

SCHOOLS: No valid contract existed between a teacher
TEACHERS: and a board of education when the teacher
failed to secure before the beginning of
school the specific certificate that was an express condition of the
contract. Since there was no valid contract between the teacher and
the school board, the teacher's certificate of license to teach can-
not be revoked because no valid contract was annulled when the teach-
er failed and refused to teach in a position for which he did not
have a valid certificate of license.

OPINION NO. 24

May 12, 1975



Charles J. McClain, President
Northeast Missouri State University
104 Baldwin Hall
Kirksville, Missouri 63501

Dear Mr. McClain:

This official opinion is issued in response to your request for a ruling on the validity of a written contract entered into with a teacher holding only a certificate to teach physical education who agreed to teach social studies in a Missouri public school on the express condition that he "must have a clear certificate in social studies by the time school begins," if the teacher fails to secure the certificate authorizing him to teach social studies.

We assume, for purposes of this opinion, that no provisional or permanent certificate had been issued to the teacher. At the start of the school year, he began teaching social studies without securing a certificate to teach social studies, although the board did not formally waive its condition of employment. After approximately three weeks of teaching he resigned. The board refused to accept his resignation. The board has requested that Northeast Missouri State University, as the issuing institution, revoke the teacher's license for breach of contract. The foregoing facts will be used as the basis for this opinion.

The following statutes are relevant to a determination of whether or not the teacher's license should be revoked.

A license to teach is required:

"No person shall be employed to teach
in any position in a public school until he
has received a valid certificate of license

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entitling him to teach in that position."
(Section 168.011, RSMo 1969)

Several grounds exist for the revocation of a license to teach:

"A certificate of license to teach may be revoked by the authority which issued the certificate upon satisfactory proof of incompetency, cruelty, immorality, drunkenness, neglect of duty, or the annulling of a written contract with the local board of education without the consent of the majority of the members of the board which is a party to the contract. . . ." (Emphasis added) (Section 168.071, RSMo Supp. 1973)

A teacher without a license is subject to certain penalties:

"Any teacher who enters a public school in this state to teach, govern and discipline the school who does not have a valid certificate of license entitling him to teach therein or who has not been legally employed by the school board of the district to teach therein, forfeits all right, title and claim to any compensation therefor, and is guilty of a misdemeanor and punishable by a fine not to exceed one hundred dollars. Any director who endorses or encourages the teacher in such unlawful conduct is guilty of a misdemeanor and punishable by a like fine." (Section 168.081, RSMo 1969)

See also The School Administrators Handbook, Missouri State Board of Education Publication No. 20-H (1969):

"A teacher's certificate is a license required by law to teach, govern and discipline students in the public schools of Missouri. A teacher's certificate indicates that one is trained as a teacher and is qualified for a definite teaching and/or school administrator's position." Id. at 79.

"A person without a teaching certificate may be employed, provided he becomes legally certificated prior to the date he starts to teach." Id. at 81.

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A teacher's contract is similar to other contracts:

"The general law of contracts applies in the construction of teachers' contracts. . . ." Adamick v. Ferguson-Florissant School District, 483 S.W.2d 629, 631 (Mo. Ct.App. at St.L. 1972)

". . . There is no question but that in Missouri a teacher's contract must be in writing and authorized by the board. Sections 432.070 and 163.080 [now § 168.101]; . . ." Lynch v. Webb City School District No. 92, 418 S.W.2d 608, 613 (Spr.Ct.App. 1967)

An appellate court has interpreted an earlier version of Sections 168.011 and 168.081, RSMo 1969:

"We do not think, taking sections 8021 and 8022 [now Sections 168.011 and 168.081], to be read together, they mean that the teacher must have a certificate of qualification at the time of making a contract to teach school in the future. The object of the statute is that the qualification may exist during the term of the employment. The language of the statute is that, 'no teacher shall be employed,' and has reference to the employment and not to the contract for employment. It means that he shall not be engaged in teaching without the required certificate, and the following section imposes a forfeiture and punishment if he does so." (Emphasis added) Crabb v. School District No. 1, 93 Mo.App. 254, 260 (K.C.Mo.App. 1902)

See also Opinion No. 57, Marr, May 11, 1938, in which we held that:

"A teacher may be employed who before teaching school under her contract will become legally qualified by the proper certificate although at time of employment was not legally qualified."

Based on the foregoing authorities, we conclude that a contract to teach is subject to the condition imposed by law that the teacher must have a valid certificate. As previously noted, the

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teacher in question prior to the beginning of school obtained neither a valid temporary nor a permanent certificate. The condition to employment having failed, there was no agreement which could be breached. Therefore, Section 168.071, RSMo Supp. 1973, does not provide a means for revoking this teacher's license because no written contract was annulled.

CONCLUSION

It is the opinion of this office that no valid contract existed between a teacher and a board of education when the teacher failed to secure before the beginning of school the specific certificate that was an express condition of the contract. Since there was no valid contract between the teacher and the school board, the teacher's certificate of license to teach cannot be revoked because no valid contract was annulled when the teacher failed and refused to teach in a position for which he did not have a valid certificate of license.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hortense K. Snower.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 57
Marr, 5-11-38