

of 1931, amending Section 1015, R. C. M. 1921, provides among other things, that the trustees of a school district are empowered to employ and discharge teachers. It appears that the trustees did engage the services of a teacher at a regular meeting and the minutes of that meeting of the school trustees show that this particular teacher was employed, but they neglected to give her in writing a contract for her services. Section 1015, sub-section 2 provides: '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.'

"The question submitted is whether or not the school trustees can avoid the payment of a teacher's salary on the ground that she has no written contract for her services. The minutes of the school trustee's meeting show that she was employed by the School Board. Is it not a fact that the obligation on the trustees to give an employed teacher a written contract is a mandatory obligation under the above quoted statute?"

That part of said chapter 122 which is pertinent here is as follows: Section 1015. "Every school board unless otherwise specially provided by law shall have power and it shall be its duty: \* \* \* (2) 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; not unless such teacher be the holder of a legal teacher's certificate in full force and effect. 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 statute makes it the duty of the board to see that contracts with teachers are executed as provided. If the board fails to attend to this duty and a controversy arises between the board and the teacher, the blame for not having the contract in writing is on the board rather than the teacher.

#### Opinion No. 474.

#### Schools—Teachers—Contracts, Execution of—Salary, Payment of—School Board.

HELD: It is the duty of the school board, under Section 1015, R. C. M., 1921, as amended by Chapter 122, Laws of 1931, to see that contracts with teachers are executed in writing as provided; if they do not the blame is on the board rather than on the teacher.

Where the board, while in session, duly authorized the employment of a teacher and made entry on its minute records to that effect, and the teacher entered upon her duties under such arrangement for four months, she may collect her salary.

February 26, 1934.

We acknowledge receipt of yours of January 26 submitting the following matter and requesting an opinion from this office thereon:

"A problem has been presented to this office as regards a construction of Chapter 122, Session Laws of 1931, in Section 1015, Sub-section 2 thereof.

"Sub-section 2 of Chapter 122, Laws

In *Ryan v. Mineral County High School*, 146 Pac. 792, an Oklahoma case, the court held that where plaintiff's application was considered by the board, a motion made to employ applicant, the clerk notified applicant and he accepted, the contract was complete, and a vote to reconsider after applicant had accepted could not abrogate the contract. See also *Morton v. Hancock County*, 30 S. W. (2d) 250.

In a letter from the teacher, Miss Moore, she advises that she taught this school for four months. We think that when the board while in session duly authorizes the employment of a teacher and made an entry on its minute records to that effect and the teacher entered upon her duties as a teacher and taught under such arrangements for four months that that is such a compliance with the statutes as the teacher may rely upon and collect her salary. True Chapter 122, above, provides that the contract must be executed in duplicate by the teacher and the board, but where the board is at fault in not preparing the contract and attending to its execution, the board should not be permitted to take advantage of its own neglect of duty to the injury of the other party. (56 C. J. 388, Sec. 315.)