

**School Board, Powers Of — Superintendent — Contract,
Cancellation Of For Increased Salary.**

Where a school board has entered into a three year contract with a superintendent, the same may be terminated after the expiration of one year and a new contract at an increased salary executed providing the transaction is in good faith.

August 26th, 1919.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have submitted to me a letter from Mr. E. M. Sybert, in which he discusses the question of the right of the school board to cancel, on its own motion, the contract of a superintendent where it has two years yet to run, for the purpose of entering into a new contract with the same person at an increased salary, and asking for an opinion thereon.

It appears from the statement contained in this letter that after having been elected by the board for the ensuing year, the superintendent advised the board that he would not accept the position unless elected for three years, whereupon a special meeting was held and this was done.

After the expiration of one year under this contract, a new contract was substituted to run for three years from that date, at an increased salary. The question is, has the board authority to do this?

Having entered into a contract with the superintendent at a certain salary, which is binding upon both parties, may they voluntarily terminate the agreement and enter into a new one in which they increase the salary and extend the term of the contract, or may they, without entering into a new contract with the superintendent, pay an additional sum or bonus to that called for in the contract? In the absence of fraud, and in dealing with a subject with which they have general authority to deal, is the board limited in its acts?

The power to terminate an agreement by mutual consent of the parties would necessarily be implied in the power to enter into an agreement except where the agreement is made for the benefit of another who acts thereon and accepts its benefits. 13 C. J. 602.

Section 508 of the General School Laws provides:

"Every school board has power to employ or discharge teachers, mechanics or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; etc. * * * All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher." Sub-division 2 of Section 508 of Chapter 76.

"The officers of the corporation, including its legislative or governing body, are merely the public agents of the corporation. Their duties and their powers are prescribed by statute. These considerations demonstrate the reasonableness and the necessity of the rule that the corporation is bound only when its agents by whom, from the very nature of its being, it must act if it act at all keep within the limits of their authority." *Clark vs. Des Moines*, 19 Iowa 199, 87 Am. Dec. 423.

In employing teachers and fixing their compensation the board is clearly within its authority conferred by statute, nor are they limited to any particular sum or amount to be paid. This does not mean an unlimited discretion. Although the terms of the law creating the authority conferred upon the officer general discretionary power without qualification, his power is not to be deemed an unlimited one. The exercise of the officer's discretion is still limited by legal construction to the evident purpose of the act, as to what is known as sound and legal discretion excluding all arbitrary, capricious, inquisitorial and oppressive proceedings. *Machems Public Offices and Officers*, Section 513.

It is conceivable that in this era of high prices and increasing wages a board might, in absolute good faith, be compelled to allow a bonus or increase in salary or to change the terms of an agreement so as to pay something beyond that for which it is legally bound in order to retain a competent corps of teachers beyond the limit of their contract; and while they have no express authority to make any donation, bonus or addition to the salary beyond that for which they are legally bound to make, yet if made in good faith for the benefit of the district, and to create a feeling of satisfaction among the teachers, and to retain a competent corps of teachers, and is reasonable and not arbitrary, it is my opinion that while the agreement is unenforceable, it may be ratified or rejected by the district. *Hermance vs. Public School District No. 2, Marcopa County*, 180 Pac. 442h

Of course, where acted upon by a majority of the board it requires no further ratification. The board is bound to protect the interests of the district and act for its best interest.

I have been unable to find a case in which the question has been raised. In contractual relations such a course seems not to have been contemplated, but I am satisfied to rest the matter on the foregoing conclusions.

The general rule is that a contract which is within the scope of the power of a municipal corporation or public body but which, owing to some irregularity, is not binding upon the corporation or body, may be ratified. Elliott on Contracts, page 675.

Respectfully,

S. C. FORD,

Attorney General.