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The Legal Concept of the Teacher's Contract

Wanda I. Johnson

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE MASTER OF ARTS
DEGREE

COLLEGE OF EDUCATION

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There are some points which are assumed but until tested may prove fallacies. Is a teacher who holds a certificate really a teacher? From what is the right, duties and liabilities of a teacher arise? When is a contract legal?
THE LEGAL CONCEPT OF THE TEACHER’S CONTRACT

CHAPTER I
INTRODUCTION

Statement of the problem: The major purpose of this study is to determine the nature and characteristics of the contractual relationships between school boards of education and public school teachers. Controversies between the board and the teacher have frequently arisen and have often been carried to the courts. Courts have been called upon to settle issues which deal with the status existing between the board and the teacher, and thereby do exert an influence upon the privileges or denials, allowed or disallowed when contracting parties make such agreements. This study deals with the action of the courts, and the decisions of the judges as based upon and governed by the facts of the case.

There are some points which are assumed but until tested may prove fallacies. Is a teacher who holds a certificate really a teacher? From what do the rights, duties and liabilities of a teacher arise? When is a contract legal?
How long is the teacher employed under it? Can the teacher recover his salary under it? May he be dismissed, and if so, on what grounds? What are the statutory and common law requisites of the teacher's contract of employment? When, and by whom may public school teachers be dismissed? When may a teacher recover compensation? What discrepancy exists, between educational practices and the legal rules and procedures in references to dismissal of teachers?

It is important that all persons in the teaching profession who are anxious to perform their function in education and wish to avoid inharmonious contacts should have an interest concerning these issues.

Perhaps the results of such a study would tend to reduce the number of controversies arising and would provide for a more harmonious attitude between teacher and the party or parties to whom he is responsible.

Purpose of the Study

This study has been made for the purpose of:

(1) Discovering these issues pertinent to teacher contracts, which have been adjudicated by the judicial tribunals of the various states.

(2) Correlating and revealing some legal principles which have been decisive of cases in which the issues involved were related to teacher contracts, and which might serve as practical aids to those who may be confronted by legal questions
pertaining to teacher contracts.

(3) Attempting to discover trends in the attitude of the judiciary towards issues pertinent to teacher contracts.

Sources of Data.

The reports of cases decided by the Supreme Courts of the various states and the United States, the National Reporter Systems of the various states, and the United States reports, were the chief sources of the study. A handbook of cases dealing with ruling case law was also used. Several textbooks and some research investigations along legal cases in education were also examined for form, and organization of the legal data.

Final efforts at classification resulted in the following general headings, which have been used as chapter headings:

1 Ruling Case Law, Vol. XXIV.
4 Malan, Clement T., Indiana School Law and Supreme Court Decisions, Pp. x & 472.
(1) Introduction
(2) The Teacher's Contract
(3) Contractual Powers of the School Board
(4) Removal and Dismissal of Teachers
(5) Contractual Powers of the Teacher

The chapter headings are not mutually inclusive in all instances but seem to be logical divisions to the author.

Limitations of Study

This is not an attempt to classify legislative acts of the various states with regard to Contractual Powers, Certificate Requirements, Tenure Codes, or Formal Requisites of Teachers' Contracts. Cubberly and others have written excellent treatises on Certification of Teachers. 4 This study deals only with those powers of school boards and teachers as revealed in common law decisions relative to the teacher's contract. The contractual status is a single phase of the legal status. The title represents an attempt to delimit clearly the scope of this investigation. The term "teacher" used in this study refers to the "public school teacher", although the legal import of the term, however, is wide enough to include superintendent, supervisors, principals, and other supervisory officers.

CHAPTER II

THE TEACHER'S CONTRACT

Introduction: It is the contract of employment, strictly speaking, which changes the mere holder of a teacher's certificate into a teacher. It is also the contract which invests the teacher with his public character and establishes a legal relationship between the board of education and the teacher. It is the purpose of the contract to secure a definite written statement of an agreement. This may include that the teacher will teach in a system for the succeeding year. It may also be an agreement of certain duties and regulations as to payments for absence, and salary schedule. The contract may inform the teacher of certain legal rights which usually can be gained only, by the board contractually, such as the right to terminate upon definite notice, or to terminate for marriage of the teacher. The contract usually gives the time and length of service and salary.
The variety of stipulations found in contract forms indicates that many contractual reservations grow out of difficulties that have arisen between teachers and school boards. A survey of a variety of possible difficulties shows the futility of attempting to provide for them in the contract form itself.

In twenty-three states: Arkansas, Indiana, Idaho, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin, there are statutes which designate specific items that must appear in the contract forms. The Indiana State form has the largest number of items—forty in number. Twenty states have no laws stipulating what must be in the contract.

In a study of contract forms made by E. W. Anderson,1 which study consisted of collecting forms in cities from 10,000 and up to 100,000 from 50 per cent of his forms from cities of 100,000 or over, he has tabulated fifty-eight specific duties of the teacher. He comments thus:

In the main these refer to duties usually expected of the teacher. Duties outside of school, including restrictions, refer to outside of school work at other callings, residence in the district, visitation of homes, attendance at summer schools, enrollment in extension classes, abstinence from dancing and from social activities on school nights, and from tutoring pupils. Only one case of each of the three last restrictions occurred in the contracts studied.

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In the same study the author points out that between 1907 and 1916 a study of the cases of teacher-board litigation shows that 22 per cent of the cases might have been avoided by the wording of the contract.

Since the contract is an agreement that the teacher is to instruct under the supervision of the board of education, the teacher holds his position by virtue of such an agreement. The teacher contract does not differ from any other contractual relationship. It may, therefore, be judged by the same criteria as any other contract.

The common law has established a series of requisites common to all simple contracts and, except when controlled by statute the making and execution of contracts with teachers in the public schools are governed by the rules and principles relating to simple contracts in general. The "common law" requisites make up one division of essentials and the "statutory requisites", giving those prescribed by statute, such as requiring contract to be in writing, to be filed with the clerk, and other requisites, make up the second division of essential requisites of teacher contracts.

Williston in his treatise on Contracts, states that the requirements for the formation of a simple contract are:

1. Parties of legal capacity; (2) An expression of mutual assent of the parties to a promise or set of promises;
3. An agreed valid consideration. The agreement must also not

\(^2\)Cyclopedia of Law and Procedure 1081.
be declared void by statute or common law.

As these requisites are common to all simple contracts it will suffice our purpose to illustrate the application of them in a few typical teacher contracts. Thus, a vote of the board of education of a city in favor of employing a certain person as teacher does not constitute a contract with such a person, where the board immediately after the balloting "then and there" refuses to declare said person elected. The court said:

Employment implies a contract on the part of the employer to hire and on the part of the employee to perform services; and until such contract is mutually entered into it can have no binding obligation on either party.4

Again, a contract between school directors and a teacher to pay good wages lacks definiteness as to consideration and would, therefore, be too indefinite to found action upon. In an early Indiana case, where it was assumed that no statute required the contract of the teacher to be in writing, a teacher entered into a verbal agreement with a trustee, who agreed to pay her "good wages" to teach the ensuing term of school. In a suit for damages brought by the teacher against the district on account of its refusal to allow her to teach, it was held that because of indefiniteness no contract had been formed. "It is necessary for the information of the citizens," said the court, "that contracts made with teachers should be certain and definite in their terms; otherwise the citizens cannot guard their interests, nor observe the conduct of their

4Mallow v. Board of Education, 102 Cal. 642.
Fraudulent representation that a teacher was not married and would remain unmarried, made in order to secure a contract to teach, would be an illustration of an agreement to be declared void by the common law. It is essential to the validity of a teacher contract that it comply with all the formal requisites prescribed by the statutes controlling it. Such requisites will vary within different jurisdictions and no general rule can be laid down. The following statutory requisites, however, are among the most important ones noted, viz: contract to be in written form; to be signed by proper board officers; to be signed by the parties to the contract; time and place of teaching to be specified; amount of wages to be paid, and other agreements of each individual member of the school board on matters all important in public education, and this for the very purpose of preventing lobbying and the exercise of one-man power.

Teachers enter into contracts with boards of school control in whom is vested the authority to contract for teaching services within a public school district. The outstanding essential of a board's authority to contract with a teacher lies in unitary or corporate action. Individual members of a board of school control have no authority as individual members to contract with teachers. Their authority as members lies in their activity as a board and not as individual members of a board. For this reason boards may repudiate what

5Fairplay School Township v. O'Neal, 127 Ind. 95; 27 Ind. App. 65.
individual members do.

Thus, where board members agree in their individual capacity to employ a certain teacher and, subsequently, in a board meeting repudiate their individual agreements, the teacher has no redress as the agreement is held to be void on the ground of public policy. The teacher's contract of employment is a corporate contract and the statutes usually stipulate the manner of its authorization. Thus it was held that in the selection of a teacher the statutes required the teacher to be selected by the school board, and that a contract between the president and secretary of the board without the concurrence of the board was invalid, and could not be enforced. In such instance the court said:

This statute is a valuable one, intended to compel the expression of each individual member of the school board on the subject all important in public education, and this for the very purpose of preventing jobbery, and the exercise of one-man power in the conduct of our common schools.

By virtue of the corporate character of the board's authority, it follows that a board of school control must convene as a board in order to enter into a valid contract of employment with a teacher. Regarding the employment of teachers, the rule is generally stated that a contract with a teacher must be agreed upon at a convened meeting of the

board of school control of which all members had due notice
and an opportunity to be present. This rule is supported
by the overwhelming weight of authority, and the cases nega-
tiving the necessity of a formal meeting of the board for the
valid employment of a teacher are limited.

Short excerpts from leading decisions here follow to in-
dicate the principle upon which necessity, notice, and oppor-
tunity of meeting are predicated.

It is an elementary principle of law that when several
persons are authorized to do an act of a public nature, which
requires deliberation, they all should be convened because
the advice and opinion of all may be useful, though all do
not unite in the opinion. (Aikman v. School District.)

The determination of the members individually is not the
determination of the board. A board must act as a unit and
in the manner prescribed.... The statute does not vest the
powers of the district in three persons but in a single board
called the district board. (Harrington v. District Township
of Liston.)

The public selects each member of the board of direct-
ors and is entitled to his service. This it cannot enjoy,
if two members can bind it without receiving or even suffer-
ing the counsel of the other. Two could, if they differed
with the third, overrule his judgment and act without regard-
ing it, but he might by his knowledge and reason change the
bent of their minds, and the opportunity must be given him.
... No contract can be made except at a meeting, and no meet-
ing can be held unless all are present or unless the absent
member had notice. (School District v. Bennett.)

School District, 120 Ill. App. 430; Barton v. School District,
97 Ora. 30, Ann. Cas. 1917A 252; Ballard v. Davis, 31 Miss.
533; Casto v. Board of Education, 39 W. Va. 707; Harrington
v. Liston, 47 Iowa 11; Ryan v. Humphries, 50 Okla. 343, L.R.A.
1915 F 1047; School Dist. v. Bennett, 52 Ark. 511; Wintz v.

11Hermance v. Public School District, 20 Ariz. 314;
63; School District v. Stone, 14 Okla. App. 311; State of
Indiana v. Yanosdol, 15 L. R. A. 332 (Ind.); Weatherby v.
City of Chattanooga, Tennessee Ct. App. 1898.
An interesting question is raised as to whether boards of school control, exercising the wide discretion of appointive power, may delegate their authority to enter into contract with teachers, to individual board members, or board officers such as secretary, clerk, and superintendent of schools. Obviously, an agreement among school directors to parcel out among themselves the control of the district schools, delegating to each authority to engage a teacher for a particular school, is void. Moreover, the law undoubtedly holds that while boards may delegate to the superintendent of schools the power of selecting teachers, the power to authorize the appointment of teachers cannot be delegated, such power having been specifically conferred upon boards by statutes. The maxim delegata potestas non potest delegari applies. The power to appoint is vested solely in the board of school control. Such power requires judgment on the part of school directors and therefore cannot be delegated. Excerpts from leading decisions establish this principle of law.

This power of appointment requires an exercise of judgment and could not be delegated to the secretary or anybody else....Parties dealing with a municipal corporation are bound to know the extent of the power lawfully confided to the officers with whom they are dealing in behalf of such corporation and they must guide their conduct accordingly. The plaintiff had no right to rely upon the action of the superintendent as a basis of service in the capacity of teacher so as to become ultimately one of the permanently employed teachers. A knowledge of the law is imputed to her.

