

SCHOOLS: Contract for more than one year with teacher is legal and binds new board, if contract is made in good faith without fraud or collusion, and is for reasonable time.

(Overruling opinion of Mr. Buffington and reaffirming opinion of General Crow of May 1, 1933, to Board of Education, Columbia, Missouri)

May 9, 1941

Mr. Robert W. Smart
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri



Dear Sir:

You recently submitted by telephone the following request for an opinion:

"The school board of Miller, Missouri, (a town with a six director board) shortly before the annual school election in April 1940, and probably in March 1940, hired a superintendent of schools for two years, namely, for the school year of 1940-41 and the school year of 1941-42, and entered into a written contract with such superintendent for that period of time. The personnel of the board of directors changed as a result of the annual school election held in April 1941. The present school board desires to rescind the contract, if possible, and the opinion of this department is requested as to whether or not it may cancel the contract. There is no evidence that the contract was executed or induced by fraudulent practices or as a result of nepotism."

There has been considerable discussion both pro and con concerning the question which you present. We are enclosing an opinion rendered by this department on May 1, 1933, to the Board of Education, Columbia, Missouri, in which this question is exhaustively discussed. The statutes

do not bear directly on the question. It has long been a custom for the period of time for hiring teachers and superintendents to be for but one year, but in the absence of any statute prohibiting a contract for longer than one year, we think such a contract is not illegal. A change in the personnel of the board of directors, as a result of the annual school election, will not invalidate such a contract, but in fact will bind the new board provided that such contract is made in good faith without fraud or collusion and is for a reasonable period of time.

A most exhaustive review of this question is contained in the decision of Tate vs. School District No. 11, 23 S. W. (2nd) 1013, l.c. 1021. The decisions of many foreign states are contained therein, but we will not burden this opinion with quotations from them all. We will cite the general rules as set forth in 35 Cyc. 1079 and 24 R.C.L. 579:

"The prevailing weight of judicial authority on the subject is thus stated in 35 Cyc. 1079, 1080: 'In the absence of a statutory provision limiting, either expressly or by implication, the time for which a contract for employment of a school-teacher may be made to a period within the contracting school board's or officers' term of office, such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office, or for the term of school succeeding their term of office, provided such contract is made in good faith, without fraud or collusion, and for a reasonable period of time; and the succeeding board or officers cannot ignore such contract because of mere formal and technical defects, or abrogate it without a valid reason therefor.'

The prevailing rule is thus stated in 24 R.C.L. 579: "In the absence of an express or implied statutory limitation, a school board may enter into a contract to employ a teacher or any proper officer for a term extending beyond that of the board itself, and such contract, if made in good faith and without fraudulent collusion, binds the succeeding board. It has even been held that, under proper circumstances, a board may contract for the services of an employee to commence at a time subsequent to the end of the term of one or more of their number and subsequent to the reorganization of the board as a whole, or even subsequent to the terms of the board as a whole. The fact that the purpose of the contract is to forestall the action of the succeeding board may not of itself render the contract void. But a hiring for an unusual time is strong evidence of fraud and collusion, which, if present, would invalidate the contract. Of course, any statutory implication that the powers of the board are limited to the current term would invalidate contracts for a term extending beyond that of the board."

You will note that the decision of Gates School District 53 Ark. 468 is based on a statute similar in purport to that of the Missouri statute. Likewise, in the decision of Reubelt vs. Noblesville 106 Ind. 473 numerous other cases supporting the rules above quoted are cited. The only sound reason for permitting a contract in excess of one year seems to be to the effect that desirable teachers and superintendents may be lost to the school if the board is not authorized to employ them for more than one year.

May 9, 1941

In the decision of *Aslin vs. Stoddard County* 106 S. W. (2nd) 472, the question arose as to whether or not the county court of Stoddard County was liable under a contract made to a janitor, and whether the members of the county court were bound by their predecessors. The Tate decision is cited and approved. The decision in the State of Minnesota, 108 Minn. 142 is as follows: "While there is some apparent conflict in the authorities it is reasonably clear that the weight of authority is to the effect that the board has such power." Another applicable and pertinent citation mentioned in the opinion is *Commissioners of Pulaski County vs. Shields* 136 Ind. 6, as follows:

"It (the board) is a continuous body while the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its members. An essential characteristic of a valid contract is that it is mutually binding upon the parties to it. A contract by a board of commissioners, the duration of which extends beyond the term of service of its then members, is not, therefore, invalid for that reason."

We think that a school board speaks by and through its members but the board continues even though the membership be constantly changing and in the last analysis it is the board and not the individual members that makes a contract. In the *Stoddard County* decision, l.c. 477, the court further said:

"In our opinion a county court has power to make a contract such that here in question for a reasonable time, the performance of which will extend beyond the term of office of some member or members

May 9, 1941

of the court. We so hold."

The question might arise as to the effect of an enactment by the legislature in 1931, Laws of 1931, page 331, wherein counties of 200,000 and less than 350,000 inhabitants, the board of education may contract under certain conditions with the superintendent of schools for a school district for a period not to exceed three years. The act further provides that the board may enter into contracts with teachers not to exceed two years. Some lawyers might interpret this section as a recognition by the legislature that contracts for teachers may not be extended beyond one year, and by the act attempt to enable the contract to extend beyond a year only in a certain county (St. Louis County).

It is reasonable to place the opposite interpretation, that is to the effect that the only intention of the legislature was to limit the term as it relates to time of such a contract, thereby recognizing that such power already existed, but the legislature merely wanted to limit the length of the term of the contract.

This department rendered an opinion to Honorable Lloyd W. King, State Superintendent, Department of Public Schools, on June 1, 1939, on an entirely different set of facts to which you present. However, the learned writer of the opinion appears to have branched out into the question herein involved, we think needlessly. But the result was the apparent conflict in the opinions of this department relating to your question.

In so far as our opinion of June 1, 1939, conflicts with our opinion of May 1, 1933, we overrule the opinion of June 1, 1939.

Mr. Robert W. Smart

-6-

May 9, 1941

You state in your letter that the superintendent in question was hired for two years. This does not appear to be an unreasonable period of time and we are of the opinion that the contract, in the absence of the elements mentioned above, is legal and binding on the new board of directors.

Respectfully submitted

OLLIVER W. NOLLEN
Assistant Attorney General

APPROVED:

VANE THURLO
(Acting) Attorney General

OWN:RT