

Contract School Board employing Superintendent for 3 years is not one that is a Facie illegal in Missouri but if any collusion shown would be invalid.

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May 1, 1933.

Board of Education,
City of Columbia,
Columbia, Missouri.

Gentlemen:

My understanding of the facts is a contract in writing has been made by the School Board of the City of Columbia employing a Superintendent of the Public Schools for a period of three years, and the question that presents itself is whether or not the School Board has authority to make a contract for that length of time.

I assume that the school district of the City of Columbia is organized under Article IV, Chapter 57, R.S. Mo. of 1929 relating to schools. Section 9327 R.S. Mo. of 1929, as to such districts in cities and towns, provides:

"The government and control of such town or city school district shall be vested in a board of education of six members, who shall hold their office for three years and until their successors are duly elected and qualified ***"

Section 9328 R.S. of Mo. of 1929 provides:

"The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resident taxpayers of the district *** who shall hold their office for three years ***"

Section 9329 R.S. of Mo. of 1929, among other things, provides:

***A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor ***"

I am assuming without knowing anything to the contrary that a majority of the whole board voted for the contract of employment of the School Superintendent.

Section 9333 R.S. Mo. of 1929 provides:

"The board of education of any town, city or consolidated school district shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the state. ***"

^{We we}
I am further assuming that the public schools of Columbia are in a district of the fourth class under Section 9194 R.S. of Mo., being in a city of either the first, second or third class and known as a city school district.

According to Section 9333 the board of education of the town or city district has the same power to perform the same duties except wherein it is otherwise specifically provided, as the boards of other school districts acting under the general laws of the state.

Turning now to Article II of Chapter 57, which is an article containing the statutory law applicable to all classes of schools, we find Section 9209 provides specifically for employment of teachers, and as Article IV of Chapter 57 (being the article applicable to city and town schools) does not specifically provide the method of employment, therefore under Section 9333 Section 9209 would apply to the hiring of teachers and superintendents of schools in city and town schools, and we find that Section 9209 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; *** 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. ****"

Turning now to Section 9210 R.S. Mo. of 1929, we find the contract provided for by Section 9209 is construed by Section 9210 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. ****"

In so far as ^{we} I can discover, there is no specific limitation fixed by the statute upon the term or time for which a legally organized school board may employ a teacher or superintendent of schools, but of course, this general rule would apply to-wit: that the time must not be an unreasonable one under all the circumstances.

^{we} I do not find any case in Missouri where the contract has been made and sustained for a period in excess of the school term for the following ensuing year after the making of the contract, but ^{we} I do find a case decided recently wherein a common school district in December made a contract to employ a teacher for a term of eight months beginning the succeeding August. The members of the school board employing this teacher went out of office in the following April and the new board employed another teacher for the term beginning in August and notified the teacher with whom the written contract had been made in December that her services were not needed and would not be accepted.

This teacher with the December contract went to the school house in August and undertook to teach the school and was prevented from doing so; she then sued the district upon the contract and alleged that she had been unable to secure other employment, and the Supreme Court, Division No. 1, on December 31, 1929, sustained the contract and affirmed the decision of the lower court, wherein upon a jury trial she was awarded the full amount of her contract for the eight months school at \$90.00 per month.

The defendant school board set up, among other things, the defense that the school board in December, which went out of office in April next ensuing, had no authority to make a contract or to employ a teacher beyond the term of the board, because one member of the Board's term expired in April (and it subsequently developed the other two resigned), and this was one of the questions the court passed upon, and upon this question the court in

Tate v. School District No. 11 of Gentry County,
23 S.W. (2d) 1020-1021-1022

said:

"The foregoing statutes reflect the clear and unmistakable intention of the General Assembly, which is the law-enacting authority of our state, that the government and control of each of the common school districts in the state shall be

vested in a board of directors composed of three members, whose terms of office shall not expire concurrently, but that the term of office of only one of the three members composing said board shall expire during each school year, thereby reflecting the intention of the General Assembly that such governing board of directors of a common school district shall be a continuous body or entity, of which a majority of the members composing the board shall continue in office during the next succeeding school year. While provision is made in the statutes for a change in the personnel of the membership of the board of directors by the vote of the qualified electors of the school district at each annual meeting of the school district, yet the intention of the Legislature is clearly reflected in the statutes that the board of directors of a common school district is a continuous body or entity, and that transactions had, and contracts made, with the board, are the transactions and contracts of the board, as a continuous legal entity, and not of the individual members.

Section 11137 R.S. 1919, provides, inter alia: "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 each member notified of the time, place, and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term."

The legislative grant of power to the board of directors of a school district to employ, and to contract with, legally qualified teachers, is made general by the statute. No express limitation is made upon the grant of power by any language of the statute; nor is any limitation upon the power granted to be reasonably implied from the language and context of the statute. The statute does not limit, or undertake to limit, either expressly or impliedly, the period of employment of a teacher to the single and particular school year in which the contract of employment is made by the school district board of directors.