12 Mitchell v. Williams, 46 S. W. 325.
There is no such thing as apparent scope of authority in one professing to act as an agent for a public municipality of which the power and manner of exercise are so strictly and minutely defined by statute... If one contracts with another professing to act as agent of the district it is at the peril of the contracting party. 14

It does not follow, however, from the above-quoted authority, that a superintendent of schools may not be delegated the authority to contract with a particular teacher. That would not be the delegation of the specific authority to contract with teachers but rather an authorization to contract in a particular instance. Thus in Denison v. Inhabitants of Vinal Haven the court says:

It appears by the evidence that it was customary in that town for the superintendent to hire the teachers. The school committee could not delegate this authority to any other person or persons in the sense of relieving themselves from responsibility, but there can be no question that the superintendent of schools could employ teachers at their request. 15

In case the superintendent of schools employs teachers without any authorization of the board, as is often done in practice, then the validity of the contract made with the teacher depends upon subsequent ratification by the board in whom the appointive power rests.

Statutes quite generally make invalid a teacher contract in which a board member holds or may hold a pecuniary interest. Thus a contract with a near relative of a board member is held invalid. 16 The provisions of such statutes, however,
do not apply to relatives not specified within the statutes.\textsuperscript{17}

The authority to contract with teachers implies the power to agree upon compensation,\textsuperscript{18} and it is immaterial that the compensation fixed for the teacher exceeds the estimate of needs previously determined for the separate schools.\textsuperscript{19} The authority to contract with teachers carries with it the absolute right to decline to employ or reemploy an applicant for the position of teacher for any or no reason,\textsuperscript{20} nor will mandamus lie to compel such employment by the board.\textsuperscript{21}

In the absence of statutory provisions to the contrary, oral contracts with teachers are valid.\textsuperscript{22} There is no law of contracts making it inherently necessary to place a teacher's contract in writing. It is true, that most jurisdictions provide by statutes, that boards of school control are empowered to contract with teachers, to enter into written contracts, and to file the same with the clerk. A good statement as to the doctrine of validity of oral contracts entered into with teachers is found in Pearson v. School District.\textsuperscript{23} It should be observed in this case that the two judges who dissented from the majority opinion did so on the ground that the particular statute did require contracts with teachers to be

\textsuperscript{17} Board of Education v. Beal, 135 N.E. 540.
\textsuperscript{18} Bessar v. Auditor of City of Peabody, 146 N. E. 360.
\textsuperscript{19} Sams v. Board of Commissioners, 72 Okla. 94.
\textsuperscript{20} People v. City of Chicago, 278 Ill. 318, L.R.A. 1917.
\textsuperscript{21} Malloy v. Board of Education, 102 Cal. 642.
\textsuperscript{23} Pearson v. School District, 144 Wis. 620.
reduced to writing. They disagreed with the majority of the
court in regard to the interpretation of the statute. They
did not, however, dissent from the doctrine of the validity
of oral contracts in absence of statutory requirements. The
gist of the majority opinion in this case follows:

... But the statute does not say that the contract must
be in writing, and the court cannot read into the statute pro-
visions not found here for the purpose of rendering an oral
contract, otherwise unobjectionable, void because not in writ-
ing, in the absence of express statutory requirement. An
oral contract by a school teacher with a municipality or school
district is valid, in the absence of requirement that it be in
writing.... The provision relied upon by applicant is, at best,
only directory.... It is a detail respecting the keeping of a
record, and not a limitation upon the power to make an oral
contract. If the Legislature intended that such a contract
should be void if not in writing, it would have so declared.
... Here the board did meet and vote to hire the plaintiff,
who was a qualified teacher, holding a diploma or certificate,
and specified the wages to be paid and the term of service.
The plaintiff accepted the terms, and assented to the propo-
sition of the defendant. This constituted a good contract at
common law. It needs no citation of authority to the point
that statutes in derogation of the common law must be strict-
ly construed.

It is generally held that a parol contract, to avoid the
defect of indefiniteness, must be recorded in the minutes of
the school board and the minutes duly accepted. Such accept-
ance of the minutes indicates the acceptance of the parol con-
tract.24 The case of Pollard v. School District.25 however,
is authority to the contrary on this particular point.

Where the statutes require that the teacher's contract
be reduced to written form, and that no action shall be brought
upon any contract not made in conformity with such provision,

there can be no recovery by the teacher either upon the oral agreement or upon a quantum meruit. In many jurisdictions, it is expressly required that a contract with a teacher shall be in writing, and failure so to conform makes the oral contract with the teacher unenforceable at law. Nor could a teacher recover on such an oral contract under a quantum meruit, notwithstanding the services were necessary, acceptable, and beneficial to the school corporation. Moreover, a teacher cannot rely on a superintendent's authority to hire orally as the teacher is presumed to know the law.

Where a teacher has been regularly elected by a board of school control, it is the duty of the chairman and secretary of the board subsequently to enter into the written contract with the teacher. It has been observed that it is not necessary that the written contract be executed at the same time and place by the members of the board of school control. Although filing and attestation of the contract by the clerk may be specified as a statutory requirement, it has been held that the failure so to do cannot prejudice the

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28Lee v. York School Township, 163 Ind. 339.

29Taggart v. Sch. Dist., 96 Or. 422, 188 Pac. 908.

30Davison v. Harrison, 140 Ky. 520.
teacher, for such acts are not within control of the teacher. Such acts are held to be directory rather than mandatory.

Notwithstanding the rigid requirements of statutes in reference to contractual requisites already considered, the courts will often find a substantial compliance with the statutory formalities and thus maintain the validity of the teacher's contract. Thus, where a contract was signed by a teacher and trustee with the time for length of service left blank until it could be ascertained, the validity of the contract was not impaired. Again, a teacher's contract was not held void where the teacher's certificate did not accompany it. Failure of directors to sign full name, or to sign the contract, was held not to invalidate the contract where other requisites were substantially complied with. Again, it has been held that lack of formality in recording board minutes would not invalidate a teacher's contract. Failure to execute duplicate contracts has been held not to impair the validity, and where a teacher made a contract signed by a

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32Atkins v. Van Buren School Township, 77 Ind. 447.
35Cluene v. School District, 166 Wis. 452.
director who was at the same time president of the board it
was not invalidated by reason of failure of the president to
approve and file with the board. Here, as in previous cases
cited, there was substantial compliance with the statutory
requirements. If, through a mutual mistake, the writing fails to ex-
press the contract in any material particular, it may be re-
formed by a court of equity; for example, the signature of
a contract by "O. M. Lloyd, township trustee", may be charged
in equity to "O. M. Lloyd, school trustee" where under a state
law a township trustee has no authority to employ a teacher.

It appears in an Indiana case that a certain Miss Taylor
applied to a school board for a position. The record of the
board contained the following: "Moved and seconded that the
following teachers be employed for the ensuing year: Misses
Dean, Coats, Higgins, and Taylor - carried." Later, however,
the trustees repudiated this alleged contract with Miss
Taylor, who then brought suit for damages. The court allowed
the letter of application and the resolution of the trustees
to be considered together as the written terms of the con-
tract. The omission of Miss Taylor's Christian name was not
regarded as a material objection to the contract, as her
identity could be established by parol evidence. But the

38Benson v. Township Silver Lake, 100 Iowa 328.
alleged contract was held unenforceable on account of indefiniteness. Taken together the application and the order of the board, as the court pointed out:

The contract does not state when the schools in the town of Petersburg began in the year 1901 - neither the day nor the month - or the grade appellant was to teach, or the pay she was to receive. It cannot be claimed that they are definite in these essentials to a complete contract. Where a statute prescribes a mode of exercising a power, that mode must be adopted. Persons contracting with school trustees are bound to take notice that their powers are limited by law.40

However, the mere failure of the contract to state when the teacher's services are to begin or end does not render it unenforceable on account of indefiniteness, since the law will imply, "That the services are to be rendered within the school year and are to begin when the school board fixes the opening of the term."41

It should be noted that the mere vote of a school board in favor of employing a certain person as teacher does not constitute a contract of employment with such person. As the Supreme Court of California has declared:

The ballots were only an expression of choice on the part of the members casting them, and had no greater force or effect than an oral vote would have had. At most they amounted only to an offer of employment, which respondent had a right to refuse and the board had a right to revoke or cancel at any time before acceptance.42

40Taylor v. School Town of Petersburg, 33 Ind. App. 675, 72 N. E. 159.
41Butcher v. Charles, et al., 95 Tenn. 532, 32 S. W. 631; Com. of Section Sixteen v. Griswall, 6 Ala. 585; Grabb v. Sch. Dist., 93 Mo. App. 254; Denison v. Inhabitants of Vinal Haven, 100 Me. 135, 60 Atl. 798.
42Malloy v. Board of Education, 102 Cal. 642, 36 Pac. 948.
Of course if the teacher, in a letter of application had previously offered to teach, the board's vote would be an acceptance of that offer. If the teacher is careful to make his application in writing detailed and definite, an acceptance of it will form a contract unobjectionable from the standpoint of certainty. In such cases it is not necessary to a completed contract that the board notify the teacher of his election or that he notify it of his acceptance. It follows from the above principles that where a teacher has been regularly employed by a school board, a refusal of the president to sign the contract, as required by the statute, does not affect the validity of the contract. Manifestly, a valid contract must be mutual, certain, definite, and free from fraud and illegality, and must be legally authorized and executed and meet all the necessary requisites, both of the common law and the statutes.

43 Weatherly v. Mayor, et al., of Chattanooga, Tenn., 46 S. W. 136.
One object of this study is to determine the answer to such questions as the following: Who shall select and appoint the teachers? How are the limitations upon the appointive power determined and by whom? What discretionary powers do they possess? May such boards impose additional rules and regulations upon qualified candidates?

If a teacher must enter into a contractual status in order to enter upon professional duties the question immediately presses with whom must he contract. In the early colonial days the people in town meetings voted to establish and support a school, and then voted to select the school master for it. Here the people hired the teacher.

As schools grew and increased in size and importance, a general distinction between lay and professional functions in school
control was gradually differentiated. The hiring of teachers was one of the first professional functions to be subtracted from the people and assigned to a special group. These groups were recognized by legislatures and invested with statutory powers, chief among which was the power to contract with the teachers.

The powers of the school committee as they were later designated, are prescribed and limited by statute, and also by such provisions of the constitution of the state as are self-enforcing. In Rudy v. School District the familiar doctrine is clearly stated that a person entering into a contract for a school through its directors must at his peril take notice of the limited powers of the directors, and if he enters into a contract with them in excess of their powers, no recovery thereon can be had.\(^1\)

The doctrine that education is a function of the state is well established in American Law. The state may vest here authority in a state board of education, or distribute it to county, township or city organization throughout its territory.\(^2\) That the state should maintain control of the certification of teachers, and not release this power to local organizations was well illustrated in the Board of Education of Galesburg v. Arnold.\(^3\) In this case the general

1Rudy v. School District, 82 Iowa 682.
3Board of Education of Galesburg v. Arnold, 121 Ill. 11.
school law provided that:

No teacher shall be entitled to any portion of the school or township fund...who shall not at the time of his employment have a certification of qualification obtained under provision of this act.

It was urged that this general law had no application to Galesburg, as it existed under a special act which provided:

The public schools of said district shall be under exclusive management and control of the board of education...

It was claimed that the special act gave Galesburg management over the power to appoint teachers, that, therefore, it was an implied power of the Galesburg board to determine qualifications of teachers irrespective of the statute. The court declared, and defined the word "management" thus:

Management of the common schools...relates to the conduct of the school in imparting instruction. The power to employ teachers may have sufficient scope when limited to qualified teachers under the law,...they are not given the right to examine and pass upon qualifications as this power resides in the county superintendent.

Have the school authorities invested with the power of employing teachers unlimited discretion as to the qualifications of those qualified under the law, which they employ? The general view appears to be in the affirmative.

Thus it is said:

The board has the absolute right to decline to employ or to re-employ any applicant for any reason whatever or for no reason at all. It is immaterial whether the applicant is married or unmarried, is of fair complexion or dark, is or is not a member of a trades union, or whether no...
reason is given for such refusal. 4

Two judges in the same case dissent from this language, saying:

A rule can easily be imagined the adoption of which would be unreasonable, contrary to public policy, and on the face of it not calculated to promote the best interests and welfare of the schools. In our opinion, courts would have the power, in the interests of the public good, to prohibit the enforcement of such an arbitrary rule.

The question is important, because teachers may desire permanent tenure, or may have made contribution to pension funds. If there is no restriction on this power, trustees may virtually dictate the domestic, social, political, and industrial affiliations of teachers. Especially is this true if, as has been held, a teacher may validly agree not to do for a limited period what he has a legal right to do. 5

The question arises, may school boards impose additional requirements, such as mental tests, examinations, residence, and experience? Perhaps this doctrine is best stated by the Illinois Supreme Court in the following terms:

It may be conceded that boards of education have power to pass rules and regulations governing their teaching force and that generally such matters are within their exclusive discretion, but the boards have no power to pass an unreasonable rule in violation of the statute or constitution. 6

Local boards retain the power to determine the professional status of the teachers they employ and may add

4People ex rel. Fursman v. City of Chicago, 278 Ill. 318, 116 N. E. 158.
6People v. Harrison, 223 Ill. 540.
to the eligibility requirements of the state, provided such additional requirements are reasonable and not in lieu of or in conflict with, the laws of the state. 7

Thus the right of a local board to require a teacher to pass an examination prescribed by the local examining committee in addition to the possession of a statutory certificate is upheld by the Appellate Court of Missouri:

It must be admitted that in the interest of a higher educational qualification the defendant board of directors had the right, in addition to having a statutory certificate to require her to take an examination in which she should maintain a certain standard of fitness, as a teacher. 8

So too, has it been held that the local board, in addition to statutory requirement, may require the teacher to pass a physical examination, 9 or to possess additional years of teaching experience in kind and amount. 10

We have observed that local boards for the purpose of maintaining high professional standards could add to the eligibility requirements prescribed by the statute. Such requirements could be determined by examinations or other technique designed to evaluate the personal, social and professional equipment and ability of the teacher.

