

SCHOOLS:

Endorsement of second grade certificate.
Teacher must have certificate throughout
term of school.

9476-74 RSM 1929

September 28, 1933.

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FILED
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Hon. David E. Impey,
Prosecuting Attorney,
Texas County,
Houston, Missouri.

Dear Sir:

This department acknowledges receipt of your letter
of September 7, 1933, which is as follows:

"Statement of Facts: A teacher now
employed to teach a school in this,
Texas County, holds a second grade
certificate issued in another county
on August 6, 1932. This certificate
bears no state grades, but county
grades only. This certificate was
endorsed by the County Superintendent
of Texas County on September 28, 1932
'for one year'; he refuses to reendorse
it.

Your opinion is requested upon the follow-
ing points:

First, Does the county superintendent
have the right to restrict his endorse-
ment to a period of one year, or does
the endorsement validate the certificate
in this county for the lifetime of the
certificate, i.e., two years from date
of issuance on August 6, 1932, without
reendorsement?

Second, If the restriction upon the
endorsement is valid, can the teacher,
having begun the current term prior to
the expiration of one year from the date
of endorsement by the county superintendent
of this county, nevertheless continue to
teach after September 28, 1933, until the
termination of his existing contract to
teach this school?

This matter will be up for decision and

action by the County Superintendent on the 15th inst. and your very prompt advise will be appreciated."

On July 25 this department rendered an opinion to the Hon. Thomas A. Mathews, Prosecuting Attorney of St. Francois County, in which it was held that the County Superintendent in a situation such as you present, must endorse second grade certificates issued by the County Superintendent of another county regardless of whether the original certificate was issued on county grades or state grades. We are enclosing a copy of the opinion for your benefit.

The situation presented in your letter, however, differs in that the County Superintendent has endorsed the certificate, but for only one year and refuses to endorse for another year. Section 9474 R.S. Mo. 1929 refers to the endorsement of certificates, and the part applicable is as follows:

"****Provided that the county superintendent must indorse without examination second grade certificates from other counties in this state on the payment of a fee of one dollar and fifty cents; and such second grade certificate, when thus indorsed by the county superintendent, shall entitle the holder thereof to all the rights and privileges granted under and by a teacher's certificate issued by such superintendent under a regular examination, and shall not be revoked unless specified charges be made and filed with the county superintendent, notice thereof be given and an impartial hearing be had thereon, as is fully provided for in section 9476."

Having held in the enclosed opinion that the County Superintendent must endorse the certificate, then under the above quoted section the holder of the certificate is in the same position as "under a regular examination", and the endorsement would be for the period of the certificate and the Superintendent would have no authority to endorse only for one year. His endorsement for one year only is in substance a revocation of the certificate and this he could not do except under the conditions as set out in Sec. 9476 R. S. Mo. 1929 as follows:

"The county superintendent may revoke, upon satisfactory proof, any county certificate for incompetency, immorality, neglect of duty, or the annulling of written contracts with the board of directors without the consent of the majority of the members of the board which is a party to such contract. All charges must be preferred in writing, signed and sworn to by the party or parties making the accusation, which must be filed with the county superintendent, and the teacher must be given due notice, of not less than ten days, an opportunity to be heard, together with witnesses.*****"

The decision in the case of State ex inf. Burgess v. Hodge, 8 S. W. (2nd) 1. c. 883, bearing on the point is as follows:

"This certificate was evidence of a valuable right vested in respondent, not only to teach school in any county in the state for a full period of three years, but to have that right renewed or extended 'an unlimited number of times' on the sole condition (for the proof was that respondent 'had had five years' experience in teaching and was employed as a teacher January 1, 1912,' and held a first-grade certificate), that he be faithful in the performance of his professional duties. Section 11361, supra. Certainly the county superintendent of public schools was without power to shorten the three-year period evidenced by the certificate except by revoking the same for cause (section 11364, R. S. 1919,), and it is nowhere contended that he did this."

