

SCHOOL & SCHOOL DISTRICTS: )

CONTRACT: TEACHERS: )

) Must state monthly wage and be  
) definite and certain.

March 18, 1936.

3-30



Honorable G. C. Beckham  
Prosecuting Attorney  
Crawford County  
Steelville, Missouri

Dear Mr. Beckham:

This is to acknowledge receipt of your letter of March 14, 1936, requesting the opinion of this Department, which letter is as follows:

"I would like to have your opinion upon the following proposition:

"During the past school year there have been a number of school teachers employed in Crawford County under a written contract that provides that the teacher is to receive a stated sum per month as wages, and in addition to that stated sum she is to also receive whatever amount there might remain in the teachers fund at the close of the term of school. It so happened, due to dividend payments from closed banks, and enhanced revenue from the sales tax, that in some case there is more money remaining in the teachers fund at the close of the term of school than the teacher has already received in the form of monthly payments. Now, some of the school boards are questioning whether or not they are bound under the contract to pay the teacher this comparatively large sum of money as a bonus.

"I believe that the statute section 9209 specifically states that the teachers contract must specify the wage per month to be paid. I am just wondering if this statute is strictly construed, whether or not the school board could legally pay the teacher the remaining balance in the teachers fund as a bonus."

In replying to your question we must refer to the statutes of Missouri governing contracts between school teachers and boards of directors and boards of education, and the general powers given to such boards under the statutes.

Section 9209, R. S. Mo. 1929, as re-enacted by Laws of Missouri, 1933, page 387, provides:

"The board shall have power, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as a teacher,

nor shall 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. Provided, that the board of Education of any first class high school may employ a superintendent either before or after the annual school election."

Section 9210, R. S. Mo. 1929, provides in part 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. \* \*"

Section 2962, R. S. Mo. 1929, provides:

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

It will be noted that Section 9209, as amended, provides, "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;" etc. It will therefore be seen that the board must specify in the contract the wages per month to be paid the teacher and the contract

cannot be indefinite and uncertain as to the amount of wages per month a teacher may receive, but it must be set out in the contract definitely what the teacher is to receive as wages per month.

Section 2962, supra, provides in part as follows:

"No \* \* \* school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, \* \* \*"

As was said by the court in *Edwards v. Kirkwood*, 147 Mo. App. 599, l. c. 617:

"As the powers and duties of such officers are defined and marked out by the law, they are open to ascertainment for one and all alike. In this respect, there is a distinction between a public and a private agency. In those cases, therefore, where the obligation of the public negotiated through its agent, is sought to be enforced against the municipality, the rule obtains that every person is required at his peril to ascertain at the time the contract is entered into that it is within the scope of the authority which the law conferred upon the officer."

And also in the case of *Rudy v. School District*, 30 Mo. App. 113, l. c. 117, it is said:

"There is no question that a school district is a quasi corporation, and that the powers of its corporators and directors are prescribed and limited by statute (*Buchanan v. School District*, 25 Mo. App. 85), and, also,

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it may be added, by such provisions of the constitution of the state as are self-enforcing. Nor is there any doubt that a person entering into a contract with a school district, 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 can be had by him thereon. Cheeney v. Brookfield, 60 Mo. 53."

The contract as mentioned in your letter sets forth a stated sum as wages the teacher is to receive and then goes further and says the teacher also is to receive whatever amount might remain in the teacher's fund at the close of the term of school. We do not think that it is within the power of the school board to make a contract which is as indefinite and uncertain as this one would be and give to the teacher this added sum over and above the monthly wage which the statute says must be set forth in the contract. Anyone contracting with a school district does so at his peril and is presumed to know the limitations of the board, and if the board enters into a contract beyond the scope of its powers, no recovery can be had against the school district.

Conclusion.

It is, therefore, the opinion of this Department that that part of the contract which provides that the teacher is to receive "in addition to that stated sum she is to also receive whatever amount there might remain in the teachers fund at the close of the term of school," is invalid and cannot be enforced against the district.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney-General.

CRH:EG