

SCHOOLS:

SCHOOL DISTRICTS:-Contractual relation between district and teacher discussed.

12-11

December 6, 1933.



Mr. J. L. Buntin,
Lock Box No. 13,
Napton, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"Through your valued and most highly appreciated assistance L. T. Stouffer, a member of our school board, has been removed. This, however, does not entirely eliminate our trouble.

The teacher (Virginia Abney) the teacher he (L. T. Stouffer) tried to elect claims that the contract she has is as good as any she can secure, which is the contract signed by her relative (L. T. Stouffer who was the president of our board of education at the time he tried to elect V. Abney as a teacher in our school.

Seven weeks after school started and after L. T. Stouffer, a great uncle of V. Abney (the teacher) had been removed, and all vacancies in the board filled, we voted by a majority of five votes to retain V. Abney for the remainder of the term, and, of course, would pay her for the remainder of the school year—but refuse to pay her for the first seven weeks because of the way in which she (V. Abney) secured the position.

She refuses to accept and sign a new contract, and is teaching now as she has been since the beginning of school, Sept. 4, 1933. It is reported that she intends to teach the remainder of the school year and then sue the school board for the full amount of her salary.

1. Is V. Abney a legally elected teacher under these circumstances, (after refusing to sign her contract)?

2. Since we voted to retain her in school rather than make a change in the faculty (which is organized for the school work of this school year) is it expedient for us to let her continue under these circumstances, or should we arrange for the employ-

ment of another teacher in her stead?

3. Since we voted to retain her, is it according to law for us to pay her the salary due her for the remainder of the school year even though she refuses to accept the new contract?

4. Since she has been legally elected seven weeks after school started, is it possible for her to collect for the seven weeks of school before her legal election?

Please answer these inquiries by number, and if you can get a reply to us by return mail it will be a great help to us in eliminating this trouble in our school, as the teacher's (V. Abney) father is trying to create as much trouble as possible for us because of our breaking up their family affair in our school, and to, we are to have a school board meeting Friday, Nov. 24, 1933."

We shall first discuss the law applicable to your inquiry and then attempt to answer your specific questions in order.

Section 9209, R. S. No. 1929, provides as follows:

"The board shall have power, at a regular or special meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and cash member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as teacher, nor shall the teacher serve as clerk of the district. All transactions of the board under this section must be recorded by and filed with the district clerk."

The above section was amended in 1933, but no material change was made so far as applying to your case. Section 9210, R. S. No. 1929, provides as follows:

"The contract required in the preceding section shall be construed under the general law of contracts, each party thereto being equally bound thereby. Neither party shall suspend or dismiss a school under said contract without the consent of the other party. The board shall have no power to dismiss a teacher; but

should the teacher's certificate be revoked, said contract is thereby annulled. The faithful execution of the rules and regulations furnished by the board shall be considered as part of said contract; Provided, said rules and regulations are furnished to the teacher by the board when the contract is made. Should the teacher fail or refuse to comply with the terms of the contract or to execute the rules and regulations of the board, the board may refuse to pay said teacher--after due notice, in writing, is given by order of the board--until compliance therewith is rendered. Should the schoolhouse be destroyed, the contract becomes void."

In construing the above sections the Court of Appeals in the case of *Boswell v. Consolidated School District No. 2*, 18 S. W. (2d) 665, 667, says as follows:

"A contract between a school-teacher and a school district, by which the teacher is employed to teach the school, must be in writing, and the statute (Section 11137, Rev. Stat. 1919) prescribes what shall be included in the contract. Section 11138 of the same statute provides that the contract required by section 11137 shall be construed under the general law of contracts. Under these provisions of the statute, it has been held that a binding contract between the school district and a teacher may be made without the formal contract, as required by section 11137, being executed as therein required."

The contract consisted of the appointment of the teacher by the board and her notification that she had been appointed, together with a letter from the teacher accepting the appointment. The judgment was in favor of plaintiff, the teacher. The district sought to review this decision in the Supreme Court, but the Supreme Court in 18 S. W. (2d) 61, refused to review the case because the relator had not complied with the rules of the court. The decision of the Court of Appeals, therefore, was not affected by the removal to the Supreme Court.

In *Edwards v. School District No. 73 of Christian County*, 297 S. W. 1001, 1002, the court, in construing the above section, says:

"Plaintiff in the cause at bar filed her written application, duly signed by her. It specified as to the school, term, salary, etc. This application may be termed an offer, and the board of directors not only made an order accepting this offer, but went further, and each director, including the president, signed a writing which evidenced the contract which they had consummated by their acceptance of record. It also

appears that the clerk of the district signed the minutes of the board accepting plaintiff's application to teach the school. This record shows that every requirement as to writing and signing, made by section 11137, was fully met. There is no argument against the validity of the contract except that it was not formally written upon a separate paper and there signed by all the parties required by the statute. Such is not necessary and could not be made so without making the law respecting teachers' contracts different from the general law of contracts. We hold that plaintiff's contract was valid and binding."

In *Wood v. Consolidated School District*, 7 S. W. (2d) 1018, the Court says:

"Under the plain terms of this statute the school board has no power or authority to dismiss the teacher, and any action of the board looking to that end would be ultra vires."

It is apparent from the above cases, in construing the above statutes, that a valid contract may exist between the school board and the school teacher, even though the agreement is not transposed on a separate sheet and signed by both parties. The Courts hold that Section 9209 is directory and mandatory, and that a contract between the two may be consummated even though the contract may not be in the form required by the statute.

