

Teachers — County Superintendent of Schools — Contracts with Teachers—School Trustees—Reinstatement.

Where a teacher is not employed by the Board of School Trustees under a written contract, the County Superintendent cannot reinstate her after dismissal by the Trustees.

Frank Hooks, Esq.,
County Attorney,
Townsend, Montana.

My dear Mr. Hooks:

You have requested my opinion whether Section 1085, Revised Codes of 1921, authorizes the County Superintendent of Schools to reinstate a teacher who is not teaching under a written contract and who has been discharged by the Board of Trustees.

Section 1085 provides as follows:

“In case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and Board of Trustees for alleged immorality, unfitness, incompetence or violation of rules, the teacher may appeal to the County Superintendent; and if the Superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal.”

Subdivision 2 of Section 1015 provides the form in which teachers' contracts shall be entered into as follows:

"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."

This section has been construed by a former Attorney General, the opinion being found in Vol. 5, Opinions of Attorney General, at page 156. It is there held that as to services to be performed by a teacher in the future the Board may rescind its previous action and refuse to enter into a contract with the teacher.

It is, therefore, my opinion that in this case the teacher not being employed under a written contract, Section 1085 does not authorize the County Superintendent of Schools to reinstate her where she had been discharged by the Board of Trustees.

Very truly yours,

L. A. FOOT,
Attorney General.