

No. 62

**CONTRACTS—WOMEN TEACHERS—PUBLIC SCHOOL
TEACHERS—BOARDS OF TRUSTEES—
TEACHERS—SCHOOLS**

Held: A contract between a woman teacher in the public schools and Board of Trustees which contains a provision terminating the contract in event of the woman teacher's marrying during the term is valid, binding and legal, and not in restraint of marriage. Overruling Opinion No. 273 of Volume 15, Official Opinions of the Attorney General.

March 27, 1941.

Mr. John D. Stafford,
County Attorney
Cascade County
Great Falls, Montana

Attention—Mr. R. J. Nelson
Deputy County Attorney

Dear Mr. Stafford:

You have submitted the question as to whether the following quoted provision in a teacher's contract with the Board of Trustees of a public school district is valid:

"(5) It is further understood and agreed that in case the teacher under this contract is a woman and she marries at any time during the term of this contract, said contract shall automatically become null and void, without any notice on the part of the Board of Trustees."

In answering your inquiry we will look first to our statutes, Sections 6703 and 7562, Revised Codes of Montana, 1935, as follows:

"6703. Conditions Restraining Marriage Void. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage."

"7562. Contract in Restraint of Marriage Void. Every contract in restraint of the marriage of any person, other than a minor, is void."

These two sections were enacted at the same session of the Legislature and each is to be given effect where controlling.

The above quoted provision of the teacher's contract does not come within the terms of Section 7562, for it does not prohibit or restrain the teacher from marriage, as she is at liberty to marry at any time she so desires. The provision in the contract gives her the position and the use thereof as long as she remains unmarried. That is the only limitation and such limitation is provided for under Section 6703, Revised Codes of Montana, 1935, and provides the distinction between the two sections.

The principal object of the contract is not to restrict marriage in any way, but to have the services performed by a single woman.

"The purpose of the brother evidently was (in this contract) not to restrain the marriage . . . of his sisters, but to give to them a small property as a home or support, until they should severally marry and have husbands to maintain them. It is hardly possible to conceive that there is anything immoral or illegal in such a purpose, and, in our opinion it has been carried out by this (contract) without infringing any rule of law."

Arthur v. Cole, 56 Md. 100.

The recent cases have consistently held that a devise to the testator's wife "so long as she shall remain my widow" are words of limitation only on the enjoyment, and are not in restraint of marriage.

Hibbits v. Jack, 97 Ind. 570, 49 Am. Rep. 478;

Thompson v. Patten, 123 N. E. 705.

A contract whereby a person will be subjected to loss in case he does marry is not invalid as being in restraint of marriage.

Page on Contracts, Vol. 2, Section 930.

The same rule is laid down in Williston on Contracts, Vol. 6, Section 1741.

An examination of the subject will show the courts have very rarely held such conditions void where the contract did not absolutely prohibit the marriage of the party within the period wherein issue of the marriage might be expected.

Reasonable contracts involving performance of personal services, which are inconsistent with matrimony, have been upheld.

King v. King, 63 Oh. St. 363, 59 N. E. 111, 81 Am. St. Rep. 635.

"A limitation until marriage is good, it being construed as a provision until marriage and not a restraint on marriage."

Watson's Compendum of Equity, 1939.

It will be observed the Court in *McQuaid v. State*, 211 Ind. 595, 6 N. E. (2nd) 547, overruled its earlier decisions and held that, where a woman signed a contract of employment as a teacher, which provided for dismissal for certain reasons, including marriage, upon her marrying the board was authorized to cancel her contract of employment.

In *Rinaldo v. Dreyer* (1936, Mass.), 1 N. E. (2nd) 37, the Court held that, where a school committee has adopted a rule that the marriage of a woman teacher shall operate as an automatic resignation of such teacher, the marriage of such a teacher is "good cause" for dismissal or enforcement of the rule:

In *Hendryx v. School District* (1934), 148 Or. 83, 35 Pac. (2nd) 235, the Court said such a stipulation is not contrary to public policy:

" . . . It was competent and proper for the district to adopt the 'rule' in regard to the marriage of a woman, and incorporate the same into the contract of employment of a female teacher, and . . . the stipulation in the teaching contract providing for the termination of the contract in the event of the subsequent marriage of the woman teacher is valid and enforceable . . ."

The Supreme Court of Kansas in a recent case has stated the facts, circumstances and reasons so succulently that I quote at length:

"Plaintiff contends it cannot be successfully maintained that the mere fact of marriage disqualifies a man or woman to perform duties as a teacher. There are no instances of just the 'mere fact of marriage.' The change of status is followed by consequences, and the brief of counsel for plaintiff contains a reference to a consequence

which sometimes occurs: 'It is most beneficial to a state to have a multitude of subjects; and therefore restraints on marriage are objectionable as being against public policy.'

"There was good reason for the command to Adam and Noah and Jacob to be fruitful and multiply. Whether the command has been sufficiently obeyed for present world needs, is not a judicial question. However, reproduction is indispensable to continued existence of the human race, and if, following marriage of a female under contract to teach, the reproductive function should become operative, and should progress toward or progress to fruition within the period of employment, successful performance of the contract on the teacher's part might be interfered with or prevented. Therefore, for the good of the schools, a board of education may by contract leave it to the teacher to decide, whether she will continue to teach, or marry.

"Plaintiff cites some constitutional provisions designed to secure equality of right of males and females. None of the cited provisions relates to discrimination between males and females as applicants for employment as teachers by boards of education. Male and female teachers have equality of right to enter into contracts to teach school. Part of plaintiff's equality of right in this respect consisted in privilege to contract with reference to employment on terms and conditions satisfactory to her. In this instance plaintiff contracted that, if she should marry, employment ceased.

"We do not have here a case of discharge of a teacher for some reason, good, bad, or indifferent. The case is one in which a person presented herself as a teacher, who had no contract of employment with the board of education, and the board was not bound to recognize her as a teacher. Likewise, we have no case of arbitrary or capricious exercise of power by the board of education. Plaintiff and the board of education agreed on terms of employment. Plaintiff exercised her privilege to marry, and thereby terminated her employment.

"The judgment of the district court is affirmed."

Grimson v. Board of Education of City of Clay Senter, 16 Pac. (2d) 492.

It is my opinion such a provision in a teacher's contract with the board of trustees of our public schools is valid, binding and legal, and not in restraint of marriage.

This opinion expressly overrules an opinion of a former Attorney General, Opinion No. 273 of Volume 15 of the Official Opinions of the Attorney General.

Sincerely yours,

JOHN W. BONNER
Attorney General