May boards also impose upon qualifying candidates rules


and regulations of a more personal and local character than those usually implied under the term "professional requirements"? May local boards impose upon the applicant sex limitations, religious qualifications, restriction upon residence or labor affiliations?

The answer will depend upon the court's interpretation of the discretionary power of school boards to select and appoint teachers.

This wide discretionary power is best stated in the decision of the court in Yoeman v. Board of Education:

The statutes vest boards of education with power to appoint teachers for their schools, and in the exercise of this power they cannot be interfered with by the courts unless there is gross abuse of the discretionary power given.

The discretionary power with regard to sex, is illustrated in the case of Commonwealth ex rel., Scott v. Board of Education. A sub-district board within the city of Philadelphia had elected a certain female teacher as principal of a mixed grammar school. The board of education notified the district board that the appointee was ineligible for the position, citing their rules and regulations that "male teachers only shall be eligible for principal-ship of a grammar school for boys or a mixed grammar school." The district board urged that the election of the teacher by a district board was not subject to confirmation.

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mation of the board of public education and also urged that the discrimination against their appointee was contrary to a constitutional guarantee of the state that:

A woman twenty-one years of age and upwards shall be eligible to any office of control and management under the school laws of the state.

The Supreme Court of Pennsylvania in this case held that the Board of Public Education of Philadelphia had the right to prescribe the qualifications of teachers, and in determining such qualifications for different kinds of schools the board may take into account the question of sex, and may determine that male teachers only may be principals of certain classes of schools. In so doing the board does not violate the constitutional guarantee because the office of teacher is not one of "control and management". Teachers are rather officers of instruction, and were not contemplated in the constitutional guarantee in controversy.

In another Pennsylvania case the discretion of the board in reference to sex is declared. In this case the board of education refused to certify a certain woman as supervising principal of a grammar school on the ground that she had not had the required experience as prescribed in their rules and regulations, and further, that in the opinion of the board a man principal was needed in the school. Again, the constitutional provision of the state

guaranteeing no discrimination against women holding an office of control and management under the school laws of the state was relied upon to defeat the refusal of the board of education to appoint a woman to the office of supervising principal. The court in this case went even further than in the preceding case, in upholding the discretion of the board in reference to sex. The following principle was given:

If it be conceded that the office of supervising principal is an office of control and management, within the meaning of the constitutional provision...her eligibility does not take away or limit the discretionary power of the board in determining who should be appointed....We do not see that sex is an important issue in the determination of this case. No woman should be excluded from any position she is competent to fill because of her sex....no woman qualified for supervising principal should be refused an appointment because of her sex alone. The question of eligibility is one thing. The selection among a class of eligibles is quite another. Sex ought not to affect the first, it may help under some circumstances to determine the last.

The rules given for qualifications for a supervising principal came within the control of the board of education. They were reasonable rules and the board would not interfere.

The religious belief of teachers, or lack of it, does not act as a restriction upon the exercise of the wide discretionary power of school directors in their power of selection and appointment. On this point the Illinois Supreme Court says:

The statute has not prescribed any religious belief as a qualification for a teacher in the public schools.
The school authorities may select a teacher who belongs to any church or no church as they may think best.\textsuperscript{14}

Again, in \textit{Hysong v. School District} the Supreme Court of Pennsylvania declares:

Unquestionably these women are Catholics...believing fully in the distinctive creed and doctrine of Catholicism. But this does not disqualify them. Our Constitution negatives any assertion of incapacity or ineligibility to office because of religious belief.... If by law, any man or woman can be excluded from public office or employment because he or she is a Catholic that is a palpable violation of the spirit of the Constitution ....Men may disqualify themselves by crime, but the state no longer disqualifies because of religious belief.\textsuperscript{15}

A nice question as to the discretion of the board of education is raised in the so-called religious garb cases. There are two such outstanding cases, one in New York and one in Pennsylvania. The facts of each are practically on all fours, but opposite decisions are reached in each jurisdiction by the courts of highest resort. In the Pennsylvania case the facts are essentially as follows.\textsuperscript{15} Two sisters of the order of St. Joseph held regular certificates granted them in their religious names. A contract to teach in the public schools of Gallitzan Borough was issued to each of these sisters in their religious names by the Board of Education of Gallitzan. While teaching in the public schools they wore at all times the familiar and distinctive garb of the order together with crucifixes.

\textsuperscript{14}\textit{Millard v. Board of Education}, 121 Ill. 297, 10 N. E. 669.

and rosaries of the order and sect. There was no evidence that they used the garb or insignia to attract particular attention to themselves, or endeavored to use them to impart religious or sectarian instruction. They were required by their vows to the church to wear such garb and such insignia. Children in the school addressed these teachers as Sisters. The evidence showed that the Board of School Directors of Gallitzan Borough intended to employ persons of a particular color and the court to determine whether Catholic Sisters in certain rooms. It also appeared in evidence that certain religious instruction and exercises of the Catholic church preceded and followed the opening and closing of the public school session. Protestant children were not required to attend or participate in these exercises or instruction. The question at issue was: Did the instruction in the school become sectarian under the conditions herein enumerated? The court held that it was not called upon to determine whether the directors acted wisely or not, but to determine under the law whether sectarian instruction had actually been given or was liable to be given in the public schools. The policy of the directors of Gallitzan in discriminating in favor of persons belonging to a particular class might indicate a reprehensible indifference on the part of the directors to the policy of the law to divorce all matters tending to sectarianism from the public schools. The court, however,
found it to be the policy of the school law of the state which lodges in boards discretionary powers to employ teachers, not to interfere in the exercise of that power unless it be arbitrarily exercised to the detriment of the school. This discretion, when it does not transgress the law, is not reviewable by the courts. Referring to the finding of fact upon which the decision turned, Justice Dean said:

The dress is but an announcement of the fact that the wearer holds a particular belief....Are the courts to decide that the cut of a man's coat or the color of a woman's gown is sectarian teaching because they indicate a sectarian religious belief?

The dissenting judge in this case, however, reached an opposite conclusion in reference to the facts. Justice Williams said:

They (Sisters) have ceased to be civilian or secular persons. They have become ecclesiastical persons known by religious names and devoted to religious work....The question presented on this state of facts is whether a school that is filled with religious or ecclesiastical persons as teachers...wearing their ecclesiastical robe and hung about with the rosaries and other devices peculiar to their church and order is not necessarily dominated by sectarian influence and obnoxious to the spirit of the constitutional provisions and school laws.

In the New York case referred to, the state superintendent of public instruction had directed that teachers wearing the garb peculiar to a religious order shall not be employed by a trustee of a school district or, if employed, shall be dismissed unless the wearing of the garb is discontinued. The court states, the question to be decided is whether the discretion of the state superintendent concerning
the wearing of a religious garb was a reasonable exercise thereof or not. The court held that the same rule of law was applicable to the state superintendent's discretion as was applicable to the school directors' discretion, and cites the case of Rawlinson v. Post as an authority in point. In that case the court points out that the school directors have power to classify scholars; to regulate their studies and their department; but that all such rules and regulations must be reasonable and calculated to promote the objects of the law. The court then addressed itself to the question of fact. Is it unreasonable to prohibit the wearing of a religious garb in the public school? The court found that it was not. The opinion of the dissenting judge in the Pennsylvania case, was cited with approval, and in agreement with him the court held that the wearing of a religious garb by a teacher within a public school may constitute sectarian influence of the type prohibited by law and public policy. The outstanding agreement in these two opposite decisions is the declaration of the doctrine that boards of education have wide discretion in the selection and appointment of teachers in the public schools. The point of departure is on the interpretation of the facts; one court holds that the wearing of a religious garb was sectarian influence, and the other court holds that it was not.

16 Rawlinson v. Post, 79 Ill. 567.
The question has been adjudicated in two states as to whether a board of education may refuse appointment or reappointment to teachers affiliated with labor organizations. Like the preceding questions of discretion in reference to sex, religion, and religious garb, this is plainly one of reasonableness of the discretionary power to be exercised by boards of education. In Frederick v. Owen, the resolutions of the board treated affiliation with labor unions as equivalent to resignation by the teacher, and said that all teacher contracts or appointments to teach should contain a stipulation to the effect that no teacher should be appointed or reappointed who did not freely first assent to these requirements of the board.\textsuperscript{17} The court held:

17Frederick v. Owen, 35 Ohio C. C. 538.
for these stated reasons, and then punish them for a con-
tempt if they fail to do so?... It is difficult to con-
ceive of anything that would be more certainly productive of confusion in practical application than the proposi-
tion that the courts may state to public officers the vari-
ous grounds upon which they shall not determine against appointing an applicant for a position under the control of such officers.

The court said such procedure would be

...like attempting to define political affiliations which are not good grounds for refusal of public appoint-
ment and punish if denying appointment on political grounds.

The court concludes with the statement of suggestive remedy in such cases:

The members of the board of education are elected by the people. If the people make mistakes in their selection of men to fill their important positions, the ballot box and not the court is the place to correct these errors.

A similar case arises in Chicago. A rule of the city board of education prohibited any teacher from holding mem-
bership in a labor union or any organization of teachers af-
"filiated with a trade union or federation of trade unions.

The rule also provided that "any member of the educational department who shall be found guilty of violation of any provisions of this rule shall be liable to dismissal from the service or to such lesser disciplines as the board, in its discretion, in each case, shall determine." Some thirty-five hundred of the seven thousand teachers were members of the Chicago Teachers Federation which was affiliated with a federation of trade unions. The court laid down the following rule:

People ex rel. Fursman v. City of Chicago, 278 Ill. 318.
No person has a right to demand that he or she shall be employed as a teacher. The board has the absolute right to decline to employ or reemploy an applicant for any reason whatever, or for no reason at all. The board is responsible only to the people of the city from whom, through the mayor, the members have received their appointments. It is no infringement upon the constitutional rights of anyone for the board to decline to employ him as a teacher in the school, and it is immaterial whether the reason for the refusal to employ him is because the applicant is married or unmarried, is of fair complexion or of dark, is or is not a member of a trade union, or whether no reason is given for such refusal. The board is not bound to give any reason for its action.... Questions of policy are solely for the determination of the board, and, when they have once been determined by it, the courts will not inquire into their propriety.

Judges Farmer and Carter, while concurring with the conclusions reached in this opinion did not concur in all the reasoning of the opinion. They held as follows:

This power does not, however, include the power to adopt any kind of an arbitrary rule for the employment of teachers it chooses to adopt, for a rule can easily be imagined, the adoption of which would be unreasonable, contrary to public policy, and on the fact of it not calculated to promote the best interest and welfare of the schools.

May local boards of school control limit or prescribe the residence or boarding locality of the public school teacher? Will the courts hold such rules and regulations within the discretionary power of boards? The California Supreme Court held that a resolution of the Board of Education of San Francisco, requiring teachers and other school employees to reside within the city and county during their employment, is a reasonable exercise of power under a San Francisco charter empowering the board of education to enforce
necessary regulations for the government and efficiency of the schools.\textsuperscript{19} This particular case, it seems, originated out of the desire of the plaintiff teacher to reside with her parents in Berkley across the Bay. The court found that because of the inability of the steamship companies to maintain a reliable schedule, the board of education was justified in enacting the particular resolution in order to maintain the efficiency of the schools. A holding of the Supreme Court of California that the Board of Education of San Francisco may require its teachers to reside within the city is cited as example of the discretionary power given the school board. It was pointed out that such regulation does not unreasonably restrict a teacher's choice of a residence and may well be for the direct benefit of the school. The court said:

In contemplation of the fact that the teacher stands in loco parentis, that it may become her duty to devote her time to the welfare of her pupils, even outside of school hours, that the hurrying for boats and trains cannot be conducive to the highest efficiency on the part of the teacher, that tardiness may result from delays or obstructions in the transportation which a non-resident teacher must use, .... all these, and many more considerations not necessary to detail, certainly make the resolution in question a reasonable exercise of the power of the board of education.

