

Opinion No. 33

Oath—Exclusive—Teaching Certificate—Teaching Contract—  
Section 75-4706, RCM, 1947

- Held:** 1. An applicant for a license to teach in the schools of Montana must subscribe to and file the oath prescribed by Section 75-4706, RCM, 1947, in the precise form set forth in the statute without alteration in any manner.
2. The same oath must be subscribed to and filed by a teacher as a condition precedent to the execution of a valid teaching contract with a school district in the state of Montana.

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December 9, 1957

Miss Harriet Miller  
State Superintendent of Public Instruction  
Capitol Building  
Helena, Montana

Dear Miss Miller:

You have requested my opinion as to whether the statutory oath required before the issuance of a teaching certificate or the execution of a valid contract to teach may be altered in any manner.

Section 75-4706, RCM, 1947, provides:

"Every person who applies for a contract, or any renewal thereof, to teach in any of the public schools of this state, shall subscribe to the following oath or affirmation before some officer authorized by law to administer oaths:

'I solemnly swear (or affirm) that I will support the constitution of the United States of America, the constitution of the state of Montana and the laws of the United States and the state of Montana, and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order and undivided allegiance to the government of the United States of America.'

"Such oath or affirmation shall be executed in duplicate and one copy thereof shall be filed with the state superintendent of public instruction at the time when the application for a license is made, and the other copy shall be retained by the person who subscribed to such oath or affirmation. No such contract shall be entered into, or be effective, unless such oath shall have been filed."

It is apparent from reading the above quoted statute that there is little need for construction or interpretation of language which is so clear in meaning. Our Supreme Court in *Grady vs. City of Livingston*, 115 Mont. 47, 141 Pac. (2d) 346, stated the rule applicable here as follows:

". . . It is not allowable to interpret what has no need of interpretation, or when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend their meaning."

The unambiguous language of Section 75-4706, RCM, 1947, makes it a condition precedent for an applicant for a license to teach in the schools of Montana to subscribe to the oath. Also a contract between a teacher and a school district is not valid or effective unless the oath is executed in accordance with Section 75-4706, RCM, 1947.

It might be urged by some applicants for a license or by teachers that slight changes or additions to the oath should be permissible. If Section 75-4706 did not state the oath in precise terms and merely required the execution of an oath in substantially the same form as that set forth in this code section then such contention would have possible merit. However, room for variance from the precise oath set out in the statute is not contemplated and a change is not authorized. In *Saxtorph vs. District Court*, 128 Mont. 353, 275 Pac. (2d) 209, it was held in substance that statutory enactments relating to teachers' contracts are conditions of the contracts as effectively as if expressly written therein. Therefore it is the duty of a teacher to subscribe to the oath without altering the same.

The failure of a teacher to subscribe and file the required oath precludes the teacher from having an enforceable contract against the school district. This conclusion results from a reading of the last sentence of Section 75-4706 which is as follows:

"No such contract shall be entered into, or be effective, unless such oath shall have been filed."

A similar conclusion was reached by the Michigan Supreme Court in *Sauder vs. District Board of School District No. 10*, 271 Mich. 413, 261 N.W. 66, where the court considered an action brought to recover damages for breach of a teaching contract which did not contain the oath required by law. The court held:

"The above statute was designed as a protection to the youth of the state; and, being so, its provisions are mandatory and the teachers not having complied with its requirements their contracts were void ab initio . . ." See, also *Scaif v. L'Anse TP. Single School District* 268 N.W. 773, 276 Mich. 662.

There is no question that the state may establish conditions that must be met by applicants for state employment. In *Steiner vs. Darby*, 199 Pac. (2d) 429, 437, 88 Cal. App. (2d) 481, the court, in determining the validity of loyalty affidavits from county employees, stated in part:

". . . To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. *United Public Workers v. Mitchell*, 1947, 330 U. S. 75, 67 S. Ct. 556, 91 L. Ed. 754."

The above quoted California case approved the requirement that an oath must be taken before a contract of employment is valid and held that such a condition precedent is a reasonable requirement for either a private employer or a public employer.

Therefore, it is my opinion that an applicant for a license to teach in the schools of Montana must subscribe to and file the oath prescribed by Section 75-4706, RCM, 1947, in the precise form set forth in the statute without alteration in any manner.

It is also my opinion that the same oath must be subscribed to and filed by a teacher as a condition precedent to the execution of a valid teaching contract with a school district in the state of Montana.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General