As to the second question "can the teacher having begun the current term prior to the expiration of one year from the date of endorsement by the county superintendent of this county nevertheless continue to teach after September 28, 1933, until the termination of his existing contract to teach this school", in the decision of School District v. Edmonston, 50 Mo. App. 1. c. 69, the Court said:

"II. It is urged against defendant, that her contract was void for another reason, viz: That she had not, when employed, a teacher's certificate for the period of

her employment. The facts are that she was employed in May for a six months' term beginning in September, and that she had, at the time of her employment, a certificate which expired the following July. That on its expiration, she obtained another certificate for another year, thus covering the period of her engagement to teach. That this certificate was dated back to May so as to cover the day she was employed.

Under sections 7995 and 8021, Revised Statutes, 1889, it is necessary to the validity of a teacher's contract that she shall have a certificate to teach, and it is provided in the former section that: 'The certificate must be in force for the full time for which the contract is made.' A proper and reasonable construction of this statute does not require that the teacher shall, at the time of employment, have a certificate which reaches to the end of term of such employment, provided that during the term of such employment he has the proper certificate. Certainly no more should be asked of the teacher than that he renew his certificate at its expiration, as is permitted by sections 8030 and 8031. It is provided in section 7996, that if a teacher's certificate be revoked the contract shall become void, and doubtless the same result would follow if the teacher should fail to have a certificate renewed which had expired during the term of employment."

Also, in the decision cited in *Hibbard v. Smith*, 135 Mo. App. 721, the court said:

"The clauses regarding the certificate to teach contained in section 9766, have been construed in connection with other statutory provisions regarding teachers' certificates contained in section 9796, and held to mean the teacher must hold a certificate through the entire term of the employment, but that this requirement will be satisfied by holding a certificate yet in force when the hiring occurs and obtaining another upon

its expiration, to extend over the term. Such was the decision in a case identical with the one at bar in the facts bearing on the immediate point. (School Dist. v. Edmonston, 50 Mo. App. 65.) We consider this interpretation of the statute sound. It was not proved plaintiff deposited or filed her certificate with the clerk before the latter attested the contract, as the statute says shall be done, but we do not regard this omission as fatal to the employment. (Saleno v. Neosho, 127 Mo. 627.) She held a certificate then, and later, when asked to produce a certificate, prof-fered for filing one extending over the six months' term, but the directors declined to accept it. * * * * *

In the decision of State v. School District, 324 Mo. 1. c. 502, the court further upholds the above decisions as follows:

"Error is assigned by appellant in the action of the trial court in striking from defendant's answer the affirmative defense that plaintiff did not have on file with the clerk of defendant school district, on December 18, 1924, a certificate of qualification authorizing her to teach in the public schools of Gentry County for the full time of employment provided by the contract of December 18, 1924. Section 11137, Revised Statutes 1919, provides: 'The certificate must be in force for the full time for which the contract is made.'

On December 18, 1924, the date of execution of the contract of employment, plaintiff held a certificate of qualification, issued and signed by the superintendent of schools of Gentry County, authorizing her to teach in the public schools of said county until August 31, 1925, and such certificate was then on file with the clerk of defendant school district. Another certificate of qualification was issued to plaintiff by the Superintendent of Schools of Gentry County on August 31, 1925, authorizing plaintiff to teach in the public schools of said county until August 31, 1927. Such was a sufficient

compliance with the statutory requirements. It has been consistently and repeatedly ruled that a proper and reasonable construction of the statute does not require that the teacher shall have, at the time of employment, a certificate which extends to the end of the term of employment, provided that, during the term of employment, such teacher has the proper certificate.* *"

In view of the above decisions, it is the opinion of this Department that a school teacher is not compelled to have, at the time of employment, a certificate which extends throughout the term of employment, but the school teacher must have during the term of employment, a proper certificate.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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