Oklahoma Supreme Court identified three elements for determining whether a position is a public office. Those elements are as follows:

- (1) the position was created or authorized by law;
- (2) the law imposes certain definite duties upon the position holder; and
- (3) the duties imposed involve “the exercise of some portion of sovereign power.”

1936 OK 589, 62 P.2d 94 at 97 [emphasis added].

The position of State Superintendent clearly meets each element of the foregoing test. Similarly, the Secretary of Education is established via the Governor’s authority to create a cabinet system for Oklahoma’s executive branch, OKLA. STAT. TIT. 74 §§ 10.3, 10.5, and imposed with a

set of specified duties by OKLA. STAT. TIT. 70 § 3-118. Therefore, the first two elements of *Century Indemnity, Co.* are clearly met.

The third element is also met with respect to the Secretary of Education. Previous opinions issued by the Office of the Oklahoma Attorney General have found that positions empowered to utilize their discretion to enter into or authorize contracts and incur expenses on behalf of the State wield “sovereign power.” *See* 1983 OK AG 50; 1982 OK AG 189. The same is true for positions with authority over the adoption of rules and regulations in the agencies they oversee. *See* 1982 OK AG 50.

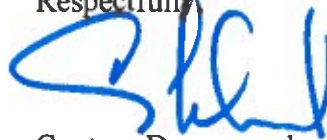
Here, these characteristics are present in the office of the Secretary of Education. To illustrate, the Secretary of Education is empowered to employ necessary personnel, OKLA. STAT. TIT. 70 § 3-118, and with the passage of Senate Bill 913 in 2021, the Secretary of Education is authorized to unilaterally veto agency rulemaking. OKLA. STAT. TIT. 75 § 303(A)(6). The Secretary of Education also serves as the chairperson of the Commission for Educational Quality and Accountability, an entity with the authority to: (1) establish performance levels and cut scores for Oklahoma public school students taking state assessments; (2) approve the accreditation of teacher education programs; and (3) set and approve the assessments for the licensure of teachers. OKLA. STAT. TIT. § 3-116.2. Finally, the Governor has granted the Secretary of Education authority to control the disbursement of State funds by empowering the office to either approve or deny expenditures of the more than thirty (30) various agencies over which the Secretary of Education exercises authority. *See* Executive Order 2023-04. These powers are analogous to those which have been deemed “sovereign” in nature. Therefore, the Secretary of Education constitutes an “office” for the purposes of OKLA. STAT. TIT. 1 § 6.

Accordingly, it is my conclusion that Mr. Walters cannot simultaneously serve as Secretary of Education and State Superintendent.

I greatly appreciate the diligence and care you have displayed in your approach to this matter. I hope the information I have provided is helpful to you in the furtherance of your duties. Please feel free to share this correspondence with your colleagues if you believe it will assist them in any way.

Thank you for your service to the State of Oklahoma. As always, I invite you to contact me with any questions or concerns.

Respectfully,



Gentner Drummond
Oklahoma Attorney General