At the time she was first employed we assume that she made her application in writing and that the board in regular meeting, by proceedings duly entered of record, accepted her application and thereafter entered into a separate written contract with her. At that time, however, her uncle was on the board and participated in her election, in violation of Section 13 of Article XIV of the Constitution. We believe that contract illegal for the reasons we will hereafter set out. After the removal of the related director the present board re-elected this teacher and we assume that the minutes or record of the board so disclose. At the time that they re-elected her we shall assume that her application was still on file and believe that in view of the foregoing decisions a legal contract was entered into between the district and the teacher without any separate contract in writing being executed, and it now appears that she refuses to execute a separate contract. She is, however, rendering service to the district and teaching school. The question arises then, and it becomes a question of fact, as to which contract the teacher is now operating under. If the teacher is relying solely upon the contract entered into when the related director was on the board, it presents one situation, but if she is relying upon the contract made by the new board it presents another situation, and we believe that she may rely, under the authority of the above decisions, upon the contract of employment made by the new board even though she refuses to sign

an independent agreement. It therefore becomes necessary to ascertain why the teacher refuses to sign the new contract. We, therefore, would suggest that before any definite action be taken by your board that you ascertain and have sufficient proof as to why this teacher refuses to sign the second contract. If she refuses to sign the second contract and denies that she made any contract with the district after the new board was formed, then her rights would have to be determined under the contract executed while her uncle was upon the board. If, however, she claims that in order to have a contract with the new board that it was not necessary to execute the separate agreement, then you have presented a situation by reason of the foregoing cases that in the hands of an astute lawyer might cause your district some difficulty. In as much as it is apparent that you will have some difficulty with this teacher, we will try to point out the various phases of the situation.

She cannot deny having any other contract except the one to which her uncle was a party, and recover upon the contract made between her and the new board. However, the mere fact that she refuses to sign a separate contract which is now being offered her, while it may tend to show that she is not claiming under the second contract entered into with the board, yet, at the same time she might explain her refusal to sign in such a way as the court would find that the second contract was a good contract.

We do not believe that the first contract is invalid for the reason that a relative related to her within the fourth degree participated in her election. In 13 G. J. 421, Sec. 352, it is said:

"Frequently a statute imposes a penalty on the doing of an act without either prohibiting it or expressly declaring it illegal or void. In cases of this kind the decisions of the courts are not in harmony. The generally announced rule is that an agreement founded on or for the doing of such penalized act is void. In accordance with the view of Lord Holt in an old case: 'Every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, tho' the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implied a prohibition, tho' there are no prohibitory words in the statute. * * * And it would seem that in all cases the true rule is that the question is one of legislative intent, and the courts will look to the language of the statute, the subject matter of it, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment.' * * *

We are of the opinion therefore that the first contract is illegal for the reason that her uncle exercised his right to name her while a member of the board. Such being true, she would

not be entitled to compensation under that contract for any services performed thereunder. We do not believe, however, that this teacher will risk her compensation for teaching the term upon the validity of the first contract, but believe that she will contend that the new board entered into a valid contract with her after the removal of her uncle, and that she taught under it, and will excuse her refusal to enter into a separate agreement in some appropriate manner. We therefore answer your questions as follows:

(1) That it is not necessary, according to the foregoing decisions, in order to constitute a valid contract between the teacher and the board, that a separate instrument in writing be executed by the parties. Her application was on file with the board at the time she was elected by the new board and the new board, as shown by its records in writing, did elect her as teacher. This would constitute a good contract between the teacher and the board and her refusal to sign an agreement, independent of the first contract, would raise an issue of fact as to whether she was teaching for a remainder of the term under the new contract and is a matter which she might be able to explain to the satisfaction of the court.

(2) Considering that she might have a good contract with the board, notwithstanding her refusal to sign an independent document, we do not believe it expedient to dismiss her and employ someone else in her place. Under Section 9210 and the Wood case above, the board has no right to dismiss a teacher with whom they have a valid contract and we believe that in view of the involved situation it would be better for the board to treat the situation as though there was a good contract entered into between the new board and the teacher.

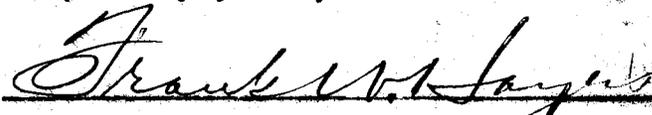
(3) Assuming that the new board has a contract with her, we believe it would be lawful for you to pay her her salary for the remainder of the school year as she earns it. If, however, you can conclusively prove that she denies having any contract with the new board and relies solely upon the written instrument executed between her and the board, while her uncle was a member, then it would not be proper for you to pay her her salary during the remainder of the term.

(4) Assuming that she was legally elected by the new board seven weeks after the term began, that fact would not justify you in paying her for the seven weeks teaching which she did prior to her legal election. Whether or not she can collect for the seven weeks she taught prior to her second election depends upon whether or not the contract entered into between her and the board, of which her uncle was a member, was a legal contract. We are of the opinion that it was not a legal contract and that she cannot collect for the first seven weeks of her teaching.

The relationship between this teacher and the board gives rise to a mixed question of fact and law. We do not believe that her refusal to sign the independent document is conclusive of the

fact that she is relying upon the first contract entered into between this district and herself. We have tried to point out above the various situations which might arise wherein the board would be liable. We believe, therefore, that it would be a better policy to consider that the second contract is a valid contract until she has taken a definite stand which would determine the board's rights. By adopting this position there is only seven weeks pay in dispute. If you adopt the attitude that her refusal to sign the independent document prevented the new contract from coming into existence and replace her with some other teacher and refuse to let her teach, then upon a proper showing she might be able to recover her pay for the balance of the term.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

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