In other jurisdictions, however, it has been found that it was unreasonable for the local board to prescribe residence or boarding limitations.\textsuperscript{20} The rule appears to be that

\textsuperscript{19}Stuart v. Board of Education, 116 Cal. 10.
\textsuperscript{20}Home v. School District, 75 N. H. 411, 35 Ohio C. C. 538.
a teacher's residence or boarding place may be prescribed by the employing board when it is necessary to obtain a quality of service reasonably demanded by the board of education.

May a board contract with a teacher for a term beginning beyond the official term of some of the contracting board members? The prevailing rule as gathered from the authorities seems to be that, where there is no limit placed on the exercise of power conferred upon school trustees or boards to contract with and employ teachers, a contract by such trustees or board employing a teacher for a term to commence or continue after the expiration of the term of such trustees or board is valid and binding upon successors in office. The rule may be stated as follows:

In the absence of express or implied statutory limitations, 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 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 members and subsequent to the reorganization of the board as a whole, or even subsequent to the term of the board as a whole. But, the hiring for an unusual time is strong evidence of fraud and collusion, which if present would invalidate the contract.\(^{21}\)

Thus, it has been held that a school board may contract to employ a teacher for a period to commence in the future after the expiration of the term of the board, and the fact is immaterial that the employment was for the purpose of

\(^{21}\) *Urie v. Board of Education*, 86 Okl. 255.
forestalling the new board, where fraud on the part of the board making the contract is not alleged. The courts invariably hold that the board is a continuous body and, while the personnel changes, the corporation continues unchanged. Such corporation has the power to contract, and its contracts are contracts of the board and not of the individual members.

Gardner v. North Little Rock Special School District exemplifies the rule just stated. In this case the board engaged a superintendent for a period of two years, and although a written contract was entered into, the board discharged the superintendent at the end of a year. It was claimed in this case that the board could not make a valid contract for a two-year term. The court held:

The proper rule seems to be that unless a statute prescribes a time limit upon the duration of such a contract, the board may make a contract for a reasonable length of time, and the reasonableness of the contract is to be determined by all the circumstances. The mere fact that there are changes in the personnel of the board during the life of the contract does not of itself render it unreasonable in duration of time.

Again, in a Connecticut case, the plaintiff was hired for a year by a school committee of the district and discharged at the end of the third quarter by a new committee, ostensibly on the grounds that the employing committee had no power to bind the district beyond their term of office. The court said:

It would be a novel and most mischievous doctrine that the officers who manage the governmental corporations of the state have no power to make a contract which was not to be performed within the time for which they were elected to office. 24

Gates v. School District represents one of the best considered cases on the authority of boards to bind their successors in office. 25 The plaintiff on May 3, 1888, was elected superintendent of schools for one year beginning July 1, 1888. On May 10, plaintiff accepted position. The annual school board election was held on May 19, at which time new members were elected and failed to recognize plaintiff as superintendent and proceeded to the election of another superintendent. In this jurisdiction the statute provided that:

Boards of directors shall have power to employ superintendents of the schools.

The court pointed out that this power is granted in the broadest of terms without placing any limitations or restrictions on its exercise. It was contended in this case, that the selection of the superintendent during each year should be left to the exclusive control of the particular board for each year. The court said in reference to this contention:

As a matter of policy an argument might be made on either side of that contention. There is nothing in the law to sustain the affirmative. Public interests might suffer from unwise contracts covering an extended term in the future. They might suffer equally for want of power to make a contract when a good opportunity offered. But with the question of policy, we have no concern except so far as an aid

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24 Wilson v. East Bridgeport, 36 Conn. 280.
in ascertaining legislative intent.... There is nothing in the act that the legislature intended either more or less than it said. We, therefore, conclude that the act furnishes an accurate expression of legislative intent, and that there is no law that forbids the school board to make a contract for a superintendent for a term beginning after some members of the board go out of office.

The conclusion of this case is sustained by the weight of authority.26

It may be pointed out that teachers, unlike the members of the profession of law or medicine, in addition to being certified to by the state, must enter into a contractual status in order to practice their profession. Therefore, it has been discovered from the investigations undertaken in this chapter, that a teacher must secure his contract to teach from a board of school directors who alone are authorized by law to enter into such contracts with teachers. It seems to be a well settle law that in the absence of controlling statutory provisions, the authority of the board to employ teachers includes the power to dismiss. Therefore, the courts have invariably ruled that, when a teacher was

dismissed or failed of reappointment, such teacher possessed no vested rights of contract. It has been seen, furthermore, that courts invariably construe a wide range of discretionary power to boards of school directors on the ground that boards chosen by the people are the educational-policy-forming body for the state, and not the courts; and if boards abuse their discretion, the electorate have their remedy through the ballot box.

CHAPTER IV

REMOVAL AND DISMISSAL OF TEACHERS

Up to this point we have investigated the conditions under which teachers become eligible to contract; are selected and appointed to a teaching position; and enter into and execute contracts. In this chapter the conditions under which a teacher may be removed, dismissed or discharged will be considered. It will be necessary to inquire into the authority and right of school boards to remove or dismiss, and the conditions under which the right may be exercised, including the mode of removal or dismissal.

The terms "removal" and "dismissal" are often used interchangeably. Strictly, the word "removal" in reference to teachers' contracts implies some personal separation of duty, while the more inclusive term "dismissal" means termination of contract for whatever cause.

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In the absence of expressed statutory provisions in
reference to the removal or dismissal of teachers there is considerable authority that boards of education have the implied power to dismiss for sufficient cause, which at common law, would justify an employer in discharge of his servant. In short, the right to employ a teacher carries with it by necessary implication the authority to dismiss a teacher for adequate cause.\(^1\)

To what extent at common law may this implied power of dismissal be exercised? A dictum in *Loehr v. Board of Education* would indicate that this power was unlimited, for the court said in this case:

In the absence of a constitutional or statutory limitation, boards of education may exercise an unlimited discretion in the employment and dismissal of teachers as well as their transfer and assignment.\(^2\)

In *Kilderhouse v. Brown*, although there was no statutory authority to dismiss, yet it was held that the trustee had power to discharge a teacher before the expiration of his contract at any time, even though he was properly qualified in all respects and performed his services in a proper manner.\(^3\) On the other hand, there is found the case which holds that in the absence of statutory authority to dismiss, the school board has not the power to discharge a teacher for cruel treatment and profane and abusive language

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\(^3\)Kilderhouse v. Brown, 17 N.C. 401.
toward pupils. There is found a third case in which the Wisconsin Court said:

We think the only power which the board has to discharge a teacher is the power which they may exercise on behalf of the district when the teacher is guilty of some breach of his contract — or when the teacher has lost all right to teach by reason of the annulment of his certificate in the way prescribed by statute.

This case assumes that the right to employ a teacher carries with it by necessary implication, the authority to dismiss such teacher, still such authority to dismiss is limited to just and sufficient cause and said board must act with discretion and judgment. However, where the statute allows the board to remove for certain specified causes, the board may so contract with the teacher as to gain the right to remove for other causes although some cases are to the contrary.

It is possible to reserve in the contract of employment the right to dismiss the teacher at will or if his services are unsatisfactory, especially if no statute specifies the causes for which teachers may be removed. However, such right must be exercised in good faith; and in case the jury deemed the dismissal improper, the teacher can recover damages.

4Arnold v. School Dist., 72 Mo. 226.
5Tripp v. School Dist., 50 Wis. 651.
for a breach of contract. 8

The principal causes justifying dismissal of a teacher at any time regardless of contract are (1) immoral conduct; (2) unprofessional conduct; (3) insubordination; (4) negligence; (5) inefficiency and incompetency.

Actual or reputed immorality of a teacher is sufficient cause for dismissal. 9 A teacher may be dismissed before his services begin, but the board must prove that it is for immorality charge and not a dismissal on account of incompetency. 10

The immorality on the part of a teacher warranting his removal does not need to be in connection with his school work. 11 It is not necessary on account of it his license to teach be revoked. As was stated by the Chief Justice Tindall:

The general want of reputation in the neighborhood, the very suspicion that he has been guilty of offenses stated against him in the return, the common belief of the truth of such charges amongst the neighbors, might ruin the well being of the school if the master were continued in it, although the charge itself might be untrue and at all events the proof of the facts themselves insufficient before a jury. 12

Indictment of a school superintendent for adultery was held sufficient grounds for dismissal although the verdict was afterward set aside and the prosecution dismissed, since not
only "good character but good reputation" is necessary to the greatest usefulness in his position.13

Obviously unprofessional conduct might be immoral but in some instances might be grounds for dismissal. Thus a teacher’s advocacy before his class of the election of a particular candidate for public office is unprofessional conduct warranting suspension, as it introduces into the school questions foreign to its purpose, stirs up student strife and disrupts discipline.14 Where a Quakeress, a school teacher stated that she would not uphold her country in resisting invasion, that she did not want to help the U.S. in carrying on war, and would not urge her pupils to do Red Cross work or buy thrift stamps, it was held that the board of superintendents’ dismissal of her on the grounds of unprofessional conduct would not be disturbed by the court.15

In holding that the discharge of a superintendent for alleged insubordination and political activities was wrongful, the Supreme Court of Arkansas indulges in a discussion of the political rights of teachers.

There is no contention that the plaintiff was lacking, to any degree in moral character, or habits, or health, or that he was not up to a high standard of ability for the discharge of the duties of his office, nor that he was in any degree inefficient. The sole contention is that he

persistently pursued policies in hostility to the views of the members of the board, and that his overzeal in the political affairs of the district was detrimental to the school interests and rendered him unfit to discharge his duties.

It is shown that the plaintiff favored a somewhat ambitious plan for the enlargement of the school properties, for expensive buildings and grounds, and that in this policy he was supported by an even half in numbers, of the board of directors, but was opposed by the other half. All the witnesses who testified on this subject stated that there was lack of harmony between the superintendent and the board, but never any harsh feelings or offensive conduct. The most that the evidence shows on this subject is that the plaintiff adhered persistently to his views with respect to his plans for improvement in opposition to the wishes of at least half of the members of the board. It shows that he was not disposed to treat the decision of the board as final, in the sense that he ceased to attempt to impress his views upon the board but there is no evidence to show that there was any obstructive tactics on the part of the plaintiff, nor any overt act of insubordination. Certainly they are not denied the right of a reasonable amount of activity in all public affairs.16

Dismissal for insubordination would include the case of the teacher, dismissed because she refused to comply with a reasonable regulation of the board as, for instance, a rule requiring teachers to be vaccinated.17 So, too, a teacher may be discharged for refusing to receive back a pupil whom he has suspended after his action has been overruled by the school directors.18 Refusal to obey the rules of the board prohibiting the reading of the Bible in the public schools,19 was held to be sufficient cause for dismissal.

Cross neglect or inattention to duty is a cause for

19Board of Ed. v. Pulse, 7 Ohio N. P. 58.
dismissal for negligence. Continued tardiness and indifferences to needs of children were held to be good grounds for dismissal.

Failure to renew a license to teach was held not to be cause for dismissal unless provision was made for termination of the contract in such event. Nor was failure to perform janitorial duties, such as carrying fuel, making fires, and preparing building for occupancy considered negligence in performance of duty in absence of stipulation in teacher's contract to perform such work.

Incompetency in a teacher generally connotes teaching inability, either from insufficient learning or incapacity to impart learning to others, and is therefore a cause for dismissal. Lack of requisite qualities of temper or discretion in an otherwise good teacher was held to be statutory cause for dismissal. Failure to manage and control the school may constitute an inefficiency sufficient for dismissal. However, inability of a physical training teacher to act as football coach in the Rockwell v. School

26 Eastman v. Rapids District, 2 Iowa 590.
District in Oregon was held as not valid ground for discharge of a high school athletic director. In other words, apart from immorality, the personal defects of a teacher to justify his removal must militate directly against his school work, rather than his popularity in the community. Thus, chewing tobacco and spitting the juice through the screen windows of the schoolhouse does not justify his discharge. School officials may not remove a teacher for matters beyond their jurisdiction, and not relating to the school; thus, a school board may not fix a teacher's boarding place and dismiss him because he refuses longer to board there.

In the absence of a statute or a valid contract permitting it, can a female teacher in the public schools be removed on account of her marriage? The courts of final jurisdiction have uniformly answered the question in the negative. The idea that marriage does not necessarily disqualify a woman for teaching has been upheld, and any other rule is regarded as arbitrary and unreasonable.

