

Opinion No. 6.**Schools—Teachers—Elementary
State Certificates.**

HELD: Where an applicant for an elementary state certificate for teachers has had one such state certificate but has failed to qualify for a renewal by teaching thereunder for 18 months and has allowed same to lapse, the Board of Educational Examiners has discretionary power to grant or refuse such certificate in accordance with regulations established by such Board.

December 12, 1934.

Miss Elizabeth Ireland
State Superintendent of
Public Instruction
The Capitol

The question is submitted to our office in relation to the right of an applicant, a teacher, to receive a state certificate. This party has been elected county superintendent and is required to be the holder of a state certificate before she can take office. (Chapter 118, Laws of Montana, 1929.) It appears that the applicant has a sufficient preliminary education and a sufficient number of credits as required under the laws of this State. The applicant is a graduate of a normal school without the State of Montana.

In 1927 the applicant was granted a state certificate under the provisions of Section 1092, R. C. M. 1921, as amended by Chapter 131, subdivision 6 (b) 3, Laws of 1923. The holder of this certificate did not teach

under the same within the State of Montana, and same expired in the year 1933. The applicant applied for another certificate and on July 1, 1934, was granted a temporary state certificate.

Attention is also called to the fact that Section 1098, R. C. M. 1921, as amended by Chapter 147, Laws of 1931, page 345, relates to renewals of state certificates and provides that "no elementary or secondary state certificate shall be renewed unless said applicant shall have taught successfully thereon for eighteen (18) months during the life of said certificate." As the applicant did not teach for 18 months during the period of her former state certificate she is clearly not entitled to a renewal thereof under the provisions of the statute last quoted.

The applicant submits that she is entitled to a state certificate under the provisions of Chapter 147, Laws of 1931, amending Section 1092, R. C. M. 1921, as amended, and in particular under subdivision 5 (b) 2 thereof. Such Act is in part as follows: "An elementary state certificate may be issued by the State Board of Educational Examiners to a graduate of any standard normal school or other higher educational institution within or without the State in accordance with regulations established by said Board and approved by the State Board of Education, * * *."

It may be that the legislature intended the question of a second state certificate to be covered solely by the provisions of the statute in relation to renewals, quoted above. It is extremely difficult to determine what was the intention of the legislature in that regard.

To hold that a teacher, who has one state certificate and is ineligible to a renewal thereof for failure to teach 18 months thereunder, may permit same to lapse and soon thereafter compel the issuance of another certificate as if such prior certificate had not been granted, is to destroy the law in relation to renewals.

However, the statute which now authorizes a state certificate has been very materially amended since 1927, and it is possible that it was intended to cover all applications for state cer-

tificates (which are not renewals) subsequent to its enactment and yet may not authorize more than one certificate under that particular statute. In other words, we may conclude that although a teacher may have had one state certificate prior to the amendment, she may have a second one after its amendment, and we may also hold that the new or amended statute would not authorize two certificates by endorsement after its amendment but in such case the party could only secure a second certificate under the renewal provision.

If the reasoning and conclusions in the last paragraph are questionable, we may reach a similar conclusion by an entirely different course of reasoning. We cannot agree entirely with the contention of the applicant that by waiting until a certificate has expired the applicant can avoid all of the effects of the renewal statute and in every case compel the issuance of a second certificate to one who has failed to ask for a renewal and who lacks the qualifications necessary under the law to obtain one. It seems a much more reasonable interpretation to hold that in such cases the Board has a discretionary power to grant or refuse such certificate. In granting or refusing it under these circumstances the Board may act "in accordance with regulations established by such Board." These regulations may well require further teaching and further evidence of experience and teaching ability of such applicant before a second certificate shall be granted.

Since the prior state certificate was issued, this applicant has studied and received four and one-half additional quarter credits from the San Francisco State Teachers' College, and five additional quarter credits from the University of Montana, so that she presents somewhat different qualifications than when she made application for a certificate in 1927.

A regulation of the State Board of Educational Examiners, in session on December 14, 1929, contained the requirement that for such a certificate the applicant must furnish proof of successful teaching under a temporary state certificate, which regulation has been interpreted to mean successful

teaching for one year under such temporary certificate. This applicant is lacking in same in that she has not taught one year under her temporary certificate. The applicant has not had a state certificate under the statute since its amendment. The statute expressly states that an applicant may have a certificate under the provisions of this paragraph. We do not believe that the fact that she had previously had a six-year certificate under this paragraph prior to its amendment, would prevent the issuance of a certificate to her at the present time.

As to the rule of the Board mentioned, in relation to one year's teaching under a temporary certificate, we believe that a liberal interpretation of the regulation mentioned might permit the State Board of Educational Examiners to grant this applicant a certificate, if it believed her teaching requirements sufficient, but that the Board would not be required to do so, or, in other words, that the issuance of this certificate should be left to the discretion of such State Board of Educational Examiners.