

**Schools, Contract of Teachers. District Schools, Contract With Teachers. Contract With Teachers, Deductions From Salary. Salaries of Teachers, Deductions on Account of Epidemics. Teachers, Deduction of Salary for Lost Time.**

The relation between the teacher and the school district is one of contract, and if contingencies are not provided for in the contract no deduction can be made for the salary of the teacher by reason of close of the school on account of epidemic, unless the teacher is himself at fault or has estopped himself from making claim for salary.

Helena, Montana, April 30, 1909.

Hon. Thomas Dignan, County Attorney, Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of the 27th instant, submitting the question:

Where teachers in public schools are hired for a school year of nine months, and are paid a salary either by the year or an agreed amount per month, and the school is closed prior to the termination of the school year by reason of an epidemic of scarlet fever, may the school board legally make a deduction from the teachers wages or salary for the period during which the school remains closed?

Section 904, Revised Codes, relates to the construction of teachers' contracts, but is silent as to the contingency named in the question. Nor does our statute anywhere make specific provisions relative to such contingencies, but seems to confer upon the school board the authority to make such contract with the teacher as in the judgment and discretion of the board will be to the best interests of the school. The relation, therefore, between a teacher and the school district is one of contract, and the terms of the contract, whether written or oral, must govern. Ordinarily where a teacher is engaged to teach a definite term, and is prevented in whole or in part from doing by the act of district officials, he may recover for the time lost, unless he is himself at fault or has acquiesced in the action of the board in such a manner as to prevent recovery.

Contingencies should be provided for in the contract, for they are not presumed to have been considered unless they are so provided for. *School District v. Crews*, 23 Ill. App. 367; *Oil School Tp. v. Marting*, 27 Ind. App. 525;

25 Am. & Eng. Enc. Law, 16.

See, also:

Kellison v. School District, 20 Mont. 153.

Some of the general principles laid down by the authorities and collated in the encyclopedia above referred to are:

The right to make deduction from the contract price must be reserved in the contract, and the mere fact that the contract is to pay the teacher for services actually rendered, or for the time actually occupied, will not justify a deduction.

Closing school on account of epidemic is no ground for deduction.

Destruction of school buildings is no ground for deduction.

The general rule from these authorities is to the effect that where the contract is silent as to contingencies, and is for a definite time, at a definite salary, the teacher may recover for the time lost, unless he was himself at fault, or by some act on his part had estopped himself from making claim for pay during the time his school was closed.

Questions of fact, of course, always enter into the decision of matters of this kind, but ordinarily where the contract is silent as to emergencies it is difficult to prove a state of facts that will justify the board in making deductions from salary, for opportunity was afforded to provide against such contingencies when the contract was made.

Very truly yours,

ALBERT J. GALEN,

Attorney General.