

School Trustees—Powers of—Employment of Teacher.

The action of the outgoing Board of Trustees in employing teachers for the ensuing year, in the absence of any fraud or irregularity in the proceedings, is valid and not affected by the fact that they are about to retire from office.

Dean King, Esq.,
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My dear Mr. King:

You have asked for an opinion of this office on the question whether or not a retiring School Board can elect a teacher for the ensuing school year.

Section 1015 of the Revised Codes of Montana of 1921 authorizes the School Board to employ or discharge teachers and order paid their salaries.

Section 1075 of the Revised Codes of Montana of 1921 provides, in part, as follows:

“After election of any teacher or principal for the second consecutive year in any district in the state such teacher or principal so elected shall be deemed reelected from year to year thereafter unless the board of trustees shall, by a majority vote of its members on or before the first day of May, give notice in writing to such teacher or principal that his services will not be required for the ensuing year; *
* *”

From the statement of facts contained in your letter, it does not appear that this section could have any bearing on the matter, the only question presented being the power of the Board to employ a teacher to teach beyond their term of office.

In the absence of statutory provision limiting, either expressly or by implication, the time for which a contract for employment of a school teacher may be made to a period within the contracting school board's or officers' term of office, such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office, provided such contract is made in good faith and for a reasonable time. (35 Cyc. 1079.)

Our Supreme Court has not passed on the matter in relation to School Boards, but has done so as to County Commissioners in the case of *Picket Publishing Co. v. Board of County Commissioners*, 36 Mont. 188. On page 193 of this case the court used the following language:

“First, then, it becomes a question of the power of the outgoing board of Carbon county to make a contract for public printing for a term not exceeding the limit fixed by statute. That the board has the power to make a contract for public printing is not open to question. The Code above specifically grants the power, and there is not any limitation or restriction imposed by law upon that power, save only that it shall be for printing for which the county may be chargeable, and the further limitations as to prices to be paid and the term for which such contract shall run as stated above. The power to make the contract is specifically granted; but the time when such power shall be exercised is not limited or prescribed. Therefore we say that the proposition is incontrovertible that it may be exercised at any time during the term of the board, when a prior contract for such work has expired or is about to expire, and, so far as the power of the board is concerned, it is just as ample and complete the last week of the board's official existence as at any time prior thereto. The making of such contract at a time near

the close of the official career of an outgoing board may, in some instances, savor of bad faith or even of fraud; but there is not any charge of bad faith or fraud in this instance. The board having the power to make a printing contract at any time during its term, when such a contract is to be let, and the Code having expressly authorized such a contract to be made for a term not exceeding two years, and the contract under consideration being of that character, it was valid and binding upon the new board as upon the old one, in the absence of fraud in its making, unless the contract is void as against public policy."

The rule announced in this case would seem to have application to the case that you have presented, for the Board of Trustees are given authority by law to employ teachers.

I am, therefore, of the opinion that the action of the outgoing Board in hiring teachers for the ensuing year, in the absence of any irregularity in the proceedings and in the absence of any fraud, is valid and not affected merely by the fact that they are about to retire from office.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.