

Teachers, Contract of Employment. Contract of Employment of Teacher, to Be Evidenced by Writing.

In the particular case referred to, written contract of employment not having been entered into between the board and the

teacher, no rights accrue to the latter.

Under the provisions of Chapter 76, Laws of 1913, contracts of employment of teachers should, in the future, be evidenced by writing, and executed in duplicate by the chairman and clerk of the board of the district, and by the teacher.

May 23rd, 1913.

Hon. C. A. Linn,
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:

I have your letter of the 17th instant, in which the following excerpt is quoted:

"Kindly give me your interpretation of the 1913 school laws relative to the hiring of teachers, as applied to the following facts: The board of trustees of School District No. 8 of Meagher County, Montana, a district of the third class, elected a certain teacher for the next year, who is at the present time teaching his first year here. The clerk of the board upon orders from the board gave him written notice of his re-election, and the teacher accepted in writing. No formal contract in writing has been entered into and signed by the board and teacher. Since that time a majority of the board of trustees have changed their mind in regard to the re-election of this teacher and now wish to rescind their action and discontinue his services at the end of this year. Do these facts under the new law constitute a valid contract between the board and the teacher, so that the board cannot rescind the contract unless for good cause?"

The power to employ teachers under the old law is found in Subdiv. 2 of Sec. 875 of the Revised Codes of Montana, 1907. This subdivision gave the school board power to employ or discharge teachers and to fix and order paid their wages. Chapter 76 of the Laws of the Thirteenth Legislative Assembly, in Subdiv. 2 of Sec. 508, embraces the language of the old law and contains in addition thereto by way of new enactment the following:

"Provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; not unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher."

It would appear, therefore, that contracts of employment of teachers should in the future be evidenced by writing, executed in duplicate by the chairman and clerk of the board for the district, and by the teacher. Under the facts, as stated in your letter, it would appear that an offer to employ was made by the school board and this offer

was in turn accepted by the teacher that the board by their action desired to employ. Assuming the offer of acceptance to be a contract, the question to be determined is as to whether under the law as it is, by virtue of the new enactment such a contract is enforceable. In the employment of teachers it would seem that the trustees act as a deliberative body, and their moves for contracting or refusing to contract in this respect may not be inquired into.

Gibson et al. v. Mobray, 145 Alabama, 112, 40 Southern, 279.

It would appear that by virtue of the express provisions of our statute that all contracts with teachers shall be evidenced by writing, and duly executed by both parties; that under the facts as you state them, whether or not there be a contract between the board and the teacher, it would be incomplete, since the action of the board has not been consummated by the writing contemplated by the statute.

In Gambrell v. District Court, Township of Lenox, 54 Iowa, 417, North Western, 693, the principal of law governing cases of this kind is laid down as follows:

"It is a familiar rule of law that corporations (i. e., school districts) of this character can be bound by contracts only when they are entered into in the manner and by the officers prescribed by the statute."

A number of illustrative cases of the rule, as laid down by the Iowa court are cited in the opinion, and need not here be quoted. Since, under the facts as you state them, it appears that the action of the board had reference only to services to be performed by the teacher in the future, and that no contract, as contemplated by the statute, has been entered into, we are of the opinion that the board in its wisdom may rescind its previous action and refuse to enter into the contract which the law prescribes, since it is difficult to conceive how any rights enforceable in law can have accrued to the teacher.

Very truly yours,

D. M. KELLY,
Attorney General.