

MISSOURI SCHOOL FOR THE BLIND: Discussion of what constitutes
TEACHER'S CONTRACT: teacher's contract.

May 14, 1942

Dr. C. C. Chesterson, President
Board of Managers
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri



Dear Dr. Chesterson:

This will acknowledge receipt of your letter, dated May 7, 1942, in which you request an opinion from this office, as follows:

"I enclose photostatic copy of a letter of application for reemployment as a teacher in the Missouri School for the Blind and a reply penned by and signed by the president of the Board of Managers. This reply was written after the Board of Managers passed a motion to reemploy this individual.

"The questions we present to you follow:

- "1. Does this constitute a contract?
- "2. If not, may the Board of Managers offer this individual a contract in which terms are set forth?
- "3. If the original letter enclosed does not constitute a contract, by what method may the Board of Managers make the terms?
- "4. If it became necessary for the Board to discharge, what position

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would they be in under such agreement
as the letter attached?

"We would greatly appreciate your
opinion prior to May 29."

Accompanying the foregoing letter is a photostatic copy
of a typewritten letter with penned reply at the bottom,
which are as follows:

"St. Louis, Mo. April 4, 1942

"Board of Managers and Superintendent,
Missouri School for the Blind,
St. Louis, Mo.

"Gentlemen:

"This is to say I desire reappointment
on the staff of the Missouri School for
the Blind. Naturally I wish to serve
in the highest capacity for which you
judge me to be abundantly qualified,
and in which a vacancy definitely exists.

"For your convenience the following brief
summary of my education and experience is
submitted.

"Education:

"Degree of Bachelor of Science in Educa-
tion from the University of Missouri,
and additional credits from the Univer-
sity and other state schools about eighty
hours, making a total of approximately
two hundred college hours.

"My majors are:

"Education
Science
Agriculture
English
Social Science

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"In addition to the subjects covered by these majors, I meet the state requirements to teach a number of other subjects. Among them is mathematics in which I have a fraction over eighteen hours.

"Experience:

"Of the executive position held the most significant are those at Polo, Mo. and at Edina, Mo. I taught in the grades at Polo for three years, and was then elected superintendent but declined the position to attend the University of Missouri. Upon graduation from the University I was elected superintendent at Edina, Mo. and served eight and one half years.

"I was afterward elected superintendent at Polo a second time and held that position six years.

"I have also had actual experience in teaching grades one to eight inclusive.

"Thank you for your consideration.

"Respectfully,

C. F. RIDDLE

"Dear Mr. Riddle:

"At the meeting of Board of Managers held April 10th you were re-employed for the School term 1942-43.

"Respectfully,

DR. C. C. CHESTERSON
Pres. Board of Managers."

The Board of Managers for the Missouri School for the Blind is created by Section 10846, Article 24, Chapter 72, R. S. Mo. 1939, and Section 10863 of the same article and

chapter, directs the organization of the Board, reading as follows:

"The board of managers of each of these two schools shall organize at the regular meeting of the board, held in March of each odd numbered year, by electing one of their number president, and also a secretary, who may or may not be one of their number: Provided, that in either school that employs a secretary or bookkeeper, such secretary or bookkeeper shall be secretary of the board of managers thereof."

The duties of the Board of Managers are prescribed in Section 10847 of the same article and chapter, as follows:

"The board of managers of each of said schools shall elect the superintendent and all teachers and officers of said school and prescribe the number to be employed therein, and fix their terms of office and the amount of compensation for their services. The superintendent shall have the power to employ all foremen, employees, supervisors, mechanics, servants and other persons not otherwise provided for and shall have the power to discharge the same at his pleasure: Provided, that the board shall have first designated the number of employees and their wages; and provided further, that nothing herein shall prohibit the board from discharging any employee when they may deem it for the interest of the school so to do. The salaries and wages due officers, teachers and employees of these schools shall be allowed and paid monthly. The superintendent and matron of each school shall reside therein."

From the foregoing it is apparent the Board of Managers has the duty and the authority to employ teachers from the school.

In Article 2 of the same chapter, 72, relating to all classes of schools, Section 10342 provides directions for the employment of teachers, as follows:

"The board shall have power, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of such board member is necessary to the selection of such person; nor shall the teacher serve as a clerk of the district. All transactions of the board under this section must be recorded by and filed with the district clerk: Provided, that the board of education of any first-class high school may employ a superintendent either before or after the annual school election."

The Board of Managers having authority to employ teachers must employ them by written contract which sets out the wages and the number of months to be taught, and signed by both parties.

Applying the foregoing to the photostatic copy of correspondence enclosed, you will see the document alone could not constitute a contract. It does not contain a statement of the salary to be paid or the number of months to be paid.

