

**Teachers Pension Law, State Aid to Fund. Pension Fund
for Teachers, State Aid to. State Aid, to Pension Fund.
Teachers, Assessment of. Assessment of Teachers, for Pen-
sion Fund.**

A pension system for teachers may be established by law but the provisions of the Constitution are an absolute bar to any state aid to such system.

Teachers already employed could not be compelled to submit to such system, nor to support it by payment of assessments. It could be made a condition precedent to employment of teachers in future that they become members.

January 26, 1915.

Miss Cassie Laird,
Butte, Montana.

Dear Miss Laird:

I beg to acknowledge receipt of your letter of the 14th instant, dwelling upon the proposition of a proposed teacher's pension law, and requesting my opinion as to the constitutionality of such a measure. Permit me to say that I have carefully considered the matter, concerning which you write, and in reply will say: I am of the opinion that none of the sources of revenue derived by the State from taxation, fees, licenses or other means, may be legally diverted for the purpose of supporting in whole or in part, a teacher's pension fund, nor may any of the funds accruing to the State from the sale of school lands, or from the leasing of such lands, be used for such purpose, for the rea-

son that the State acts only as trustee for the Federal Government in disbursing such funds strictly according to the terms of the Federal grant.

The Constitution of our State specifically provides:

"Neither the State, nor any county, city, town, municipality, nor other subdivision of the State shall ever give or loan its credit in aid of, or make any donation or grant by subsidy or otherwise, to any individual, association or corporation."

(Art. XIII, Section 1.)

"No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the State without previous authority of law." (Art. V, Sec. 29).

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State." (Art. V, Sec. 35).

It is my opinion that the first two sections above quoted furnish an absolute bar to any state aid being extended for the purpose of providing or supplementing a pension fund of any kind, under any guise whatsoever, and the last section quoted, while at first blush apparently countenancing a diversion of funds for the purposes mentioned, cannot upon a careful reading and consideration, have any application whatsoever.

I am aware that in many states of our union, the pension system is in vogue.

35 Cyc, 1108,

and I am convinced that a pension system may be established by law in this state, but that it would have to be supported by assessment levied against the teachers themselves, and by private gifts and donations. The view here expressed is contrary to the doctrine announced by the Supreme Court of Ohio in *Hubbard vs. State ex rel Ward*, 58 L. R. A. 654, but it is in harmony with the views expressed by the Supreme Court of New Jersey in the case of *Allen vs. Board of Education of Passaic*, 81 N. J. L. 135, the doctrine of which case appears to me to be in consonance with sound reasoning, and the principles there declared would be followed, I believe, by the Courts of our State, were the question to be litigated.

I am of the opinion that teachers already employed, could not be compelled to submit to the pension system, and could not be compelled to support it by the payment of assessments, but it could be made a condition precedent to the employment of teachers in the future, that they assent to become members of the system, and subscribe to the pension fund as a condition in the contract of employment.

It would, of course apply to such teachers already employed, who care to come under its provisions voluntarily.

I trust the views here expressed may be of some assistance and benefit to you, and I beg to assure you that my services are at your

command to assist you and your colleagues in furthering any plan looking toward increasing the efficiency of our school system.

Yours very truly,

D. M. KELLY,

Attorney General.