

Opinion No. 15

**SCHOOLS and SCHOOL DISTRICTS
—BOARD OF TRUSTEES, Schools—
CONTRACTS, Teachers — TEACH-
ERS, Contracts—SALARIES, Teach-
ers — BUDGET, School Districts
ELECTIONS, School Districts**

HELD: Board of school trustees may enter into contracts with teachers at any time during the year, except as restricted. Board of school trustees have only such powers and authority as granted by statute, or reasonably implied, but has wide discretion in exercising same. When Board finds anticipated expenditures for year exceed anticipated revenue

from authorized levy and other sources, it is its duty to submit question of an extra levy to electors of the district as provided by law.

February 22, 1947

Mr. James D. Freebourn
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Freebourn:

You have submitted to this office your opinion rendered to the Board of Trustees of School District No. 1, Silver Bow County, with reference to the duties and powers of the board, and particularly to the duties and powers of the board, and particularly to the duties and powers in entering into contracts with teachers.

Your opinion has quite fully covered the law applicable to the questions presented, and after careful consideration and study of the opinion I am glad to concur therein.

In determining the powers and duties of a school board we must keep in mind the rule laid down by our Supreme Court in many cases, to the effect that such boards have no powers except those expressly granted, or necessarily implied from those granted. (*McNair v. School District No. 1 of Cascade County*, 87 Mont. 423, 288 Pac. 199.) With this rule of law in mind the questions submitted to you and considered in your opinion will be considered in the same order in this opinion.

1. Is it legal for the board to enter into contracts with the teachers at the present time for the school year 1947-1948?

Section 1015, Revised Codes of Montana, 1935, as amended by Chapter 103, Laws of 1943, dealing with powers of boards of trustees, provides, insofar as applicable here:

"2. To employ or discharge teachers . . . and to fix and order paid their wages . . . All contracts of employment of teachers authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher."

Section 1075, Revised Codes of Montana, 1935, provides in part as follows:

"After the election of any teacher or principal for the third consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of May give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year; **provided that nothing in this act shall be construed to prevent re-election of such teacher or principal by such board at an earlier date . . .**" (Emphasis mine.)

With reference to the specific question, these are the only statutes applicable and clearly give the trustees the power and duty to enter into contracts of re-employment with teachers and principals who have been employed for three years or more at any time with the provision, of course, that if any such teacher is not notified prior to May first his services are not required, he is deemed re-employed for the ensuing year at the same salary. It is likewise made the duty of the trustees to enter into written contracts with these teachers. Having the power to fix and order paid the wages or salaries of teachers employed by the board as provided in Section 1015, *supra*, the board therefore has the power to fix the salary and provide for the same in the contract at any time.

The second question presented is: "Should the board enter into a contract with the teachers at this time on the anticipation that the amount of money required for the contracts would be voted as a special millage by the people of the district in the election in April, and the people failed to so vote, would the contract still be binding upon the district?"

I fully agree with your opinion that this question, as to whether the board should enter into such a contract, is a question of administrative discretion with which the board is vested

and determinative only by the board itself. As to whether the board has authority to enter into such a contract, we may again look to the statutes to find such authority.

The board is given the power and duty to employ and discharge teachers and to fix their salaries. (Section 1015, Revised Codes of Montana, 1935, supra). Aside from the restrictions as to employment of teachers prior to May 1, there are no restrictions on the power of the board in the hiring of teachers or fixing salaries.

In the provisions of the statutes dealing with the preparation, submission and final adoption of school budgets, we find the following language in Section 1019.13, Revised Codes of Montana, 1935:

" . . . provided, further, that if any contract has been entered into between the board of trustees of any school district and any teacher, principal or other person, by the terms of which contract such teacher, principal or other person has been employed for the school year for which the preliminary budget has been prepared, or when any teacher or principal, by reason of employment during the last school year, is entitled under the provisions of Section 1075, to retain his position and salary during the school year for which the preliminary budget was prepared, the board of school budget supervisors must not make any change in any item for salaries or wages which will reduce or in any manner affect the salary or wages of such teacher, principal, or other person."

As stated in your opinion, therefore, the law is clear that, apart from the restrictions imposed by Section 1075, the board may at any time hire teachers and fix salaries and terms by written contract, and from the time of the execution of the contract, the amount of such salary must be inserted in the budget and cannot be changed. The contract becomes a binding obligation of the district. That the board has the implied if not the granted power to fix the salary at any figure it deems advisable, within its reasonable discretion, is apparent from the further provisions of the statute providing for the submission of an extra

levy to a vote of the people in the event the proposed expenditures approved in the budget will exceed the anticipated revenue.

