

Schools—Teacher's Permit—Examination—Teachers.

A person who has received a permit "to teach until the next regular examination" is entitled to teach thereunder until the examination has been held and it is determined by the state board of educational examiners whether he has passed the examination.

Miss Elizabeth Ireland,
Superintendent of Public Instruction,
Helena, Montana.

May 16, 1929.

My dear Miss Ireland:

You have referred to this office a letter from the superintendent of schools of Cascade county in which she inquires if a teacher who is taking the examination and who has been teaching under a permit expiring at the date of the examination can collect salary for the period that must elapse between the date of holding the examination and the time when the papers are graded and certificate issued, said teacher having taught ten days without a certificate before applying for the permit which was granted her.

Section 1092 R.C.M. 1921 as amended by Section 8, Chapter 131, Laws of 1923, provides for the issuing of permits to persons applying to take an examination at any time other than a regular examination by the terms of which permit the person to whom it is issued may be authorized "to teach until the next regular examination," provided, of course, that persons have the qualifications necessary to entitle them to receive a permit as set forth in the statute. The word "until" has been held by various courts as excluding the day or event mentioned while other courts have held it to include the event or day, but practically all of the courts agree that its meaning in this respect is to be determined

in accordance with the intention with which the lawmakers used it as ascertained from the legislation in which it occurs.

If the word as used in the statute is inclusive of the regular examination then a permit issued by the state board of examiners for a person to teach "until the next regular examination" would authorize the holder of the permit to teach until the examination was concluded. In my opinion, the examination is not concluded with the mere submission of questions to candidates and the writing of answers thereto, but it includes the examination of the papers by the examiners, the grading thereof and certifying the results. The successful candidate becomes entitled to his or her certificate to teach immediately after it is ascertained he or she has passed the examination.

It is my opinion that the legislature intended by the expression "until the next regular examination" that the permits so issued would authorize the persons to whom they were issued to teach until they either received a certificate in pursuance of their examination or it was ascertained that they failed to pass said examination. It would seem that the legislature would not intend that a school board might hire a person to teach under a permit until the first day of the examination and then be compelled to close school until it was ascertained whether the person had passed the examination, or hire a new teacher.

Under this holding if the person referred to in the letter submitted to me was granted a permit in conformity with the statute, that is, to teach until the next regular examination, it is my opinion that he or she may teach thereunder until it is determined by the state board of educational examiners whether he or she has passed the examination. The permit would not expire until that time. A person who fails to pass the examination may not teach and draw pay therefor for the reason that the permit has expired and no certificate is issued in pursuance of the examination. A school board may not contract with anyone to teach its school who does not hold some sort of a certificate or permit to teach. A contract entered into by a schoolboard with a person not qualified to teach under the laws of Montana, is void.

Very truly yours,

L. A. FOOT,
Attorney General.

By L. V. Ketter, First Assistant.