

Opinion No. 49.

**Schools—Teachers, Leave of Absence
—Contract, Renewal of.**

HELD: 1. A Board of Trustees of a school district has authority to grant a leave of absence to a teacher and the teacher's status is the same as if she had been on duty every day and was receiving compensation therefor.

2. A teacher who was granted a leave of absence was entitled to receive a written notice prior to May 1 that her services were not required for the next ensuing year, as long as she complied with the conditions of the leave of absence.

February 21, 1935.

Mr. D. J. Sias
County Attorney
Chinook, Montana

Your letter of February 13 is in part as follows:

"There is a legal question which I would like to submit to your office for your opinion which is as follows:

"A teacher has taught in a school

district for three consecutive years and is re-elected in the same school district for her fourth year. She accepts and signs a teacher's contract for her fourth year. After her re-election for her fourth year and prior to the commencement of the school term, she is taken sick and applies to the board of trustees for a year's leave of absence. The leave of absence is presented to the board and the same is approved and allowed and granted. After May 1st of the following year and while she is still on her one year's leave of absence, she is notified that she no longer has a position with the school district.

"Is such a case as outlined above within the provisions of Section 1075, Revised Codes of 1921, which requires that a school teacher who has been elected for three consecutive years must be specifically notified on or before May 1st that she no longer has a position with the school district, or, she is automatically re-elected again for another year?"

"Does the leave of absence which was granted to the school teacher in the above case in any way affect her rights under Section 1075, Revised Codes of 1921, so as to take her outside of the protection of said section?"

Section 1015, R. C. M. 1921, as amended by Chapter 122, Laws of 1931, empowers the school board to employ or discharge teachers and to fix and order paid their wages. Except as limited by other conditions imposed by law, I know of no specific provision of law qualifying or limiting the discretion of the board with respect to the terms of the contract of employment authorized by Section 1015, supra. And it is well settled that the discretion vested in a public officer will not be disturbed so long as the action taken is not unlawful, arbitrary, unreasonable or of such a character as to constitute an abuse of discretion. (56 C.J. 294). Therefore, it follows, we think, that the board was authorized to grant a year's leave of absence to the teacher under the facts you have outlined.

Having been granted the leave of

absence, what was the status of the school teacher to the district during the interim? For the purposes of Section 1075, as amended by Chapter 87 of the Laws of Montana, 1927, we think it was the same as if the teacher had been on duty every day and was receiving compensation therefor.

In the case of *People ex rel. Davie v. Lynch*, 149 N. Y. S., 895, 164 App. Div. 517, the court, in construing the New York Civil Service Act, held that an employee who had been given a leave of absence, retained the right to return to work, as the fact that she had obtained leave of absence did not amount to a "separation from the service" within the meaning of that expression.

It follows, therefore, that the teacher in question was entitled to receive a written notice prior to May 1, that her services were not required for the next ensuing year, as long as she complied with the conditions of the leave of absence. (56 C.J. 408.)

In the case of *McBride v. School District No. 2*, 88 Mont. 110, 290 Pac. 252, the Supreme Court held: "The provisions of section 1075, as amended, became a part of the contract of employment and were binding upon both the teacher and the board of trustees (24 R. C. L. 618), and the notice of dismissal therein provided for must be clear and explicit (46 C. J. 553). As no such notice was given, plaintiff was automatically re-elected for the school year beginning in September, 1928, and was therefore entitled to recover the amount of salary due her for the first month of that year, with interest, as declared by the judgment. (*LeClair v. School District No. 28*, 74 Mont. 385, 240 Pac. 391.)"