

No. 364

**TEACHERS—SCHOOL BOARDS—TENURE—
CONTRACTS**

Held: Terms of Montana teachers' tenure statute are written into teacher's contract and may not be waived.

February 26, 1942.

Mr. John F. McGough
County Attorney
Jefferson County
Boulder, Montana

Dear Mr. McGough:

You inquire whether a provision inserted in an employment contract between a school board and a teacher waiving the provisions of Section 1075, Revised Codes of Montana, 1935, is valid. You state this practice has actually been followed and the teacher is compelled to sign the contract with such provision in order to secure employment.

The enactment of a teachers' tenure law is justified upon the theory its purpose is to promote good order and the welfare of the state and of the school system by preventing the removal of capable and experienced teachers at the political or personal whim of changing office holders.

School City of Elwood, et al., v. State, 203 Ind. 626, 180 N. E. 471.

In State ex rel. Keeney v. Ayers, 108 Mont. 547, 92 Pac. (2nd) 306, it was held that, where tenure regulations were stricken from the contract, the teacher's acceptance of the contract "would no more constitute a waiver of the regulation than it would constitute a waiver of the statute."

The terms of the Montana tenure statute (Section 1075, Revised Codes of Montana, 1935) are written into the teacher's contract. (McBride v. School District No. 2, 88 Mont. 110, 290 Pac. 292.) The school board cannot circumvent the statute by requiring a waiver of the provisions thereof as a condition precedent to employment.

Thompson v. Gibbs, 97 Tenn. 489, 37 S. W. 277.

I agree with you in your conclusion and it is therefore my opinion such a provision, inserted in a teacher's contract and used as a condition of employment, is invalid and against public policy.

Sincerely yours,

JOHN W. BONNER
Attorney General