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 52 L.R.A. 406, 92 Md. 591, 48 A. 145, 84
 Am.St.Rep. 524

Court of Appeals of Maryland.
 MAYOR, ETC., OF CITY OF BALTIMORE et
 al.
 v.
 LYMAN.
 Feb. 8, 1901.

Appeal from circuit court No. 2 of Baltimore city.

Bill by Albert B. Lyman against the mayor and
 city council of the city of Baltimore and others.
 From an order overruling a demurrer to the bill,
 defendants appeal. Reversed.

West Headnotes

Municipal Corporations 268 ↪ 138

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The superintendent of public instruction in the
 city of Baltimore, being appointed at the pleasure
 of the board of school commissioners, in
 pursuance of the power conferred on it by City
 Charter (Acts 1898, c. 123) § 100, is merely an
 employee of that department of the city
 government, and not a “municipal official,”
 within section 26 of the charter, which provides
 that all municipal officials shall be registered
 voters of the city; and hence the fact that one not a
 registered voter was appointed was no ground for
 restraining payment of his salary.

Argued before McSHERRY, C.J., and FOWLER,
 BOYD, PEARCE, JONES, and BRISCOE, JJ.

Edgar H. Gans, William A. Fisher, and Olin
 Bryan, for appellants.

Karl A.M. Scholtz and Geo. P. Mister, for
 appellee.

BRISCOE, J.

The question in this case being one of public
 importance, and being a matter affecting the

public-school system of Baltimore city, we
 announced our decision in the case shortly after
 the argument, in a per curiam order. We will now
 state the reasons for the conclusion reached by us
 at that time.

It is admitted that the record in this case presents
 but a single question of law for our consideration,
 and that is whether the superintendent of public
 instruction in the city of Baltimore is a municipal
 official, within the meaning and intent of the city
 charter? The twenty-sixth section of the charter
 (Acts 1898, c. 123) provides that no person shall
 at any time hold more than one office yielding
 pecuniary compensation under the mayor and city
 council of Baltimore. All municipal officials,
 except females, shall be registered voters of the
 city of Baltimore. The facts of the case are few,
 and are not disputed. Briefly stated, they are as
 follows: The board of school commissioners of
 Baltimore city, in pursuance of the power
 conferred on it by section 100 of the city charter,
 appointed Mr. James H. Van Sickle
 superintendent of public instruction, to take effect
 from the 1st day of July, 1900. At the time of Mr.
 Van Sickle's appointment and of the filing of the
 bill in this case he was not a registered voter of
 the city of Baltimore. The bill is filed by a
 resident and taxpayer of Baltimore city to enjoin
 the mayor and city council of Baltimore, the
 comptroller, and the board of school
 commissioners from paying his salary, for the
 reason that, not being a registered voter of the
 city, he was not eligible to the position to which
 he had been appointed. The determination of the
 question depends upon an examination of the
 charter itself, and the ascertainment of what
 persons the legislature intended should be
 included in the use of the term “municipal
 official” in section 26 of chapter 123 of the Acts
 of 1898 (City Charter).

It appears from an examination of the charter that
 the expression “municipal official” is used to

describe the heads of departments, heads of subdepartments, and municipal officers not embraced in a department, and is not applicable to employés of these several departments. By section 25 of the charter the mayor has the sole power of appointment of all heads of departments, heads of subdepartments, municipal officers not embraced in a department subject to confirmation by the second branch of the city council, except where otherwise provided by the charter. The city comptroller and surveyor are elected by the people, and the city register and public printer are appointed by joint convention of the two branches of the council. Sections 33, 35, 205, 208. The appointment of the other city officials is provided by the twenty-eighth section, which reads "that the heads of departments, heads of subdepartments, municipal officers not embraced in a department, and all special commissions or boards shall have the sole power of appointment and removal at pleasure of all deputies, assistants, clerks and subordinate employés employed by them, unless otherwise provided for." Now, under the charter (section 100), the superintendent of public instruction and his assistants are appointed by the board of school commissioners, the head of the department of education; and the qualification there prescribed*146 is "that the superintendents shall all be persons of education and experience in the management of schools, and they shall be not less than twenty-five years of age nor more than fifty at the time of their appointment and shall discharge the duties herein prescribed and such other duties as the said board may direct." It appears, then, from the foregoing sections of the charter, that the superintendent of public instruction is not appointed by the mayor or joint convention, or elected by the people, but is appointed by the board of school commissioners, the head of the department of education, and is an employé of this department of the city government.

Judge Cooley, in the case of [Throop v. Langdon](#),

[40 Mich. 683](#), where it is held that the position of chief clerk in the office of the assessors of the city of Detroit was not an office, says: "The officer is distinguished from the employé in the greater importance, dignity, and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance in office; and usually, though not necessarily, in the tenure of his position." In particular cases other distinctions will appear, which are not general. In *Olmstead v. Mayor, etc.*, 42 N.Y.Super.Ct. 482, it was held that one who receives no certificate of appointment, takes no oath of office, has no term or tenure of office, discharges no duties, and exercises no powers depending directly on the authority of law, but simply performs such duties as are required of him by the persons employing him, and whose responsibility is limited to them, is not an officer, and does not hold an office. And in the recent case of [Commissioners v. Goldsborough](#), 90 Md. 207, 44 Atl. 1055, we said: "Civil officers are governmental agents. They are natural persons, in whom a part of the state's sovereignty is vested or reposed, to be exercised by the individuals so intrusted with it for the public good. The power to act for the state is confided to the person appointed to act. It belongs to him upon assuming the office. He is clothed with the authority which he exerts, and the official acts done by him are done as his acts, and not as the acts of a body corporate." In the case now before us we find the superintendent of public instruction is not appointed by the mayor, or elected by the people, or appointed by joint convention of the two branches of the council. He takes no official oath, gives no official bond, has no commission issued to him, and has no fixed or definite tenure of office, but is appointed at the pleasure of the school board. It also appears from an examination of the charter that all the executive power relating to educational matters, is vested in a department known as the "Department

of Education,” and this department is composed of the board of school commissioners. The superintendent of public instruction exercises no power except what is derived from and through this board. He is simply, then, an employé or the agent of the school board, and not a municipal official, within the meaning of the charter. Nor do we find anything in the duties to be performed by him which indicates an office, and not an employment, within the meaning of the twenty-sixth section of the charter. In [State v. Vickers, 58 Ohio St. 730, 51 N.E. 1102](#), it is held that a superintendent of schools is not an officer. [Butler v. Regents of the University, 32 Wis. 131; U.S. v. Germaine, 99 U.S. 508, 25 L.Ed. 482](#).

We are, therefore, all of the opinion that section 26 of chapter 123 of the Acts of 1898, providing that all municipal officials, except females, shall be registered voters of the city of Baltimore, has no application to the position of superintendent of public instruction. It follows, then, that the order of the court below overruling the demurrer to the bill will be reversed, the demurrer sustained, and the bill dismissed. Order reversed, demurrer sustained, and bill dismissed, with costs.

Md. 1901.

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