

Teachers, Registration of Certificates Of. Certificates, Temporary State. School Districts, Liability Of. Certificates, Excuse for not Registering.

Where a temporary state certificate is granted to a teacher and he is prevented from registering the same by reason of delay in the office of the state superintendent but continues teaching, the district is liable for the payment of his salary.

Helena, Montana, April 19, 1907.

Hon. W. E. Harmon,
Superintendent of Public Instruction,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of April 11th, requesting an opinion from this office relative to the liability of School District No. 1 of Silver Bow County for the payment of salaries alleged to be due certain teachers employed to teach school in that district.

The statements of facts appears to be that R. G. Stevenson and B. M. Bowman were duly and regularly employed as teachers in the schools of said district; that they at the time held authority from the county superintendent which expired February 23rd, 1907; that some time prior to this last named date these teachers made application to you, as State Superintendent, through the City Superintendent of the City of Butte, which city is within said school district, for temporary state certificates, and that, on February 22nd, in response to an inquiry from the said city superintendent as to whether such temporary state certificates would be granted to these teachers, you wired said city superintendent telling him that said temporary certificates would be granted, and for said Stevenson and Bowman to continue their teaching, but owing to some delay in getting proper blanks printed these temporary certificates were not sent to these teachers until about March 20th, when they were registered in the office of county superintendent of schools in and for said Silver Bow County; that on or about March 15th, 1907, you notified the county superintendent that these certificates would be sent to these teachers. Prior to that time, however, and on March 5th 1907, the county superintendent of Silver Bow County notified the school board that these two men were teaching without authority. It appears further that these teachers continued on with their school and no objection is made except the technical objection that these temporary state certificates were not registered in the office of the county superintendent, the question submitted on this state of facts being

“Is the district liable to these teachers for their salary from February 23rd up to the time the temporary certificates issued by the State Superintendent were actually registered in the office of the county superintendent?”

The Act of the Tenth Legislative Assembly amending Section 1520 of the Political Code confers authority upon the state superintendent to “grant temporary state certificates at any time, to any teacher, whose experience, qualification and credentials, in his opinion, entitles such a teacher to either a state or life diploma in Montana.” This Act further provides “that the holder of such certificate shall have it duly registered in the office of the county superintendent of schools of the county in which he is entitled to teach before he begins teaching.” This Act was not approved until February 8th, 1907 and has never yet been published except as a news item and by certified copies sent out. It appears that

these teachers however, made seasonable application for these temporary certificates and that the same were granted to them prior to the termination of the authority under which they were teaching, and that the only reason the strict letter of the law was not complied with in their registration was by reason of a delay for which the teachers are in no manner to blame, the delay occurring in the office of their superior, the state superintendent. Furthermore, the city superintendent, who is the immediate superior of these teachers, was cognizant of all these facts and the teachers were permitted to go on with their work without objection on the part of anyone, so far as the facts submitted here show, except that the county superintendent notified the school board not to pay the teachers their salaries. To hold that no possible condition would excuse a failure to register these certificates would be to give to the act a technical construction not warranted by its meaning. As well might it be urged that a county superintendent could delay the registration of the certificates tendered to him and then deprive the teachers of their pay because the certificates were not registered.

We believe under this state of facts that these teachers are entitled to their pay in the same manner that they would be had these temporary state certificates been received by them and registered prior to the expiration of the authority under which they were then proceeding.

The opinion of the county attorney of Silver Bow County which you enclosed is strictly correct, but, as shown therein, the county attorney did not have before him the facts of the case, which explain the reason for the non-registration of these certificates.

Under every possible construction of this law these teachers would be entitled to recover upon a Quantum Meruit for the service performed and if their salaries are withheld by the district and action is brought to recover the same these teachers will certainly obtain judgment against the district.

Very truly yours,

ALBERT J. GALEN,

Attorney General.