A board of education may refuse to employ a married woman as a teacher, just as it may refuse to employ one who is not a normal or university graduate. Moreover, unless

a statute rules otherwise, the board may employ a woman teacher only upon condition that she will remain unmarried during the term; and upon her failure to observe this condition, it may rescind her contract.\textsuperscript{31} However, an illegal regulation cannot become a part of a teacher's contract; therefore, where by statute a school board is authorized to remove a teacher only for "gross misconduct, insubordination, neglect of duty, or general inefficiency," it cannot by regulation provide that the marriage of a teacher vacates her position.\textsuperscript{32}

A strong statement of this point is found in an opinion of the Supreme Court of Oregon:

We prefer to proceed with the inquiry and determine whether the single fact of marriage can in advance and alone be said to be a reasonable cause for dismissal. Efficiency and competency of teachers and the welfare of the schools are, of course, consummations "devoutly to be wished". If a teacher becomes inefficient or fails to perform her duty, or does some act which of itself impairs usefulness, then a good or reasonable cause for dismissal would exist. The act of marriage, however, does not, of itself furnish a reasonable cause. That the marriage status does not necessarily impair the competency of all women teachers is conceded by the school authorities when they employ married women as they are even now doing to teach in the schools of this district.

The reason advanced for the rule adopted by the board is that after marriage a woman may devote her time and attention to her home rather than to her school work. It would be just as reasonable to adopt a rule that if a woman joined

\textsuperscript{31}Guilford School Twp. v. Roberts, 29 Ind. App. 355, 62 N. E. 711.

\textsuperscript{32}People ex. rel. Murphy v. Maxwell, 177 N. Y. 494, 59 N. E. 1092.
a church, it would work an automatic dismissal on the imagined assumption that the church might engross her time, thought, and attention to the detriment of the school. 33

In cases in the states of West Virginia 34 and New York, 35 where the statute provides certain charges for dismissal, the Court of Appeals held that the board of education had no authority to make such a by-law under the terms of their charter.

A promise not to marry is not legally binding on the teacher according to the great weight of authority. A contract in general restraint of marriage is void because it is contrary to public policy.

Courts refuse to enforce or recognize certain classes of acts because they are against public policy on the ground that they have a mischievous tendency, and are thus injurious to the interests of the state, apart from illegality or immorality; a contract in restraint of marriage is of this nature. 36

Where the restraint upon marriage is a mere incident to the main object and purpose of the contract, the courts as a rule hold that the contract is not void in all of its terms, but only with respect to the promise not to marry. 37

33 Richards v. District School Board, 78 Ore. 621, 153 Pac. 482.
It would seem, therefore, that a provision in a teacher’s contract restricting her right of marriage is void and without effect.

No court of final jurisdiction it seems, has yet passed on the constitutionality of a statute specifically stipulating marriage as a course for dismissal of women teachers. In a number of cases, however, laws have been upheld which authorized boards to dismiss at pleasure.38

It may be said then that the dismissal of teachers because of marriage is regarded by the courts as unreasonable. Should a teacher misrepresent her marriage status, her contract would be void because it was fraudulently obtained. Where a teacher promises in her contract not to marry, that provision in the contract is without effect because it is contrary to public policy.

A statute may give a school board the power to dismiss a teacher without giving him any notice of the charges against him or any trial thereon.39

The statutes of most of the states, however, provide

38People v. New York Board of Education, 23 N. Y. S. 473; Jones v. Nebraska City, 1 Neb. 175; Gillian v. Board of Regents, 98 Wis. 1042, 24 L. R. A. 356.
mouth and tie his hands. He comes into this court of appeal, and asks whether he may be lawfully tried, convicted, and sentenced without so much as notice that he is accused. A good character is a necessary part of the equipment of a teacher. Take this away, or blaken it, and the doors of professional employment are practically closed against him. Before this is done there should be at least, a hearing, at which the accused may show that the things alleged are not true, or if true, are susceptible of an explanation consistent with good morals and his own professional fidelity. We think it is plain, too plain for serious discussion that the action of the trustees was irregular and unjust to the appellant. 43

Considering the removal of a teacher without a hearing, the Supreme Court of Tennessee has said:

It is a rule of common law, in accord with the plainest principles of justice, that to warrant the removal of an official under a limited power specific charges should be made and all witnesses in the matter be sworn. 44

Where a teacher is entitled to notice of the reasons for his dismissal, a letter saying that the trustees believe it for the best interests of the school that his services be dispensed with is not sufficient. 45

The action of trustees in dismissing a teacher without a hearing is waived by his appearing and asking for and being granted a hearing, which results in a finding that he is guilty of the charges against him. 46 A trial of charges against a teacher by the board of directors is not objectionable on the ground that they are accusers rather than

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44 Morley v. Powers et al., 10 Lea (Tenn.) 219, 73 Tenn. 691.
45 Underwood et al. v. Board of School Commissioners, 103 Md. 181, 63 Atl. 221.
judges, or because of their prejudice, whenever they constitute the only tribunal authorized to try such charges. 47

But where charges are filed against a teacher, a director who is a personal enemy of the accused and the "prime mover" of the charges against him, and who has announced his intention to join in a finding of guilty and in removing the accused, no matter what the evidence may be, is incompetent by reason of his prejudice to participate in the trial of such charges. 48

With regard to the right of a teacher to have the courts review his alleged improper dismissal, the attitude of many courts is well expressed by the Supreme Court of Idaho, 49 as follows:

After an examination of the various authorities cited by respective counsel, as well as others, we conclude that the general principal running through all of them is that where the power to remove is restricted or limited to certain reasons or causes, the final determination as to whether the case falls within any of these causes rests with the courts, and may be reviewed or inquired into by them; and that, on the other hand, where the power is general, unlimited, and unrestricted, and is once exercised, it cannot and will not be questioned or examined into by the courts.

Many cases 50 concur with the above doctrine; but it is

47 White v. Wohlenbury, et al., 113 Iowa 236, 84 N. W. 1026.
49 Ewin v. Independent School District, 10 Idaho 102, 77 Pac. 222.
not believed that such dismissal is conclusive whenever the fraud, corruption, or oppression exists, 51 or whenever any abuse of discretion is shown. 52 Under some statutes a teacher who is aggrieved by the action of the board in removing or dismissing him has an appeal to higher school officials, such as a county or a state superintendent of public instruction, whose decision generally is final as to questions of fact and not subject to review by the courts; 53 and if such an appeal is not done immediately, or in a reasonable time, the teacher's dismissal becomes final. 54

A teacher may be removed from his position for reasons in no wise dependent upon the dismissal grounds heretofore discussed. These dismissals might be listed as indirect dismissals not due to "cause". Thus, the necessity for the abolition of a teaching position, the exigency of an insufficient quota of pupils, lack of funds, and the transfer or reassignment of a teacher to another position, are often indirect causes of a teacher's removal from a given position. What are the teacher's rights under such circumstances?

It sometimes happens that a teacher's services are no longer needed because of a change in conduct of the schools.

52 Finch v. Fractional School Dist., 225 Mich. 674, 196 N. W. 532; Gillan v. Board of Regents, 88 Wis. 7, 58 N. W. 1042; State v. Hulder, 78 Minn. 524, 81 N. W. 532.
54 Harkness v. Hutcherson, 90 Tex. 383, 38 S. W. 1120.
Boards under statutory authority to reorganize or modify the conduct of a school find it necessary to abandon certain teaching positions, thereby accomplishing the discharge of teachers who otherwise would not have been dismissed for cause. Thus, it was held that the board of education in the City of New York not only was authorized under the statute to establish evening schools, but also was authorized in its discretion to change the system of conducting them, and, if the results of the change involved the abolition of the former position of principal, such principal had no recourse for the retention of said position. 55

Even in tenure jurisdictions where a teacher serves during the term of good behavior, or until removed for cause, boards under statutory authority may abolish old positions and create new ones, perfect consolidation, or economize in the management of the schools in the reduction of the teaching force. 56

Again, it has been held that a teacher might be dismissed before the expiration of his contract, where the district failed to enroll the statutory quota of pupils. 57

Authority is divided as to whether a teacher hired for a definite term may be dismissed when the funds of the

district become exhausted. The issue turns on the power of the boards to exceed the debt limit or the appropriation authorized, for the purpose of keeping open a school. In *Riley v. School district* it was said that in order to make it appear that the contract with the teacher is ultra vires on the part of the board, it must appear that not enough revenue was "provided" to continue the school longer, and not merely that not enough was collected and turned over to the treasurer of the school board. In general, it may be said that a teacher will not be dismissed for lack of funds, if there are any legal means by which the necessary funds can be raised.

Another case of indirect dismissal has been observed where a teacher is transferred or reassigned in such manner as to deflect his statutory right to removal for cause only. This becomes an important matter in a tenure jurisdiction where teachers hold positions for life unless removed for cause. Thus it has been held that the removal of a teacher may be accomplished by the transfer of a teacher to a position involving less pay and rank, or by removal from a higher to a lower grade.

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that a teacher shall not be discharged for cause before the end of his term without the preferment of charges against him, due notice, and an opportunity to be heard. 40

In most of the cases dealing with the dismissal of teachers, their right independent of statute, to receive notice of the charges against them and a hearing in reference to the same has not been decided; but a few cases have asserted that they have this right without referring to any statute as giving it, 41 although there is authority to the contrary. 42 Thus, without basing its decision on a statute, the Supreme Court of Pennsylvania has held that a principal of a normal school, without objection, cannot be regularly discharged by the board of trustees for immoral conduct without a hearing. The court stated:

The appellant was summarily ejected from his position about the middle of the year for which he had been regularly elected. When he asked for a reason for such treatment, he was pointed to his conviction on four distinct charges, of immoral conduct, spread upon the minutes of the board of trustees. When he denied the regularity of such action a court of equity was appealed to by the trustees to close this case.

40Benson v. Dist. Township of Silver Lake, 100 Iowa 328, 69 N. W. 419; Clark v. Wild Rose District, 47 N. D. 297, 182 N. W. 307, 35 Cyc. 1092; Curttright v. Independent School Dist., 111 Iowa 20, 82 N. W. 444; Ewin v. Independent School District, 10 Idaho 102, 77 Pac. 222; Inhabitants of Shearmont v. Farwell, 3 Me. 450; McKenzie v. Board of Education, 1 Cal. App. 405, 52 Pac. 392; Morley v. Powers et al., 10 Lea (Tenn.) 219, 72 Tenn. 691.


42Ewin v. Independent School District, 10 Idaho 102, 77 Pac. 222.
Suoh transfers or reassignments are held to be de facto dismissals. In the California cases, a teacher was granted a leave of absence by the board of education. During her absence the position was filled by another teacher. Upon her return she was assigned to a lower grade at a lower salary. This was held to be an unlawful removal of a teacher without cause. A later California case, Loehr v. Board of Education, appears to hold to the contrary.

The legislature certainly intended to leave such freedom of action in a board of education as would permit it in its discretion to make such assignment or transfer as is complained of in this case. 61

The Supreme Court of Oregon, however, has held that the transfer of a permanently employed teacher was not equivalent to a dismissal. 62 The transfer from a principalship to another school as instructor was, within the discretion of the board, without a necessity for notice and hearing.

CONTRACTUAL POWERS OF THE TEACHER

A consideration of the powers of the teacher should enable the teacher better to create and to protect his own interests thereunder. In view of the preceding chapters, this chapter will attempt to give the privileges of the teacher under contract: his right of compensation; the remedial processes accessible to the dismissed teacher; certain types of remedies, such as appeal, review by the courts, action for damages, and mandamus for reinstatement.

When a contract is entered into by competent authority, it is prima facie valid, and the burden of showing it invalid is upon the district. As was shown in Chapter I, when the contract is to be written, as prescribed by statute, an oral one is insufficient, and the teacher is presumed to know of such statutes. It should not be concluded, however, 

2Taggart v. School Dist., 96 Or. 422, 188 Pac. 408.
merely because a school board has made an oral contract with a teacher, when the statute requires a written one, that it can thereby escape liability for his services; for the acceptance of part performance is a ratification of the contract. 3

A teacher who has rendered services to a district may recover reasonable compensation therefor, even though he had no contract or agreement with the board in regard thereto, for the district, "will not be permitted to avail itself of the fruits of his labor and then refuse to pay for it." 4

If the trustees repudiate an alleged contract, executed in their private capacity only, before the teacher has entered upon the performance of his duties thereunder, the teacher necessarily is without remedy against the district, because there is here no ratification of the contract by the district. 5

It is illegal to dismiss a teacher for incompetency before he has rendered services, where he has a proper certificate and has been employed by the board with the knowledge of his qualifications, since he has the legal right to begin teacher, and have his competency determined by the services rendered. 6

335 Cyc. 1085.
4Smith v. Sch. Dist. #64, 89 Kans. 222, 131 Pac. 557.
Where a contract for teaching states that a teacher has a second grade license, there is no warranty that it will continue such. Consequently, the fact that before school began he took an examination to teach, as his license had nearly expired, wherein he received only a third grade certificate does not justify the rescission of the teacher's contract. 7

In some jurisdiction the courts hold that it is incumbent upon the licensed teacher to hold a certificate covering the full term of his employment at the time of entering upon the contract to teach. 8 The State of Washington Supreme Court held:

No rule of law is better settled than that, if a contract is entire, it can be enforced only in its entirety, and a breach as to any material part of an entire contract is a complete discharge, and releases the other party of his obligation to perform.