Answering your second question, from the foregoing sections of the statutes you will observe the Board not only may offer a contract containing all of the terms, but it is the duty of the Board of Managers to do so.

It has been pointed out that the correspondence enclosed does not alone constitute a contract, but it, when taken with the minutes of the meeting of the Board of Managers, might constitute a contract, and, in this connection your attention is called to the following lengthy extract from the case of Edwards v. School Dist., 297 S. W. 1001, 1. c. 1002:

"Did plaintiff have a valid contract? April 2, 1926, plaintiff, a legally qualified teacher, made written application to the board of directors of defendant school district for a position as teacher in the district, and specified the length of the term and the salary desired, to wit, \$70 per month. April 10th thereafter defendant's board of directors in session made this order of record:

"Board of directors met April 10, 1926, district No. 73, county of Christian, and state of Missouri, and agreed on Reba Edwards for teacher for the term of eight months starting the first Monday in August, second day, for \$70 per month."

"In addition to placing the order of record, the directors signed a separate written paper which was a copy of the order placed of record.

"May 25, 1926, Walter Wilcox, president of the board, notified plaintiff by registered mail that the board was not going 'to hire you to teach this school for the coming term.' May 29th thereafter the board met and by an order of record attempted to rescind its action of April 10th employing plaintiff. Plaintiff refused to accept the purported rescission, and on August 2d, the day the school commenced, she went to the district and offered to teach the school, but another teacher was then employed, and plaintiff's offer was refused.

"Section 11137, R. S. 1919, provides that a teacher's contract--
"shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk,' etc.

"Plaintiff had no contract unless her written application and the action and orders, etc., of the board thereafter as above set out constitute a contract.

"Defendant's learned counsel invokes the letter of section 11137, and contends that plaintiff had no contract signed by herself, by the president of the board, and attested by the clerk, as provided in the statute, and that therefore she had no valid and binding contract. Section 11138, R. S. 1919, provides that the contract required by section 11137 shall be construed under the general law of contracts. Section 2164, R. S. 1919, is a part of the general statutory law of contracts, and provides:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

"Sections 11137 and 2164 both require that a teacher's contract be in writing, and there is no conflict in the two sections. Since section 2164 is a part of the general statutory law of contracts, it may be invoked in the construction of a teacher's contract. Neither section requires that a teacher's contract be in any particular form, nor does either section require that the parties to be bound all sign the same instrument. In construing section 2164 the Kansas City Court of Appeals in *Platte City to Use of Prior v. Paxton*, 141 Mo. App. 175, 124 S. W. 531, held that, in an ordinance for street improvement, a written bid duly signed and a resolution accepting the bid, constituted a written contract and was a substantial compliance with the requirements of section 2164. To the same effect are *Blades v. Hawkins*, 133 Mo. App. 328, 112 S. W. 979; *City of California v. Telephone Co.*, 112 Mo. App. 722, 87 S. W. 604.

"A contract is the agreement which the parties make and not the writing which

evidences the agreement. 13 C. J. 239. In Baxter v. School District, 217 Mo. App. 389, 266 S. W. 760, we held a teacher's contract valid, although the president of the board had not signed a formal written paper evidencing the contract.

"Plaintiff in the cause at bar filed her written application, duly signed by her. It specified as to the school term, salary, etc. This application may be termed an offer, and the board of directors not only made an order accepting this offer, but went further, and each director, including the president, signed a writing which evidenced the contract which they had consummated by their acceptance of record. It also appears that the clerk of the district signed the minutes of the board accepting plaintiff's application to teach the school. This record shows that every requirement as to writing and signing, made by section 11137, was fully met. There is no argument against the validity of the contract except that it was not formally written upon a separate paper and there signed by all the parties required by the statute. Such is not necessary and could not be made so without making the law respecting teachers' contracts different from the general law of contracts. We hold that plaintiff's contract was valid and binding."

Following this decision you will readily see the original of the photostat enclosed with your letter, if supplemented by sufficient written evidence, might make evidence of the contract sufficient to make it enforceable.

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The foregoing answers your first two questions. Referring to the same authorities furnishes the answer to your third question. The Board of Managers must contract in writing and which writing definitely sets out the terms of the agreement and is signed by both parties.

In reply to your fourth question, the Board of Managers would be in the same position with reference to discharging a teacher no matter what the form of the contract. The Board could not discharge the teacher and terminate the contract, so long as the teacher properly discharged the duties and is not guilty of gross immorality or of any crime. It is respectfully suggested that if the occasion arises when the Board considers discharging a teacher it would be much better to take up and discuss the matter of discharge at the time such question arises, as the facts in the case would have great bearing on the matter.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WOJ:CP