

Opinion No. 262**Schools—Teachers—Life Certificate to
Teach—University—College—
Students—Contracts.**

HELD: When a student matriculates at a college, the rules and regulations of the college then in effect, and the payment of the required fees by the student, creates a contract between the college and the student which the state may not impair, and therefore, a student who matriculated prior to the enactment of Chapter 147, Laws of 1931, (Sec. 8) is entitled to a life certificate to teach after she has successfully taught for 27 months after graduation.

June 29, 1933.

You request my opinion whether Mrs. Wm. Gregg of Polson, Montana, is entitled to a life certificate to teach in the schools of Montana, after having satisfactorily taught subsequent to graduation from the University of Montana for twenty-seven months.

Mrs. Gregg was formerly Miss Elizabeth Frye. She graduated at Missoula in 1930. At the time of her graduation, the statute provided that after teaching for twenty-seven months subsequent to graduation she would be entitled to a life certificate. (Sub-section 2 of Section 7, Chapter 131, Laws of 1923, amending Section 1092 R. C. M. 1921.) In 1931 the legislature further amended Section 1092 extending the time a graduate must successfully teach, from twenty-seven to thirty-six months, before being entitled to a life certificate. (Section 8, Chapter 147, Laws of 1931.) At the time Mrs. Gregg graduated in 1930, the University at Missoula issued to her a diploma or certificate reciting the statutory provision then in effect providing that after successfully teaching for twenty-seven months she would be entitled to a life certificate.

The question is as to whether Mrs. Gregg shall be required to teach the

thirty-six months required by the new law or the twenty-seven months required by the statute in force at the time she graduated, and which was made a part of her certificate of graduation.

When a student matriculates at a college, the rules and regulations of the college then in effect, and the payment of the required fees by the student, creates a contract between the college and the student. (People v. Bellevue Hospital Medical College, 14 N. Y. S. 490). In State v. Barrett, 25 Mont. 112, our Supreme Court said: " * * * A statute which imposes new conditions * * * is repugnant to the Constitution as being a law impairing the obligation of a contract * * *." We are therefore of the opinion that the added requirement of the 1931 Act cannot apply to one who graduated from the University prior to its enactment.

Furthermore, to apply the 1931 Act to students who graduated when the old law was in effect would give the 1931 Act a retroactive effect and no statute may be construed so as to give it such effect unless the act expressly provides therefor. Section 3 R. C. M. 1921 is as follows: "No law contained in any of the codes or other statutes of Montana is retroactive, unless expressly so declared." See also Illinois Conference Female College v. Cooper, 25 Ill. 133, where the court said: "The rule is universal that a law shall not be construed to have a retroactive effect, unless that intent is clearly expressed by the lawgiver." There is no express declaration in Chapter 147, Laws of 1931, providing it shall be retroactive and it must be held to apply only to agreements and transactions arising subsequent to its passage and approval.

The State Board of Education has supervision over the University and provides the rules and regulations under which it operates in addition to those provided by statute, (Section 836, R. C. M. 1921) and the law assumes that all officers perform their respective duties. Consequently it must be assumed that the Board of Education provided for or authorized the data contained in the diplomas and certificates issued to students, and are controlled thereby, and, even though a different conclusion were not contrary

to law, it would not be in harmony with the dignity and honor of the state to repudiate any promise made in such matters by one of its most important boards, acting within the scope of its powers. Students have a right to confidently rely upon such representations as are contained in their certificates and diplomas, and the state and the Board of Education should, with the utmost good measure, keep faith with its students.

We are therefore of the opinion that Mrs. Gregg is entitled to a life certificate when she furnishes the Board of Education satisfactory evidence of having successfully taught twenty-seven months subsequent to her graduation at the University at Missoula.