

Opinion No. 349**School Boards—Attorney, Employment
of—County Attorney—Settlement of
Claims.**

HELD: Where the County Attorney is disqualified, a board of school trustees has the power to engage counsel to defend it when suit is brought against the board.

A school board has authority to settle claims to avoid litigation if good faith is exercised.

Whether or not a settlement should be made is as much or more a question of business policy than a question of law.

September 25, 1933.

You submit the following questions, relating to a teacher's contract, to this office for an opinion:

"1. Can our trustees engage counsel to defend the school district in case suit is brought, and would it be legal to disburse district funds for that purpose? No provision has been made in the current year's budget for anything like this. The County Attorney is unable to represent us as he is disqualified.

"2. Can the school district make a compromise settlement with Mrs. Amundson without having the matter settled in court, and would the trustees be empowered to make such compromise settlement if they in their own judgment believe that it would be to the district's advantage or benefit to make a compromise settlement?

"3. From the information given you above and herewith do you think it advisable to compromise or defend the claim she may have, if any?"

No. 1: The county attorney is the legal adviser of all school trustees, and shall prosecute and defend all suits to which a district may be a party. (Section 1328 R. C. M. 1921).

In this matter, however, the teacher had retained him to represent her, prior to his election as county attorney, and he feels he is disqualified from acting in the case.

As the county attorney is paid by the county and the state, it appears to us that when the county attorney is disqualified, the trustees being public officials and entitled to counsel in any action affecting the district, the trustees may employ counsel.

Section 1022 R. C. M. 1921 provides: "Every school district constituted and formed as provided in this title shall be and is hereby declared to be a body corporate, and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with, and may acquire, purchase, and hold and use personal or real property for school purposes mentioned in this title, and sell and dispose of the same." Statutory authority granted to school boards to sue and be sued has been held in numerous decisions to carry with it the necessary incident to employ counsel and to pay for counsel's services. *State v. Aven*, 67 S. W. 752 (Ark.); *Arrington v. Jones*, 191 S. W. 361 (Tex.); *Dennitson v. School District*, 17 N. H. 492; *McCaffrey v. School District*, 42 N. W. 103 (Wis.); *Taylor v. Matthews*, 75 S. E. 166 (Ga.). Former Attorney General Foot held (Vol. 14 Attorney General's Opinions, page 181) that a high school board had no authority in itself to employ counsel, but would have the right to be represented by counsel, if the county attorney were disqualified.

Since the budget makes no provision for payment of special counsel, we do not see how he may be paid before a new budget is adopted.

No. 2: A school board has authority to settle claims to avoid litigation if good faith is exercised.

No. 3: It would appear that whether you settle this controversy or stand a lawsuit is as much or more a matter of business policy than a question of law, and the course adopted should be determined by the board of trustees,

after conference with the county superintendent and other interested parties, who are in personal touch with the situation. Local officials are provided to solve their own local problems and such controversies should be referred to this office only when the local officials exhaust their ability to reach a solution.

If the district goes to suit, however, we think it may be of some aid to call your attention to some of the facts given to us. The minutes of the meeting of the board of April 5, 1932, recite that Mrs. Amundson was employed to teach the next term at the Grand Prairie School. If this action of the board has been revoked it does not appear in the statement of facts. The advice of Mr. Weasa to the clerk, to mark the contract null and void, was no more authority for such act than such instruction from a stranger. Mr. Weasa had not qualified as a trustee at that time, and even if he had, valid instructions in such matter could be given to the clerk only by majority vote on a motion duly made and adopted.