Opinion No. 100

Schools — Teachers—Superintendents of Schools—Controversies—Appeal

HELD: A superintendent of schools, dismissed by the board of trustees, has the right to appeal to the county superintendent of schools as provided by Section 966.

July 18, 1939.

Mr. Frank M. Catlin
County Attorney
Wolf Point, Montana

Dear Mr. Catlin:

You have submitted the following question for my opinion:

> "Under the laws of the State of Montana, has the superintendent of schools in a second class district, upon being dismissed by a school board, the right of an appeal to and a hearing before the county superintendent of schools?"

Section 966, R. C. M., 1935 provides:

"He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts."

It will be noted that the language of this section is very broad. It includes "all matters in controversy." There are no exceptions stated. While the language of the statute is plain and unambiguous, and therefore there is no need to resort to the rules of construction to determine the intention of the Legislature, should that be necessary, then the statute should be liberally construed to maintain the right of appeal.

State ex rel. Stephens v. Keaster et al., 82 Mont. 126, 266 Pac. 387; Morin v. Wells et al., 30 Mont. 76, 75 Pac. 688;

Payne v. Davis, 2 Mont. 381.

In State ex rel. School District v. Trumper, (69 Mont. 468, 477, 479, 222 Pac. 1064, our Supreme Court, in referring to this section, said:

"In the absence of express provision in the statute as to who may appeal, it must be held the right of appeal is given to any person beneficially interested." * * * *

"The statute is plain, and from the language thereof the jurisdiction of the respondent to entertain and determine the controversy is beyond question. Appeals in such matters involving the administration of the public schools have been conferred by the Legislative assembly exclusively upon the state superintendent of schools, and so long as she acts legally and within the power expressly conferred the courts will not interfere. (24 R. C. L. 575.)"

In enacting Section 966, the policy of the Legislature seems to have been to create an educational system sufficient unto itself, and free, as far as practical, from any interference by the judiciary; in other words, the machinery was provided for the settlement of all school matters in controversy without resort to the courts. In a controversy between the school board and a pupil (Peterson v. School Board et al., 73 Mont. 422, 236 Pac. 670), our Supreme Court said (p. 477):

"* * * the controversy should be settled, if possible, by the school authorities, and resort to the courts should be had only in the event that the school officers are unable to satisfy the demands of the parties to the controversy. This was manifestly the intention of the Legislature in enacting section 966 above. Under like statutory provisions, it is held generally that the courts will not assume jurisdiction of the controversy or undertake to adjudicate the rights of the parties until the remedy provided by law has been exhausted."

We see no reason why this policy should not extend to a controversy between a school board and the superintendent. Certainly in the absence of an express exception none should be read into the law. Our Supreme Court, in support of this policy and intention of the Legislature in the last cited case quoted with approval (73 Mont. 448) from Pinzer v. Directors of Independent School Dist. of Marion, 129 Iowa 441, 6 Ann. Cas. 996, 3 L. R. A. (n.s.) 496, 105 N. W. 686:

"'It is plainly intended * * * that the management of school affairs should be left to the discretion of the board of directors, and not to the courts,' and that 'the method provided for reviewing the proceedings of a school board, either as to law or fact, relating to a subject which is within their jurisdiction * * * is by appeal to the county superintendent.' The court held that such appeal was a 'plain, speedy, and adequate' remedy, and **mandamus** would not lie. To the same effect are Edwards v. State, 143 Ind. 84, 42 N. E. 525, Commonwealth v. School Directors, and Wilson v. Board of Education, supra."

It also quoted with approval (Id. 447) from School District v. Bank (Tex. Civ.), 227 S. W. 974:

"'There is no allegation in the application for **mandamus** that appellees had exhausted their remedy of appeal to the superintendent of public instruction, which is given by Article 4510, Revised Codes. In that article that officer is given the authority to hear and determine all appeals from the rulings of subordinate school officers, and * * * an appeal to and decision by the state superintendent is absolutely essential to give a court the authority to pass upon the question. **It seems to be the fixed policy of the Legislature to create an educational system of public free schools that is sufficient unto itself and free as far as practical from any interference by the judiciary.** The courts fully recognize the desire of the legislative branch * * * and uniformly hold that the remedies provided for before school authorities must be exhausted before the courts will interfere.'" (Emphasis ours.)

See also People v. Buckland, 84 Colo. 240, 269 Pac. 15; Plains v. Common Consolidated School District Etc., vs. Hayhurst,——Tex. Civ. App. ——, 122 S. W. (2) 322.

In view of the broad scope of the statute and the statements by our Supreme Court regarding the policy and intention of the Legislature in enacting it, we think it is clear that this section gives to a superintendent the right of appeal to the county superintendent of schools. It is therefore not necessary to determine whether in the instant case the right of appeal exists by virtue of Section 1085, R. C. M., 1935, which is limited to certain questions; that section reads:

"In the case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence, or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal."

It is urged that the superintendent in question is not a "teacher" and therefore not entitled to an appeal under this section. His contract with the board provides that he shall "fulfill the duties of superintendent of schools of District No. 45" for a period of three years. His duties, as superintendent, are not specified in the contract. His affidavit, however, discloses that he has done work as a teacher for this school for a period of twenty-one years. He has given regular courses of lectures in public speaking, commercial arithmetic, economics, American history, sociology and other subjects, besides acting as substitute teacher whenever the occasion required it. He has been employed in fact as a teacher with the knowledge and consent of the board. Aside from this fact, which seems to be undisputed, the term "teacher," liberally construed, includes superintendent of schools. Compare Section 1 (4) Chapter 87, Laws of 1937, which defines the word "teacher" as follows:

"'Teacher' shall mean any teacher in the public elementary and high schools of the state, including kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state * * *."

See State vs. Keaster, supra.

For the foregoing reasons, we are of the opinion that your question must be answered in the affirmative. This opinion is concerned only with the question of law, namely, the right of appeal. We do not pass upon any of the facts as that is not our function. The law favors the right of appeal, as well as the right to a hearing. This applies to superintendents (56 C. J. 401). Moreover, in the circumstances we are unable to advise that to resist this right would be to the advantage of the school district.