

Schools—Teachers—Certificate—Employment — Compensation.

A teacher who is employed before obtaining a certificate and subsequently fails to obtain a certificate is not entitled to compensation for the time taught.

Howard A. Johnson, Esq.,
County Attorney,
Boulder, Montana.

March 3, 1926.

My dear Mr. Johnson:

Your letter was received relative to the employment of a person to teach by school district No. 26 of your county who has not procured a teacher's certificate. You ask whether she can be paid for the time she has taught.

Subdivision 2 of section 1015 R. C. M. 1921, as amended by chapter 122, laws of 1923, provides, among other things:

"that no teacher shall be employed except under resolution agreed to by the majority of the board of trustees at a special or regular meeting: nor unless such teacher be the holder of a legal teacher's certificate in full force and effect."

Section 1088 R. C. M. 1921, as amended by chapter 131, laws of 1923, provides:

"No person shall be accounted a qualified teacher within the meaning of the school law who has not first secured from the

state board of educational examiners a certificate setting forth his qualifications; or who has not secured a temporary certificate from the state board of educational examiners; or who has not a certificate endorsed by the county superintendent of schools; or who has not a state certificate or a life certificate issued by the state board of education or the state board of educational examiners; or who has not a temporary state certificate issued by the state superintendent; or who does not hold a certificate from the state normal college; or who has not a university certificate of qualification to teach."

It is apparent from these provisions that a teacher is not qualified to accept a position to teach until she has a certificate as provided in this section.

You have called attention to the latter part of subdivision 4 of section 1088, as amended, which provides:

"Not more than ten days' salary shall be paid any teacher for services rendered previous to the registration of such certificate."

I believe that it was the intention of the legislature, by this provision to permit a teacher to receive salary for ten days before the filing of her certificate, but was not intended to permit salary to be paid except upon the filing of the certificate.

I find the following statement in Voorhees on the law of public schools (section 63):

"And if a teacher has not the necessary certificate at the time of making a contract to teach, it is sufficient if he procures it before entering upon his duties, unless the statute makes the holding of such certificate a condition precedent to the right to make such contract."

Pollard vs. School District, 65 Ill. App. 104;

McCloskey vs. School District, 134 Mich. 235, 96 N. W. 18;

O'Connor vs. Francis, 42 N. Y. App. Div. 375, 59 N. Y. S. 28.

Also the following:

"An unlicensed teacher generally cannot recover for services rendered under a contract for employment in a public school as a teacher inasmuch as such contracts are generally void." (Stevenson vs. School, 87 Ill. 255.)

"An action by a school teacher for wages claimed to be due, may be maintained only when the teacher shows that he is licensed to teach as provided by law."

Kester vs. School District, 48 Wash. 486, 93 Pac. 907;

Davis vs. Harrison, 131 S. W. 272.

In section 63 Voorhees states the following:

"The production of a certificate of qualification is a prerequisite to legal employment, and therefore, if the proper officers

wantonly refuse to examine the applicant, he has no authority to teach and recover compensation for his services without the required certificate, and a school warrant issued to an unlicensed teacher is invalid. If a town wishes to avail itself of the want of the required certificate as a defense, it had the burden to show the want of such certificate."

It is, therefore, my opinion that the school board has no authority to pay the teacher even the reasonable value of her services in this case.

Very truly yours.

L. A. FOOT,
Attorney General.