Section 1019.7, Revised Codes of Montana, 1935, which is a part of the chapter of the Code on the preparation, submission and approval of the budget, provides in part:

" . . . the board must determine and make an estimate of the amount of such deficiency and the number of mills of additional levy required to be made to meet and take care of such deficiency, and must call an election . . . for the purpose of obtaining the approval of the qualified electors . . ."

This section then provides for the time when such election may be held.

It would appear, therefore, from these provisions of the statute that the legislature contemplated that at some time the estimated expenditures of a district would exceed the estimated revenue to be derived from the authorized levies, and all other sources, and therefore provided a means of meeting such situation by enacting Section 1019.7, supra. It may be reasonably inferred the legislature contemplated such a deficiency might be caused by an increase in salary from the fact that it made it the duty of the board to enter into written contracts with the teachers and provided there should be no reductions in the budget of the amount fixed in such contracts.

From the express authority given the board to enter into written contracts as to term and salary, and the prohibition against the reduction of the amount of salaries so fixed in such contracts, together with the provisions for the submission of the question of an extra levy to a vote of the people in the event of a deficiency in the budget, it would appear that the only considerations of the board in fixing the amount of salaries to be paid the teachers should be reasonableness of the amount based upon a fair and just remuneration for the services under the existing economic conditions.

The third question presented is: "Would it be possible to make a contract in such a way that it would be binding if the people voted the money

but not binding if the people failed to vote it?"

As has been pointed out, the board has power and it is made its duty to enter into contracts with the teachers as to terms and salary. Having the power to contract with the teachers, the board may contract as to any conditions not restricted by law. I find no law preventing the board from entering into a conditional contract such as suggested in your question. Like any other contract, the terms thereof depend upon the agreement of the parties and, unless such terms, or any thereof, are prohibited by law become binding upon both parties.

The fourth question presented is: "Are the individual board members personally responsible for the contracts they enter into if the people of the district fail to vote proper millage to cover the amount designated in the contracts?"

I assume by this question is meant—are the members of the board individually liable to pay the amount of the salaries contracted for in the event the electors fail to authorize the extra millage.

A board of school trustees is a body politic and may act only as a body and not individually. Only such contracts as are entered into by the board acting as such in meeting duly assembled are binding upon the district. When contracts are entered into in such manner they become the contracts of the district and not of the individual members, and hence only the district is liable thereon. *State ex rel School District No. 29, Flathead County v. Cooney*, 102 Mont. 521, 59 Pac. (2d) 48. *School District No. 2 of Silver Bow County v. Richards*, 62 Mont. 141, 205 Pac. 206. *McNair v. School District No. 1 of Cascade County*, 87 Mont. 423, 288 Pac. 188.

Hence, if the contract in question is entered into by the board acting as such in meeting duly assembled, the board having the power to enter into such contract, in the absence of fraud, such contract is binding upon the district and the individual members may not be held liable therefor.

The board of trustees of a school

district having only such powers and authority as the legislature has given it, may act only within such powers. It is the duty and obligation of a board of trustees to exercise such powers and such authority reasonably and for the best interests of the district. In the present instance it is the duty of the board to negotiate a contract with the teachers which is just, equitable and reasonable both for the teacher and the district, based upon the economic conditions presently existing. If the amount contracted for salaries on this basis, together with other anticipated expenditures of the district, exceeds the anticipated revenue from the authorized millage and other sources, it is the duty of the board under the provisions of Section 1019.7, *supra*, to determine the amount necessary to cover the deficit and to submit the question of levy of such extra millage necessary to the voters of the district. The trustees are not bound to conjecture as to the result of such election. When the question is submitted to the electors the boards' duty has been performed and the matter is then left to the electors.

It is therefore my opinion:

1. A board of school trustees may enter into contracts with teachers at any time during the year, except as restricted by the provisions of Section 1075 Revised Codes of Montana, 1935.

2. A board of school trustees has only such powers and authority as is granted it by statute, or which are reasonably implied from those granted, but has a wide discretion in honestly and fairly exercising such powers and authority.

3. When the board finds that the anticipated expenditures for the year exceed the anticipated revenue from the authorized levy and other sources, it is its duty to submit the question of an extra levy to the electors of the district as provided by law.

4. Members of a board of school trustees are not liable individually for any contracts or acts done by the board acting as such in meeting duly noticed and assembled.

sincerely yours,
R. V. BOTTOMLY,
Attorney General.