

No. 514

STATE INDUSTRIAL SCHOOL—TEACHERS, contracts with—TEACHERS' RETIREMENT SYSTEM—SCHOOLS

- Held: 1. A teacher in the Montana State Industrial School comes within the provisions of the Teachers' Retirement System, and the retirement board has the power to so declare.
2. The local executive board (Montana Industrial School), having been granted the power to appoint teachers, has the implied power to enter into contracts with teachers, which contracts are subject to correction, approval or change by the State Board of Education.

November 24, 1942.

Mr. S. R. McCleery
President
Montana State Industrial School
Miles City, Montana

Dear Mr. McCleery:

You have requested my opinion in regard to the questions:

1. Do the teachers in the Montana State Industrial School come within the provisions of the Teachers' Retirement System?
2. May the Montana State Industrial School enter into contracts with teachers concerning their employment?

In considering the first question submitted, it is necessary to examine pertinent sections of the Teachers' Retirement System Act.

Section 4, Chapter 215, Laws of 1939, provides in part:

"(1) The membership of the retirement system shall consist of the following:

"(c) All persons who become teachers or re-enter the teaching service in the public elementary or high schools on or after the first day of September, nineteen hundred and thirty-seven, and all persons who become teachers or re-enter the teaching service in the University of Montana on or after the first day of September, nineteen hundred and thirty-nine, shall become members of the retirement system by virtue of their appointment as teachers."

This section would apply to all teachers who are teaching or entered teaching service in the public elementary or high schools since 1937, while other sections include those who were in service prior to 1937 and continue in the service.

The question that next presents itself is whether or not the Montana State Industrial School is a public school.

Section 1053, Revised Codes of Montana, 1935, provides:

"A public school is a school established and maintained under the laws of this state at public expense and comprising the elementary grades, and, when established, the kindergarten and the high school including all the junior and senior grades of high school work."

The Montana State Industrial School was established under the laws of this state. (Sections 12488 and 12489, Revised Codes of Montana, 1935.)

Section 12489, Revised Codes of Montana, 1935, provides:

"All branches taught in the public schools of the state shall be taught in the reform school, and the inmates shall be taught and trained in morality, temperance, and frugality, and they shall also be instructed in the different trades and callings of the two sexes as far as possible in the scope of the institution."

While under this section instruction additional to that given in the public schools is given at the State Industrial School, the section contemplates generally the subjects taught will be of a similar nature.

The Montana State Industrial School was established and is maintained at public expense.

Section 12514, Revised Codes of Montana, 1935, provides for a building fund for the school out of monies realized from the sale of state property. The legislature has always appropriated a fund for the maintenance of the school. (Pages 384 and 386, Session Laws of 1941.)

Subdivision 4, Section 1, Chapter 215, Laws of 1939, provides in part:

"(4) 'Teacher' shall mean any teacher in the public elementary and high schools of the State . . . provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for the full time outside vacation periods. . . . In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act."

It is my opinion a teacher in the Montana State Industrial School comes within the provisions of the Teachers' Retirement System and the retirement board has the power to so declare.

In answering the second question you submitted to me, it will be necessary to consider the governing bodies of the school.

Section 12493, Revised Codes of Montana, 1935, provides:

"The general supervision and control of the Montana State Industrial School is vested in the state board of education and a local executive board, as provided in section 836 and 842 of the Political Code."

Section 12495, Revised Codes of Montana, 1935, provides:

"The state board of education shall employ a president and matron of the Montana State Industrial School. It shall be the duty of said president to take charge of the school, and he shall also have immediate control of the male department of said school, and the matron shall have immediate control of the female department of the school; and the local executive board shall also appoint such other officers and teachers as may be necessary for the management of the school." (Emphasis mine.)

Section 836, Revised Codes of Montana, 1935, provides in part:

"The state board of education shall have power and it shall be its duty:

"1. To have general control and supervision of the state university, state normal college, college of agriculture and mechanic arts of Montana, state orphans' home, Montana School of mines, Montana school for deaf and blind, the Montana state industrial school, and the state vocational school for girls."

Section 842, Revised Codes of Montana, 1935, provides:

"There shall be an executive board, consisting of three members, for each of said institutions named in the preceding section, two of whom shall be appointed by the governor, by and with the advice and consent of the state board of education, and the president of such institution shall be ex-officio member of the said board. At least two of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board."

From the foregoing code sections it is apparent the executive board has the authority to appoint teachers, but all of its acts are subject to the supervision and control of the state board of education.

The fact the local executive board may employ and appoint teachers necessarily carries with it the authority to enter into contracts with the teachers.

In the case of *Panchot v. Leet*, 50 Mont. 314, 146 Pac. 927, the Montana court said:

"Every power necessary to execute the power expressly granted is necessarily implied."

It is my opinion the power of the local executive board to execute a contract with teachers is necessarily implied with the power to appoint the teachers. The form of the contract would be determined by the local executive board, subject, however, to correction, approval or change by the state board of education.

Sincerely yours,

R. V. BOTTOMLY
Attorney General