In support of its contention and insistence that the board of directors of the defendant school district had no lawful power or authority to make the contract of employment with plaintiff for her services as teacher for the next ensuing school year, appellant has placed reliance upon the rulings made in *Loomis v. Coleman*, 51 Mo. 21, *Crabb v. School Dist.*, 93 Mo. App. 254; and *Burkhead v. Independent School District*, 107 Ia. 29, 77 N.W. 491. All of the cited cases are clearly

distinguishable from the case at bar. The Loomis Case, supra, involved the construction of the Public School Act of March 19, 1870 (Laws of Mo. 1870, pp. 138-158). That act (Sec. 2 Id. p. 140) provided for a board of directors for each school district in the state, composed of three directors, all of whom were elected annually, by ballot, by the qualified voters of each school district, and "who shall hold their office for the period of one year, and until their successors are elected and qualified." Under said act, the board of directors of a school district was not made a continuous body, such as is provided by the present and existing statute. In the Loomis Case, it appeared that the three members of the new board of directors of the school district were elected on Saturday and qualified on the next succeeding Monday, before the contract of employment was signed by and between the plaintiff, Loomis, and the old board of directors. Hence, it was properly ruled by this court in the cited case that "it is clear that the old directors were then out of office and that their assumed action was wholly ultra vires." In the Crabb case, supra, it was contended that the contract of employment of plaintiff as teacher of a district school was void for uncertainty and indefiniteness, in that the contract specified no time at which plaintiff's employment was to begin. It was ruled by the Kansas City Court of Appeals in that case that the law implies that the services of the teacher are to be rendered within the ensuing school year and that the contract of employment was referable to the time when defendant's board of directors should fix the beginning of the school term within the ensuing school year. The power of the board of directors of the defendant school district to make the contract of employment was not involved in the cited case, and was not a question or issue for decision in that case. In the Burkhead case, supra, a contract of employment whereby plaintiff was employed as superintendent and teacher of the schools of defendant's school district for the period of five years, was held to have been made in violation of certain statutes of the State of Iowa, which by implication were deemed to reflect the intention of the Legislature of that state that such contracts of employment shall be limited in duration to the single and ensuing school year, as determined by the board of directors of the school district. In ruling such case, however, the Supreme Court of Iowa said (77 N.W. loc. cit. 492): "By section 2743 of the Code, the school district is a body politic and as such may sue and be sued. The board of directors represents the district from a legal standpoint, is the district. It is a continuous body. The officers change but the corporation continued unchanged. The contracts are of the corporation, and not of the members of the board individually. It is not essential, then that contracts be limited to the terms of office of the individuals making up the board."--citing numerous authorities in support of the rule so announced.

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

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

* * * * *

The prevailing rule is sound and, is grounded upon good sense and reason. The contract of employment between plaintiff and defendant school district, here in controversy, cannot be held to be void or illegal for any lack of power or authority in the then board of directors of defendant school district to make such contract on December 18, 1924. The eight-month period of plaintiff's employment prescribed by said contract occurring within the next ensuing school year, cannot be well said, as a matter of law, to be such an unreasonable or unusual period of employment as to bespeak, or to indicate fraud in the making of the contract. The trial court rightly overruled

the demurrer to plaintiff's petition, and rightly refused the preemptory instructions requested by defendant. The assignments of error respecting the aforesaid actions of the trial court must be denied *****

Section 11137 R.S. of Mo., 1919 corresponds to and appears as Section 9209 R.S. of Mo., 1929. It will be seen from the foregoing opinion that the court holds the school districts of Missouri are a continuous body or entity of which a majority of the members composing the board continue in office during the next ensuing year. The court also holds that the weight of authority is in the absence of a statutory provision limiting expressly or by implication the time for which a contract for employment of a school teacher may be made to a period within the contracting school board's term of office; such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office or for the term of school succeeding their term of office, provided such contract is made in good faith, without fraud or collusion and for a reasonable length of time.

It seems to be an established rule according to our court that in the absence of an expressed or implied statutory limitation a school board may enter into a contract to employ a teacher for a term extending beyond that of the board itself, and if such contract is made in good faith and without fraudulent collusion, it binds the succeeding board, but a hiring for an unusual time, the courts hold is strong evidence of fraud and collusion, which if present, would invalidate the contract. Of course, any statutory implication that the powers of the board are limited to one current term would invalidate contracts extending beyond the term of the board.

According to the decisions a three year contract might be said by our court as a matter of law to be such an unreasonable or unusual period as to bespeak or indicate fraud in the making of the contract, but ^{we} have been unable to find any contract for three years that has been so declared to be legal or illegal in this state. In the case referred to, State v. School District, supra, in the course of the opinion, the court said:

"The eight months period of plaintiff's employment prescribed by said contract occurring within the next ensuing school year cannot well be said as a matter of law to be such an unreasonable or unusual period of employment as to bespeak or indicate fraud in the making of the contract."

We see, therefore, that this Missouri decision I have referred to does not decide the identical question as to whether or not a three year contract would be such an unreasonable period of time as

to void the contract or even to indicate fraud in the making of it.

In what ^{we} I have said, of course, ^{we} I have assumed that no facts surrounding the making of the contract or in connection therewith show any fraud or collusion and that the fraud or collusion, if found at all, would have to arise from the mere fact of the contract being made for three years.

The court in the Missouri decision referred to does say, however, that there is nothing in the Missouri statutes that impliedly prohibits the members of a school board from making a contract in good faith, without fraud or collusion for a reasonable length of time beyond the term of office of the members of the board.

Yours very truly,

EDWARD C. CROW

APPROVED:

Attorney General

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