In Missouri the Appellate Court has held that unless the statute so stipulates, it is unnecessary that a teacher's certificate cover the entire period of employment, as the teacher may renew his certificate at its expiration. 9 The reasoning of the Missouri cases is based upon the theory that the statutory prohibition runs against the district board and not against the teacher. It was the duty of the

board to see that the teacher possessed the requisite evidence of qualification before making salary payments.

It is, however, generally held that the failure of a teacher to renew a certificate that has expired during the term renders the teacher ineligible to teach and to recover for services rendered during the period he is without a certificate. The Supreme Court of Vermont ruled to the contrary in an early decision, but the precedent has not been followed.

Evidently the intent of all statutes prohibiting boards of education and school directors from employing uncertificated teachers is to protect the people of the state against the employment of unqualified teachers. If education is a function of the state, then, plainly, one of the first duties of the state in exercise of this function, would be to prescribe eligibility requirements for its teachers and to prohibit the employment of ineligible ones. In such an event it would then follow that uncertificated teachers could not teach a legal school or recover for services rendered on the contract, nor could such teacher recover damages for breach of contract by the employing board nor maintain action in quantum meruit. The Supreme Court of Michigan has announced the following doctrine:

The general policy of the school law is that schools shall be taught by qualified teachers, but necessities may

arise where this cannot be done. A district may be unable to find a qualified teacher. Where the employment of an unqualified teacher is a necessity, the school district is authorized to employ one who has not the proper certificate, if the school board are satisfied that the teacher is otherwise qualified, and to pay such teacher out of moneys belonging to the district.\footnote{12} Apparently no other case had gone to such an extreme; although where a teacher's certificate expired during the term, recovery of salary for the services rendered both before and after the expiration of the certificate has been sustained.\footnote{13} Such cases are contrary in principle to the great weight of authority. If it be legal to pay an unlicensed teacher for teaching part of a term, why not for all of a term? It is believed that the doctrine of necessity is one of danger and uncertainty. It disregards the doctrine that in law a certificate is the sole test of teaching competency; and it opens the door to an easy evasion of the wise policy of requiring teachers to be eligible before certification. It is not likely that many courts would allow a teacher compensation under such circumstances.

In Illinois it has been held that not only must a teacher hold a valid certificate in order to teach a legal school, but that such certificate must be filed with the proper officers prior to the opening of the term, and failure so to file would justify the school board in refusing to examine

and certify the schedule of the teacher in error.\textsuperscript{14}

The Ohio Supreme Court has declared concerning the employment of a teacher who has not a certificate:

The law forbids the employment of a teacher who has not a certificate. The teacher is not "employed" within the meaning and intent of this provision, until he engages in the discharge of his duties as a teacher. The mischief intended to be guarded against was the teaching of a school by an incompetent person, and not the making of a contract by an incompetent person.\textsuperscript{15}

The legislative intent in each instance is what the courts will attempt to carry out.

There are two theories of law by which courts have found it possible under certain circumstances to permit the teacher uncertificated at the time of negotiating the contract to enter subsequently upon a valid contract. One is the ratification theory, and the other is the implied contract theory. These theories will be considered in the order mentioned.

Whether or not a teacher uncertificated at the time of contracting, who obtains a certificate prior to entrance upon employment, may have the contract ratified depends upon the court's view as to whether the original contract is void \textit{ab initio} or whether the original contract is valid \textit{ab initio}, but voidable in case the teacher fails to secure the certificate. The former view is held by the Colorado

\textsuperscript{14}Botkins v. Osburn, 39 Ill. 101; Casey v. Baldrige, 15 Ill. 63; Smith v. Curry, 16 Ill. 147.

\textsuperscript{15}School District v. Dilman, 220 Ohio 194.
Supreme Court in School District v. Kirby,\(^1\) while the Arkansas Supreme Court in Lee v. Mitchell holds that a board may not restrain a teacher from entering upon his contract where the certificate has been secured prior to the opening of the school but subsequent to the signing of the contract.\(^2\) Evidently there is conflict of opinion on this point due to difference of interpretation placed upon the status of the original contract. The weight of authority would seem to indicate that where a statute requires a teacher to hold a certificate at the time of entering into a contract, the contract made by an uncertificated teacher is void and cannot thereafter be ratified. But where the statutory prohibition refers to the employment rather than the contract of employment, the subsequent acquisition of a certificate by the uncertificated teacher, before, at, or even after his entry upon employment may amount to a ratification of the original contract.

The reason why a teacher uncertificated at the time of contracting cannot subsequently ratify said contract by the acquisition of a certificate and entrance upon teaching, where the statutory prohibition refers to the contract of employment rather than the employment, is well stated in the following excerpt from the Texas Court of Civil Appeals:

The original contract was void, because repugnant to the statute, and it could not have been ratified and certainly

cannot be vitalized by obtaining a certificate and endeavoring to have it read as though of date anterior to the execution of the contract. He (teacher) did not have it when he entered into contract and that instrument being null and void in its inception could not be vitalized and purified by any subsequent events, but it is so nugatory and ineffectual that nothing can cure it.\textsuperscript{18}

When is a teacher entitled to compensation? In general, it may be said that a legally qualified teacher regularly appointed and employed, having performed the agreed services according to the terms of the contract in a substantial manner and in compliance with the laws of the state and the rules and regulations of the employing board is entitled to compensation.

A teacher having performed the agreed services stipulated by the contract is entitled to compensation.\textsuperscript{19} Having performed his part of the contract, he cannot legally be refused compensation for failure of the board to perform its duty toward certain children of the district,\textsuperscript{20} or because the district had been consolidated with other districts.\textsuperscript{21} The teacher's claim to compensation rests upon the performance of agreed services even though such services are to be performed in an unusual manner. Thus it was held that a teacher might divide her time between two schools, one a college and the other a public school, where both employer's consent and the payments are equitably distributed to each.\textsuperscript{22}

\textsuperscript{18}Richards v. Richardson, 168 S. W. 50.
\textsuperscript{19}Brown v. White, 43 Calif. App. 363.
\textsuperscript{20}State v. Blain, 36 Ohio St. 429.
\textsuperscript{21}Sproul v. Smith, 40 N. J. L. (Vroom) 314.
\textsuperscript{22}Clay v. School District, 174 N. W. 47.
But where the teacher voluntarily paid the rent for the schoolhouse and purchased the necessary supplies, such teacher is not entitled to reimbursement as it was an attempt to recover for services not agreed upon. In such instance the court said:

The teachers in contracting and paying these obligations were volunteers. No man entirely of his own volition can make another his debtor. The school board would have been required by mandamus, at the suit of any proper party, to furnish a place for the conduct of the school. 23

A similar ruling is made under like conditions in Taylor v. School District. 24 In this case the court ruled that a teacher entering into a contract to teach was not thereby invested with any of the statutory powers conferred upon the board of directors. The extent of power conferred upon a teacher to bind the board by an implied contract for services other than teaching is neither greater nor less than that of any other individual.

The teacher's contract is for agreed services substantially rendered. Thus it has been held that the refusal of a clerk to receive from a teacher the school register and schedule at the completion of the term cannot defect recovery of compensation on the ground that the register was not delivered according to the statute. The tender of the register was a substantial compliance of the agreement there-to. 25 Nor may a board withhold a teacher's wages because

23 Noble v. Williams, 150 Ky. 439, 42 L. R. A. (N. S.) 1177
she permitted some of the older pupils to "hear" classes—it not being contrary to the rules of the board, and necessary, moreover, owing to the crowded condition of the room.\textsuperscript{26}

When a teacher is selected and employed, the contract is for the personal services of that teacher. The teacher can not fulfill the contract by hiring a substitute...The circumstances might be such that the teacher would be warranted in assuming the approval thereof, or the consent thereto by the employers without any express consent.\textsuperscript{27}

Whether such substituted service was accepted by the board is a question of fact for the jury where action is brought for recovery of compensation.\textsuperscript{28}

The teacher agrees not only to perform according to the terms of the contract but also according to the requirements of the statutes which are either expressly or impliedly made a part of the contract. Nor may a teacher acting in the capacity of principal and performing the principal's work receive the pay fixed for a principal, not having obtained the required principal's license.\textsuperscript{29} Nor may a teacher receive a larger stipend for rendering service in a higher capacity without securing the proper certificate.\textsuperscript{30} Nor may a teacher acting as principal, who was not appointed to the position in the statutory manner, receive the fixed salary

\textsuperscript{26}Perkins v. School District, 61 Mo. App. 512.  
\textsuperscript{27}School Directors v. Hudson, 88 Ill. 563.  
\textsuperscript{28}Southern Industrial Institute v. Hillier, 142 Ala. 686.  
of a principal.\footnote{He\textsuperscript{r}ling \textit{v.} Board of Education, 104 N. Y. S. 941.} Under a Kentucky statute providing that no teacher shall teach high school subjects except by written contract, it was held that common school teachers, who taught high school subjects by resolution of the board but without a written contract, could not recover compensation for their services.\footnote{County Board \textit{v.} Dudley, 153 Ky. 425.} Favorable as well as unfavorable requirements of the statutes will be read into the teacher’s contract. Thus, a statute provided payment of regular salary to public school teachers in any county while in attendance upon an institute. Such statute was held to apply to those teachers, who, at the time of the institute, were not yet employed to teach in the county, but were employed within three months after the close of the institute.\footnote{Everstock \textit{v.} Board of Education, 75 Ohio St. 144.} So, too, it was held that employed teachers attending an institute during vacation before the regular opening of school were entitled to pay for the institute work in addition to their first month’s salary.\footnote{See 33.}

Litigation over the reduction of the compensation of teachers has arisen in two important classes of cases. First, where the contract of the teacher has been interrupted by act of the board or other agency; second, where the interruption has been due to the voluntary act or omission of the teacher. The former classification includes cases where the
school has been closed for epidemics, unfitness of building for occupancy by fire or other cause, holidays, lack of funds, special provisions of the contract, prohibitory acts or omissions of the board, and dismissal of the teacher. The latter classification includes absences of teacher without consent of the board, the resignation and abandonment of contract by the teacher.

There is a familiar and general rule of law which holds that when the performance of a contract becomes impossible on account of an act of God or of the public enemy the non-performance is excused and no damages can be recovered therefore. Thus there is no doubt that when one agrees to work for another for a certain time and is prevented by his own sickness or the sickness and death of the other he is excused from completion and may recover pro rata. This rule has significant application in cases where the public schools are temporarily closed either voluntarily by act of the board, or upon order of the board of health in times of a community epidemic. Is such closing of the school due to an act of God or not?

If it is an act of God, then plainly the teacher who holds herself ready and willing to perform is not entitled to compensation during the time of temporary suspension. It has generally been held, however, that although the epidemic itself may be properly called an act of God, still it must appear that the observance of the contract by the district
was caused to be impossible by act of God. This doctrine is confirmed in a considerable number of cases. Perhaps it is best stated by the Supreme Court of Michigan in *Dewey v. School District* in the following excerpt:

> Beyond controversy the closing of the school was a wise and timely expedient, but the defense interposed cannot rest on that. It must appear that observance of the contract by the district was caused to be impossible by act of God. It is not enough that great difficulties were encountered or that there existed urgent and satisfactory reason for closing the schools.... The plaintiff continued ready to perform, but the district refused to open its houses and allow the attendance of pupils and it thereby prevented performance of the plaintiff. Admitting that the circumstances justified the officers, yet there is no rule of justice which will entitle the district to visit the misfortune upon the plaintiff.... It was the misfortune of the district and the district and not the plaintiff ought to bear it.

It appears, however, that the rule heretofore stated does not adequately cover all cases that have arisen under this section. Another rule is cited under which a contrary decision has been reached in school epidemic cases. This rule is stated by the Nebraska Supreme Court to be:

> Whenever a contract which was possible and legal at the time it was made becomes impossible by act of God or illegal by an ordinance of the State, the obligation to perform it is discharged.

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36See 35.

In the Nebraska case, just cited, after eight months of the school term had expired, the school was closed by order of the board of health on account of the prevalence of smallpox. It was held that a teacher so prevented from teaching could not recover the nine months' wages. The court differentiated the case of Dewey v. School District, in the following opinion:

No contract can be carried into effect which was originally made contrary to the provision of law, or which, being made consistently with the rule of law at the time, has become illegal by virtue of some subsequent law....It is not claimed that the board of health did not have authority to close the school, or that the order was illegal in any respect. This being so, that order so long as it remained in force was a valid legal prohibition against the continuance of the school, and the district, by force of law, was unable to complete its contract. Had the board of health failed to act, and had the school been closed by the district on its own motion, then the rule contended for by the (teacher) and followed in Dewey v. School District might be invoked. But the act of the district in closing the school was not voluntary. It was the act of the law which the district and all others were compelled to obey.

