

SCHOOLS: Board of Directors cannot do indirectly what it is prohibited from doing directly.

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Honorable Charles A. Moon  
Assistant Prosecuting Attorney  
Springfield, Missouri

Dear Mr. Moon:

This is to acknowledge your letter dated May 7, 1937, as follows:

"The County School Superintendent has requested an opinion from you on the following questions:

"Can the employment of a teacher without a valid certificate to teach, be made by indirection by a school board, as by employing a person, with a valid certificate, under written contract with an increased salary, with a verbal understanding that he will employ and pay the salary of a person, without a valid certificate, to also teach in the school? Can a Member of the School Board be indirectly employed in this same manner, regardless of whether or not he has a certificate to teach?

"Can a School Board pay for incidentals by indirection out of the teachers fund, as by employing a qualified teacher under written contract, with an increased salary, with a verbal understanding that said teacher is to either do the janitor work himself or employ and pay the salary of another person to do the janitor work; or with a verbal understanding that said

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teacher shall return a certain amount of his salary each month to the School Board to enable said School Board to purchase a set of reference books?"

Your two questions are inter-related to the extent that a school board is seeking by indirection to do something that it cannot do by statute. In other words, the board for all intents and purposes of the record provides for the doing of certain acts, but the records are a subterfuge to the real accomplishment of what the board wants done.

A school teacher cannot be employed without a valid certificate to teach, either directly or indirectly. Section 9209 R. S. Mo. 1929, provides in part as follows:

"The board shall have power \* \* \* \* to contract with and employ legally qualified teachers \* \* \* \* the contract 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. \* \* \* \* The certificate must be in force for the full time for which the contract is made."

Section 9210 R. S. Mo. 1929 provides that the contract between the teacher and the school board shall be construed under the general laws of contract and provides in part as follows:

"But should the teacher's contract be revoked said contract is thereby annulled."

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From the above two statutes it is seen that the Legislature commanded and intended that the person who taught pupils must be a legally qualified teacher and have a certificate at all times to enable such person to teach. A member of the school board cannot be indirectly employed for the reason that he cannot be directly employed; in fact he is prohibited from accepting employment by virtue of his office of director if he be a member of a public school board of any city, town or village in this state having less than 25,000 inhabitants. Section 9360 R. S. Mo. 1929.

A school board should not pay for incidental expenses at the expense of the teacher by giving an increased salary by written contract, and then requiring her to part with any portion of it in order to pay the salary of a janitor, or to enable the school board to purchase reference books. The teacher's contract with the board must be written, and all of his or her duties contained in the contract. In a small school district perhaps it would be a reasonable exaction from a teacher to require such to do janitor work, and if the teacher agreed in writing, no criticism could come to the Board of Directors. However, for the Board of Directors to make a written contract with a teacher to the effect that the salary will be stated in the contract at a certain amount, but a percentage of that salary must be turned over to the board for other and different purposes is clearly wrong, and we are of the opinion the Board of Directors would be derelict in their duty and unfaithful to the trust reposed in them by such an arrangement.

The Board of Directors of a school district are liable for misappropriation of school funds, notwithstanding good faith and absence of wilfull intent. Consolidated School District No. 6 vs. Shawhan, 273 S. W. (2d) 182.

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In *Eisensmith et al vs. Buhl Optical Co. et al*,  
178 S. E. (W. Va.) 695, the Supreme Court of Appeals of  
West Virginia said: (page 697)

"A person \* \* \* \* individual or  
corporation may not do by in-  
direction what he or it is pre-  
cluded from doing directly."

From the above and foregoing it is our opinion  
that if the School Board employs a teacher by contract,  
with a verbal understanding that the teacher will divide  
or use part of the contract stated salary with other  
persons or for other purposes, that such arrangement is  
illegal and non-enforceable. The Board should not by  
indirection do what it is prohibited from doing direct.

Yours very truly,

James L. HornBostel  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General

JLH/R