

School Trustees.—Teachers, Employment Of.—Effect of Contract on the New Board.

The current School Year begins September 1st and ends on August 31st following. The School Board is elected and organized in April and has authority to employ teachers for the entire school year beginning in September following. They have no authority, however, to employ teachers for any longer period of time.

Helena, Montana, May 14th, 1906.

Phil. Cole, Esq., County Attorney, Choteau, Montana.

Dear Sir:—Your letter of the 9th inst., requesting opinion of this office received:

From the facts stated by you, it appears that the old school board, a few days before retiring from office, employed and entered into contracts with teachers to teach school in their district for the term beginning on the first Monday in September next. That the new board of trustees, as organized after the school election on the first Saturday in April, are not satisfied with the action of the retiring board and desire to employ other teachers. The question presented is "Whether or not the action of the old board in contracting with teachers for the term beginning next September is binding upon the new board as organized in April?"

There is a conflict in the authorities on this question. The question is determined, however, in most cases upon the particular statutes of the state. From a careful examination of the school laws of this state, it is apparent that it was the intention to provide for a current school year, and that each year the board of school trustees as organized after the school election on the first Saturday in April were to have the management and control of the schools for the ensuing current year.

Sec. 1864 of the Pol. Code provides that "The school year shall begin on the first day of September and end on the 31st day of August. Sec. 1793 as amended by laws of 1899, p. 59 provides that "The school trustees shall meet annually on the third Saturday in April and organize by choosing one of their number Chairman and a competent person, not a member of the board, as clerk", etc.

Sec. VI, Art. XI, of the Constitution provides that a public free common school must be maintained in each organized district in the state for at least three months in each year.

Sec. 1920 as amended by laws of 1903, p. 92, provides that all children, unless excused by the authorities, must attend school for not less than sixteen weeks during each current year, and shall begin within the first week of the school term.

Sec. 1797, Div. 16, provides that the school trustees may determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the County Superintendent.

Sec. 1940, B, laws of 1901, p. 13, provides that the school board in each district shall certify to the county commissioners the number of mills on a dollar which it is necessary to levy on the taxable property of the district, not to exceed five mills, to raise a special fund to maintain the schools of said district for the then ensuing year.

From the sections mentioned above, we find that the trustees in each district must organize annually, immediately after the school election in April; that the new board thus organized must determine the amount of special school levy to be certified to the county commissioners, and within their discretion may determine what branches shall be taught in the school of their district in addition to those required by law.

There would be a serious conflict of authority and confusion in the affairs of the district if the old board of trustees could determine the salaries to be paid teachers and the length of the term they were to teach, while the new board would determine the special levy to be made for the purpose of meeting the expenses. If the old board has authority to employ teachers for the current year beginning in September following, they would also have authority to employ the teachers for two succeeding school years, and by fixing the amount of their salary would, of necessity, take away the discretion from the new board of determining the amount of school levy to be each year certified to the county commissioners, as it would be necessary for the new board to make a levy sufficient to raise the money necessary to pay the teachers salaries as contracted for by the old board. In our opinion, it is the intention of the law that the board of trustees organized on the third Saturday in April have the management and control of the school district for the ensuing school year beginning in September; that they alone have authority to employ teachers, certify the tax levy to the county commissioners, determine the length of the term and all other matters for the current school year. The old school board at any time prior to the organization of the new board, would have had authority to employ teachers to fill vacancy that might occur in their schools during the school year beginning September 1st, 1905 and expiring August 31st, 1906, but have no authority to go further than this.

Under the statutes of Illinois, which are very similar to the laws of this state, the supreme court of Illinois, in 87 Illinois Reports, p 257, said:

"It is here seen, power is given alone with reference to the current year. The schools to be provided, the teachers employed, the taxes levied, etc., are, as clearly as language can express the idea, for the current year. No other power, contemplating the making of contracts for the employment of teachers for future years, can be found—and the rule is familiar, that the powers of school directors are limited to those expressly granted, or such as result by necessary implication from those granted.

If the contract here sought to be enforced were to be held valid, it would necessarily be because the board of directors are unlimited in respect of contracting for future services of teachers. If they may contract for services to be commenced four months in advance, and after the board as organized shall cease to exist, why may they not do so indefinitely? If they are not, in this respect, limited by the current school year, where is the limit? * * * * *

But we think the spirit and intent of the law are clearly repugnant to the idea that one board of directors may, by contracts wholly to be carried out in the future, divest future boards of the power to select the teachers they shall desire, for the terms to be commenced after their organization.

To the same effect see also

Loomis v. Coleman, 51 Mo. 21.

Fitch v. Smith, 34 Atl. (N. J.) 1058.

Taylor v. School Commissioners, 5 Jones Law (N. C.) 98.

The new board may, or may not, in their discretion, ratify the action of the old board in employing teachers for the school year beginning next September, but unless the new board see fit to ratify such action of the old board, the contracts made by the old board relating to the school year beginning next September are not binding upon the new board.

What is hereinbefore said applies only to contracts for the running expenses of the current school year and have nothing to do with continuing liabilities of the district such as bonds, or promissory notes given for school furniture, etc., which are valid obligations against the district after the organization of the old board has been superceded by the new organization.

Very truly yours,

ALBERT J. GALEN,

Attorney General.