Ruling Case Law summarizes this particular problem as follows:

We may say that when a school board makes a contract with a teacher for a definite time, it must pay him for that time even though there is no teaching for him to do. And this is true even though the contract provide that the teacher shall be paid only for time actually occupied in school, for the evident intent of the parties was merely to stop payment during vacation or absences. Where a contract is to do acts which can be performed, nothing but the act of God or of a public enemy or the interdiction of the law as a direct and sole cause of the failure will secure performance. But, of course, the school district may save itself from liability in such a case by a proper provision in the contract of employment. 38

3824 Ruling Case Law, 619.
The weight of authority holds that deductions cannot be made from the compensation of a teacher where the school is closed on account of the destruction of the building by fire or other cause rendering the building unfit for use. An exception to this holding is found in a case where the contract was made with reference to a particular building.

There the law of contracts to do work in a particular building was applied. The doctrine of these cases is covered in the following excerpt:

The discharge of either party to the contract would not result as a matter of law because of the destruction of the building. A school teacher is entitled to compensation when he is prevented by the school authorities from performing his part of the contract. In case of an unauthorized closing of school by the school directors before the end of the term, the teacher is entitled to compensation for full regular term.

No lawful deductions from the compensation of the teacher can be made because of absence on recognized holidays.

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The principle underlying this rule is stated by the Supreme Court of Michigan in School District v. Sage.

In regard to deductions for holidays we are of the opinion that school management should always conform to those decent usages which recognize the propriety of omitting to hold public exercises on recognized holidays; and that it is not lawful to impose the forfeiture or deductions for such proper suspension of labor. Schools should conform to what may fairly be expected of all institutions in civilized communities.

So, too, it is held that a teacher is entitled to compensation for a special vacation properly ordered. Compensation for compulsory attendance upon teachers' institutes has already been noted. Where the board of education had ordered a two days' holiday at Thanksgiving time and the teachers objected, if thereby they would lose their wages, it was held that the teachers were entitled to their wages; this, too, although, the rules of the board provided that the school year should consist of thirty-six consecutive weeks exclusive of vacation. Vacation was interpreted to mean "an intermission of the regular duties and exercises of an institution between terms."

Is a school teacher subject to deduction of compensation where the school is closed by a board of directors because of lack of funds? The answer seems to depend upon whether the lack of funds is due to the exhaustion of all legally available funds or due merely to neglect of

tion of funds. To keep the school open and pay the teachers might, in the first instance, result in an *ultra vires* act, but, in the second instance, it would not be a good defense for making void the teacher's contract. It was held in *Morley v. Power* that where a teacher contracts for compensation at a monthly rate, without any fixed term of employment, and for want of funds an authorized shortening of the time occurs, a corresponding deduction in the salary of the teacher may be made. But it has been held, that where a board of school control recklessly or ignorantly exhausts appropriated teacher funds for other purposes before completion of the teacher's contract and then refuses payment for lack of funds, the teacher is entitled to compensation.

The second classification includes those cases where absence is due to act or omission of the teacher and the resignation and the abandonment of contract. A school teacher is subject to deduction in compensation when absent from duty without leave, unless there is a rule permitting teachers to provide substitutes at their own expense. Absence due to act or omission of the teacher has been little considered in adjudicated cases. In a case arising under the New York City Charter, a teacher was ill from March to September, and in October made an unsuccessful application

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47 *Murphy v. Board of Education*, 84 N. Y. S. 360.
to the school board to be excused with pay. Referring to
the Charter the court said:

The salary of an employee not being an incident to the
office, but payment for service rendered, there would cer­
tainly be nothing illegal in a provision changing the con­
ditions under which the salary is paid, so that it is pay­
able only for the period for which services are actually
rendered. The school board therefore has the right to re­
duce the salary of a teacher by providing that he is to re­
cieve no compensation for the days on which he is absent
without leave.49

May a teacher, who has voluntarily resigned or aban­
doned his contract before the expiration of the term, re­
cover compensation for services rendered up to the time of
the resignation or abandonment? The answer to the question
will depend upon whether the attempt is to recover in
assumpsit upon the contract or upon a quantum meruit. In
jurisdictions where a teacher's contract is held to be in­
divisible or entire, notwithstanding the compensation is
payable by the month, the teacher would recover nothing on
the contract. In other jurisdictions he has been permitted
to recover on a quantum meruit.

What are the remedial processes accessible to the dis­
missed teacher? Is the order of dismissal against a teach­
er by a board of school control final or may it be reviewed
by another body such as a court or an appeal body? Obvious­
ly this answer depends upon the statues in the various
states. In general it may be said, that where the board of
school control dismisses the teacher in accordance with the

49Murphy v. Board of Education, 84 N. Y. S. 380.
statutory provisions, such act is conclusive on the courts, in the absence of fraud, corruption, or oppression. The aggrieved teacher, however, may in some jurisdictions carry his case to an appeal body or officer.

The exercise by a school board of statutory authority to dismiss at pleasure being discretionary cannot be questioned by the courts. In some jurisdictions no action lies in favor of a teacher to review a dismissal. Nor can the courts inquire into the wisdom of such dismissal.

Under the statutes in many jurisdictions a teacher who has been dismissed has a right to appeal to a higher board or officer such as a county or a state superintendent.

Some courts hold that where the right of appeal exists, such remedy should be pursued before the teacher can maintain action for breach of contract. Thus in Moreland v. Wyne, it was said that the dismissed teacher could not enjoin the defendant, successor, where plaintiff had failed to appeal to county and state superintendents. In some jurisdictions, however, such a rule does not apply where the teacher, for

51 Ewin v. School District, 10 Idaho 102; Gillen v. Board of Regents, 88 Wis. 7, 24 L.R.A. 386; State v. Hawkins, 44 Ohio St. 98; State v. Prince, 45 Wis. 610.
instance, has been wrongfully discharged without a hearing. Such action of the board amounts to a nullity and the teacher may bring action for breach of contract without taking an appeal. 

Again, an exception to the rule is noticed in People v. Board of Education, where there was no present incumbent of the office of State Commissioner of Education. In this case it was held that a teacher wrongfully dismissed might resort to the Supreme Court for relief. The dismissal, however, may become final if the right of appeal is not taken promptly. And it is generally said that a decision of the appeal body affirming the dismissal of a teacher is final and is not subject to review by the courts. In the Maryland case cited, the Supreme Court held that it could not review the decision of the State Board of Education affirming the dismissal of a teacher although the appeal power was not expressly given to the State Board of Education. In the Iowa case cited, the court held that an appeal to the county superintendent of public instruction settled conclusively the wrongfulness of a school teacher's discharge although such appeal was determined on the ground of statutory procedure rather than on the merits of the dismissal.


In addition to the statutory right of appeal, the dismissed teacher has access under certain conditions to three types of remedial court procedure. The dismissed teacher may ask the court to pass upon the wrongfulness of the dismissal; he may bring action for damages upon a breach of contract; or he may seek his reinstatement through the equity processes of the court. Where a teacher has been dismissed, it appears that in most jurisdictions the court will not interfere with the exercise of a board's statutory discretion to dismiss such teacher provided it has acted within its jurisdiction and has complied with all the statutory requirements of dismissal. But in an action for breach of contract, the courts will go into the wrongfulness of the dismissal and submit to the jury the question of fact in reference to the same. Where the statutes do not set out the formalities for a dismissal procedure, there is some authority that in an inquiry as to whether the teacher was wrongfully dismissed the courts will go so far as to inquire into the reasonableness of the cause of dismissal and even submit the teacher's professional competence to the jury. Obviously, where a teacher has been wrongfully dismissed, such teacher has a remedy at law for a breach of his contract

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56 People v. Chicago, 278 Ill. 318.
57 Surkett v. Joint School District, 159 Wis. 149; Shuck v. Board of Education, 92 Ohio St. 55.
58 Neville v. School Directors, 36 Ill. 71; School Directors v. Reddick, 77 Ill. 628.
and, under certain conditions, is entitled to mandamus for reinstatement to the position from which he has been wrongfully dismissed. As already noticed, some jurisdictions hold that the wrongfully discharged teacher has his remedy at law, without first taking his statutory appeals. More usually, however, teachers wrongfully dismissed seek reinstatement to the position from which they have been wrongfully dismissed.

Assume that a wrongful dismissal of a teacher has been found either by the appeal body or the court, and that the teacher seeks the remedy of reinstatement rather than damages for a breach of contract. Under these circumstances, if the board refuses reinstatement, the teacher has her remedy through mandamus proceedings provided certain conditions of equity jurisdiction obtain. What are these prerequisite conditions of equity? It is generally said that such teacher cannot maintain mandamus to compel reinstatement, whose relations to the school authority rest wholly in contract. A teacher, it is said, is not a public officer and his contract is one of employment in so far as in case of wrongful dismissal, an adequate remedy at law lies in damages for breach of the contract, and a writ of mandamus will not be issued. Nor in such case can equity be invoked whether the bill is brought by the teacher herself.

or by a taxpayer, the reason being, in both cases, that
the remedy at law is adequate.

It is only where the teacher by positive provisions
of law has a fixed tenure of office or can be removed only
for cause and in some prescribed manner, and where, conse-
quently, it is the plain ministerial duty of the school
board to retain him, that mandamus can be maintained. Such
is the rule laid down in the case last cited. Or, again,
the rule is stated that where the teacher's right rests up-
on statute or other law, mandamus will lie to compel rein-
statement after a wrongful dismissal has been determined.

Thus, where a higher authority, such as an appeal body,
reverses the dismissal order of the board of school control
and orders reinstatement, mandamus will lie. Such teach-
er is said to have a right other than that determined by
contract. But where a teacher has been dismissed without
notice or hearing, and such dismissal procedure has been

60 Greer v. Austin, 40 Okla, 51 L.R.A. (N.S.) 336;
61 State v. Board of Education, 18 N. M. 183; 49 L.R.A.
(N. S.) 62.
62 Boyle v. School District, 8 Pa. Dist. 436; Fairchild
v. Board of Education, 107 Calif. 92; Gilman v. Barrett,
33 Conn. 293; Kennedy v. Board of Education, 92 Calif. 463;
Morley v. Power, 10 Lea (Tenn.) 219; People v. Board of Edu-
1899; People v. Van Siclen, 43 Hun. (N. Y.) 539; State v.
Watertown, 9 Wis. 254; Whitman v. Owen, 76 Miss. 153.
63 Board of School Commissioners v. Menning, 123 Md. 160;
approved by the county superintendent on appeal as provided by statute, mandamus will not lie. The teacher had no higher right than his contract, as the appeal was decided against him. He was therefore confined to his remedy at law.64

The decision of courts in reference to the right of mandamus and other equitable rights in jurisdictions, where, under tenure codes, the teacher possesses more than a contract right to teach, are worthy of study.

CHAPTER VI

GENERAL SUMMARY OF FINDINGS

The issues involved and which frequently arise and which may be generally embraced within the general scope of the legal concept of the teacher's contract may be briefly summarized as follows:

1. Issues which arise and exist between boards of education and teacher in cases involving:

   a. Contracts which are unenforceable on account of not being mutual, certain, definite, and free from fraud or misrepresentation.

   b. Contracts in which the statutory terms and provisions relative to the board's actions have been disregarded in part or overlooked entirely.

   c. In cases involving the corporate action of the board and the lack of authority for individual
members to contract.

(d) In cases concerning due notice and opportunity to be given each member of the board before the meeting of the board is to be convened.

(e) In cases where the board illegally delegates its discretionary and appointive power, in violation of the principle delegatio potestatis non potest delegari.

(f) In cases where the school board or some member has a pecuniary interest in the contract of hiring.

(g) In cases where no statute required the contract of the teacher to be in writing.

(h) In cases where the statute required the contract to be in writing.

(i) In cases concerning a substantial compliance with statutory formalities, and the failure to express the contract in any material particular.

(j) In cases revealing the vote of the board of education not constituting a contract of employment with the teacher.

(2) The issues involved and which arise and exist concerning the contractual powers of the school board:

(a) Involving contracts between the board of edu-
cation and the teacher in which the teacher has not been duly licensed and certificated.

(b) In cases concerning the requirements by the board of education of the qualifications of the teacher in addition to those prescribed by law.

(c) In cases imposing qualifications upon teachers, not prescribed by law, and the nature of which is not related to the prescribed legal qualifications, such as: mental tests, examinations, residence and experience.

(d) In cases concerning the imposition of the board upon the teacher limitations or qualifications of a more personal or local nature, such as: sex limitations, religious qualifications, restriction in labor affiliations.

(e) In cases concerning the validity of a contract with a teacher for services commencing beyond the term of office of the members of such board.

(3) In the issues dealing with the removal and dismissal, these issues between the board of education and the teacher have arisen in the following cases:

(a) In cases involving the dismissal of the teacher by the board under its implied powers.

(b) In cases involving the right to dismiss the teacher
at will when no statute specifies the causes for which the teacher may be removed.

