

Schools, Resignation of Teachers. Teachers, Resignation of.

A request from a Board of Trustees that a teacher resign is not a sufficient notice to the teacher that his services are not required for the ensuing year, under the terms of Chapter 76, Session Laws of 1913.

August 21, 1914.

Hon. D. M. Durfee,
County Attorney,
Philipsburg, Montana.

Dear Sir:

I am in receipt of your communication under date of the 12th inst., in which you request my opinion on behalf of School District No. 11 of Granite county, upon the following question:

"Does a request to resign amount to a notice to the principal that his services are not required for the ensuing year?"

The record of the minutes, a copy of which you have included with your letter, seems to show that on January 17th, at a regular meeting of the school board, it was moved and carried that the principal be requested to resign for the following term. The clerk was requested to notify him, in writing to be signed by the chairman of the board. Again, on April 8th, at a regular meeting of the school board it was moved and carried that the three present teachers be discharged at the end of the present term and not be hired for the coming term. You state in your letter that the board has no copy of the notice sent by the clerk of the board to the principal, but that it was in the language used in the motion, as shown by the minutes. Nor does it appear that any notice was sent after the action of the board on April 8th.

I have been able to find but one case dealing with a similar state of facts, which is the case of *Kennedy v. School District*, found in 20 Wash, 399; 55 Pac. 567. The facts in that case were very similar to those at hand, and it was held by the court:

"The resolution requesting her to resign was not the equivalent of a resolution removing her and cannot be given the same legal effect."

The court further stated that the clerk has no authority beyond the resolution of the board and a notice by him that the teacher had been discharged is not binding upon the teacher.

The resolution passed by the board of trustees of school District No. 11 went no further than to instruct the clerk to request the resignation of Mr. McCormick. Up until that time the board had not even passed a resolution that he be discharged, or that he be not hired for the ensuing term. To make the action of the board definite and effective, I think such a resolution would be necessary. A mere suggestion or expression of desire would not operate as a positive act of the board.

I am therefore of the opinion that upon the record, as presented here, no notice sufficient under the terms of Sec. 801 of Chap. 76, Session Laws of 1913, was given to Mr. McCormick, and the question submitted by you and quoted above must be answered in the negative.

Yours very truly,

D. M. KELLY,
Attorney General.