

Opinion No. 86**Schools—Teachers—Contracts— School Boards.**

HELD: Since the legislature has seen fit to indicate with particularity the manner and extent of entering into contracts between teachers and school boards, it must be held to exclude any other method.

February 22, 1933.

You have submitted to this office the contracts of three teachers of the Hingham School District. These contracts are given for two years as an inducement to accept a cut in salary. The teachers have all taught in the district for more than five years. It is agreed that the validity of these contracts shall be determined by the Attorney General. The only question involved is whether the trustees have power to enter into a contract with teachers for more than one year.

Where there is no limit placed upon the exercise of the power conferred upon school boards to contract with and employ teachers, a contract by such board employing a teacher for a term to commence or continue after the expiration of the term of such trustee or board, is valid and binding upon the board where it is not for an unusual time. (29 R. R. A. (N. S.) 652; 24 R. C. L. 579).

As our statutes provide a method for employing teachers and fixes their tenure of office, it is necessary to inquire whether this is intended by the legislature as an exclusive method so as to constitute a limitation on the powers of a school board in entering into contracts with teachers. The statute provides a very definite method of procedure in employing teachers, as well as providing the term of employment.

Section 1015, subdivision 2, provides that no teachers shall be employed except under resolution agreed to by a majority of the board. All contracts authorized by proper resolution shall be in writing and executed in duplicate by the chairman and the clerk of the board and by the teacher.

Where the statute prescribes a definite method of entering into a contract,

it must be complied with or there is no contract.

Section 1075, R. C. M. 1921, as amended by Chap. 87, Laws of 1927, provides:

"After the election of any teacher or principal for the third consecutive year * * * such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary, unless the board of trustees shall, by majority vote of its members on or before the first day of May, give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year: * * *"

It then provides that "nothing in this act shall be construed to prevent re-election of such teacher or principal by such board at an earlier date." The purpose of this section is to first require a probationary period of three years of service from any new and untried teacher before the automatic provisions of the act begin to operate so as thereafter to continue her in her position from year to year unless affirmative action is taken by a majority of the board before a definite date notifying her of the termination of her contract. Every contract entered into with a teacher by the board is limited by these statutory provisions. The automatic re-employment provision is for the benefit of the teacher and the majority vote of the board required before she can be discharged prevents the teacher from being made a victim of the annual election of trustees. On the other hand, one board of trustees may not take it out of the hands of a majority of a future board to terminate a contract by entering into long term contracts with a teacher who might be a particular favorite of the existing board. By fixing the time limit for giving the notice (May 1) the teacher has an opportunity to apply in another district for a school before the beginning of the school year. The provision that "nothing in this act shall be construed to prevent re-election of such teacher or principal at an earlier date" is, in my judgment, limited to an earlier date in that school year and to employment for the succeeding school year.

Since the legislature has seen fit to indicate with particularity the manner and extent of entering into contracts with teachers by school boards, it must be held to exclude any other method. *Franzke v. Fergus County*, 76 Mont. 150; 245 Pac. 962.

The contract being in violation of the foregoing provision of the statute and of the legislative purpose and intent of limiting contracts with teachers to one year, it is my opinion that it is not a valid contract.