(c) In the cases involving the dismissal of the teacher on account of immoral conduct, unprofessional conduct, insubordination, negligence, inefficiency and incompetency.

(d) In cases concerning dismissal on account of marriage subsequent to the execution of the contract.

(e) In cases involving a dismissal of a teacher without notice by the board pursuant to a statute, requiring no notice to be given.

(f) In cases involving dismissal of a teacher when fraud, corruption or oppression have exercised a controlling influence.

(g) In cases concerning the dismissal of a teacher in violation of a teacher tenure law.

(h) In cases involving the indirect dismissal of a teacher by transfer or reassignment which defeats the statutory rights to removal for cause only.

(4) A brief summary of the contractual powers of the teacher includes a consideration of the following matters:

(a) The privileges of the teacher under contract.

(b) His right of compensation.

(c) The remedial processes accessible to the dismissed
teacher.

(d) The classification of his legal remedies.

A second purpose suggested as a possible outcome of the study was to correlate and reveal some legal principles which have been decisive of cases in which the issues involved were related to teacher contracts, and which might serve as practical aids to those who may be confronted by legal questions pertaining to teacher contracts. The forty-five guiding principles which follow are the result of an organization and a classification of the essential principles and standards discovered in the foregoing chapters.

Forty-five Guiding Legal Principles.

(1) The contract of employment invests the teacher with public character and establishes a legal relationship between the board of education and the teacher. (Chap. II)

(2) The teacher's contract does not differ from any other contractual relationship and may be judged by the same criteria as any other contract. The making and execution of contracts with teachers are controlled by the rules and principles relative to simple contracts in general. (Chap. II)

(3) Contracts must be mutual in character, definite
based upon a valid consideration, and must be entered into by parties of legal capacity. There must be no misrepresentation (fraudulent) or the agreement may be declared void by common law. (Chap. II)

(4) A school board's authority to contract lies in its unitory or corporate action; individual members have no authority to contract, then single action may be repudiated. (Chap. II)

(5) The board must convene as a board in order to enter into a valid contract of employment with a teacher. All members must have opportunity to be present. (Chap. II)

(6) The law holds that while boards may delegate to the superintendent the power of selecting teachers, the power to authorize the appointment of teacher cannot be delegated, such power having been specifically conferred upon boards by statute. The maxim delegatia potestas non potest delegari applies. (Chap. II)

(7) Statutes quite generally make invalid a teacher contract in which a board member holds or may hold a pecuniary interest. (Chap. II)

(8) Authority to contract with teachers implies power to agree upon compensation. (Chap. II)

(9) Oral contracts valid in absence of statutory provisions. No law of contracts is found which makes it inherently necessary to place a teacher's contract in writing.
It is true, however, that the teacher should require the contract to be in writing, as it is more easily proven, and furnishes the teacher with substantial evidence.

(Chap. II)

(10) There can be no recovery by the teacher upon the oral agreement, if the statute requires a written one.

(Chap. II)

(11) When the teacher has been elected by the board, it is the duty of the chairman and secretary of the board to execute the written contract for and in behalf of the board. (Chap. II)

(12) Notwithstanding the rigid requirements of statute in reference to contractual requisites already considered, the courts will often find a substantial compliance with the statutory formalities and thus maintain validity of the contract. (Chap. II)

(13) Where a statute prescribes a mode of exercising a power, that mode must be adopted. Contract may be held unenforceable on account of indefiniteness if contract does not state period of employment, assignment of teacher, or salary to be received. (Chap. II)

(14) A mere vote of election by the board does not constitute a contract of employment. (Chap. II)

(15) The application of the teacher should be written, detailed and definite; and an acceptance of it by the board
constitutes a contract, 'unobjectionable from the standpoint of certainty.' (Chap. II)

(16) A contract to be valid must be mutual, certain, definite and free from fraud and illegality and must be legally authorized and executed and meet all the necessary requisites, both of the common law and of the statute. (Chap. II)

(17) Historically, local boards or committees of school control exercised the right to impose eligibility requirements before the state took over such authority. Consequently, the board, still retains the right to establish eligibility requirements for teachers, within reasonable limits, not in conflict with the laws of the state. (Chap. III)

(18) The appointive power delegated to the school board is a discretionary one, and when exercised within reasonable limits and in conformity with the statutes, such exercise cannot be questioned either by the courts or the taxpayers of the district. (Chap. III)

(19) Boards may exercise wide discretionary power in the enactment of rules and regulations controlling selection and appointment. Courts will not interfere unless there is gross abuse of the discretionary power. (Chap. III)

(20) If there is no implied or expressed statutory limitations, a board of school control in good faith, may bind their successors in office to the appointment of a teacher.
whose term neither begins or ends within the individual membership of the appointing board. (Chap. III)

(21) Boards may not delegate statutory authority to contract with teachers, but may delegate authority to contract with a particular teacher or in practice ratify all contracts made with teachers by the superintendent of schools. (Chap. III)

(22) The authority of a school board to employ a teacher carries with it by necessary implication the authority to dismiss a teacher for sufficient cause. (Chap. III)

(23) The authority to dismiss has been followed by statutes which designate, causes of dismissal, and procedure necessary. (Chap. III)

(24) There is considerable authority that boards of education have the implied power to dismiss for sufficient cause. (Chap. IV)

(25) The authority to dismiss should be limited to just and sufficient cause and the board must act with discretion and judgment. (Chap. IV)

(26) It is possible to reserve in the contract of employment the right to dismiss the teacher at will or if his services are unsatisfactory, especially if no statute specifies the causes for which teachers may be removed. (Chap. IV)

(27) If the jury deems the dismissal improper, the
teacher may recover damages for breach of the contract. (Chap. IV)

(28) Actual or reputed immorality is sufficient cause for dismissal. Immorality does not need to be in connection with the school work. (Chap. IV)

(29) Unprofessional conduct, as a teacher's advocacy of a particular candidate and political activities in an election, is conduct warranting suspension. (Chap. IV)

(30) Refusal of the teacher to be vaccinated; refusal of the teacher to receive a pupil suspended; and the refusal to obey rules of the board was held to be sufficient cause for dismissal. (Chap. IV)

(31) Incompetency, lack of requisite qualities of temper, failure to manage and control the school, may constitute an inefficiency sufficient for dismissal. (Chap. IV)

(32) Marriage does not necessarily disqualify a woman for teaching and is not just cause for dismissal. A contract in general restraint of marriage is void because it is contrary to public policy. No court of final jurisdiction it seems, has yet passed on the constitutionality of a statute, specifically stipulating marriage as a course for the dismissal of women teachers. (Chap. IV)

(33) A board may have the power to dismiss a teacher by statute, but in the absence of statute a teacher shall not be discharged for cause before the end of the term.
without the preferment of charges against him, due notice, and an opportunity to be heard. (Chap. IV)

(34) Even though the charge be immoral conduct, the teacher cannot be discharged without a hearing. (Chap. IV)

(35) Where the power to remove is restricted or limited to certain reasons or causes, the final determination as to whether the case falls within any of these causes rests with the courts, and may be reviewed or inquired into by them. (Chap. IV)

(36) Where the power is general, unlimited, and unrestricted, and is once exercised, it cannot and will not be questioned or examined into by the courts. (Chap. IV)

(37) It is not believed that such dismissal is conclusive whenever fraud, corruption, or oppression exists, or whenever any abuse of discretion is shown. (Chap. IV)

(38) Under ordinary conditions the law holds that where a certificate holder's certificate expires during the term, there can be no legal recovery for compensation for services rendered during the time the teacher is without the certificate. There is divided authority, as to whether the teacher may be allowed to renew the certificate and recover for services during the unexpired term. (Chap. V)

(39) The law holds that an uncertificated teacher cannot teach a legal school nor recover for services rendered
on the contract or upon a quantum meruit. (Chap. V)

(40) In case the dismissed teacher is found to be wrongfully dismissed either by the final appeal body or the courts, the rights of such teacher may be sought either by mandamus for reinstatement or by action at law for damages in breach of the contract. (Chap. V)

(41) In general it may be said that a legally qualified teacher regularly appointed and employed, having performed in a substantial manner the agreed services according to the terms of the contract, and in compliance with the laws of the state and the rules and regulations of the employing board, is entitled to compensation. (Chap. V)

(42) The board of education is excused from compensating a teacher for the period of interrupted service, when by an act of God, or of the public enemy or the interdiction of the law is a direct and sole cause of the interruption. (Chap. V)

(43) In general the board of education is not excused from compensating the teacher for a period of interrupted service due to the following conditions; failure to provide place to teach even though the building was destroyed by fire or storm; failure to permit the teacher to teach by shortening the school term; failure to keep school on recognized holidays. (Chap. V)

(44) Authority is divided on deduction in teacher's
salary due to closing of the school from lack of funds. The board cannot commit ultra vires act, and the diverging opinion is that the compensation may not be reduced unless all available funds are exhausted. (Chap. V)

(45) A teacher who abandons the contract or resigns cannot recover compensation for services rendered, is a prevailing rule. Some jurisdictions allow the teacher recovery in quantum meruit. (Chap. V)

The third purpose of this study was to be an attempt to discover trends in the attitude of the judiciary toward issues pertinent to teacher contracts. In the following paragraphs a comparison will be made of the best educational practices as suggested by expert authority and the best educational practices as supported by the trend of court decisions.

(1) Education Should Be a Function of the State

It has become a commonplace, in discussions concerning educational administration, to assume that education is a function of the state, and that, therefore, members of boards of education are, in legal sense, state officials rather than municipal officials. The tendency on the part of legislatures is to eliminate just as far as possible municipal civil authority from any control over school affairs. This tendency is wholly desirable and it is to be hoped that eventually this separation of municipal from
educational authorities can be made complete. (Department of Superintendence - First Yearbook, "The Status of the Superintendent," pp. 155-56.)

This educational practice has been supported by court decisions. This point of view is affirmed by the highest judicial authority.

(2) The Examining or Certificating Power Should Be Separated From The Appointive Power

It is in general accordance with the principles of a sound civil service system that the power to examine teachers and the power to appoint should be kept distinct. (Nicholas Murray Butler, Columbia University, quoted in Report of Educational Commission, Ibid., pp. 62-63.)

The above thesis is supported by the courts. Notice particularly the excerpt from the Illinois Supreme Court in Board of Education of Galesburg v. Arnold.

(3) Local Boards Should Supplement the Statutory Certificate of the Teacher with Careful Selective Technique

Another step in improving the conditions surrounding the selection of teachers is to get certain definite standards of competency formulated and adopted by the board of education. Such standards give both the board and the superintendent a foundation to stand upon and eliminate the most poorly prepared of the applicants. In large school
systems where the number of applicants and vacancies are both large... a competitive professional examination is often introduced. (E. P. Cubberley, *Public School Administration*, pp. 203-209.)

The policy of local boards supplementing the statutory certificate requirements is encouraged by the courts. Judge Collins in *Stetson v. Board of Education* 218 N. Y. 101 says:

The provisions (local examinations) were intended to protect and promote the efficiency and educational usefulness of the public schools....The present commissioner of education has well said in an opinion: "The references to the requirements of the state school laws contained in such provisions of the Education law prescribe the minimum qualifications of teachers. Such references should not be construed to restrict the power of the board of education to impose additional academic and professional qualifications as preliminary requirements for an appointment."

(4) The Superintendent Should Select and Nominate Teachers

This authority (nomination of teachers) ranks first among those which the superintendent initiates. It is significant that the head of the school system should have power to initiate the appointment of teachers. This adds strength to his functions of professional leadership and insures a higher degree of cooperation in the superintendent's effort to improve instruction. (Department of Superintendence, *First Yearbook*, "The Status of the Superintendent," p. 155.)
This suggested practice is favorably commented upon by Federal Judge Van Orsdell in United States ex rel Denney v. Callahan.

(5) The Dismissal of a Teacher Should Be Made a Professional Rather Than a Legal Matter

There appears to be a fundamental tendency for the courts to base their practice on the principle that the state laws have set up a special organization responsible to the public for the conduct of education, including the administration of the appointment and dismissal of the teachers. Within these laws the constituted authorities should limit their jurisdiction, exercise their discretion, refrain from arbitrary action, and determine from the point of view of the interests of the public and the schools the reasonableness of the procedure. (Isaac L. Kandel, Teachers College Record, XXVI, no. 3, Nov. 1924.)

The above practice is endorsed by Justice Cuddlebeek in the celebrated case of People ex rel Peixotto v. Board of Education 212 N. Y. 465.

The proceedings of the board of education involve simply a matter of school discipline and are not subject to review by mandamus....Sec. 1093 of The City Charter has made neglect of duty ground for dismissal without any qualifying words....The general rule is that mandamus will not lie to review the determination that public boards of officers in matters involving the exercise of discretion or judgment, if they have proceeded within their jurisdiction and in substantial compliance with the form of the law.
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