

SCHOOLS:

A teacher may be employed who before teaching school under her contract will become legally qualified by the proper certificate although at time of employment was not legally qualified.

May 11, 1938

Mr. G. Logan Marr,
Prosecuting Attorney,
Morgan County,
Versailles, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 10, 1938, for an official opinion from this office which request is as follows:

"The county superintendent of school of our county has asked me to write to you for an opinion on a school contract. A common school district had a regular meeting and duly elected a teacher to teach the district, and the board by proper entry entered the resolution hiring the teacher in the minutes of the school board. The teacher at the time of the meeting of the board did not have a teacher's certificate to teach in the county. In June the teacher was and is to take the examination for such a certificate so that she can fully comply with the law. This examination is to be held before the teacher must commence work under her teaching contract with the district. This the board knew at the time. It was the understanding that a formal contract would be entered into in writing between the board and the teacher just as soon as the teacher received her teacher's certificate.



Now the president wants to go on with the resolution as was unanimously adopted. The other two members of the board, want to set aside this resolution and hire another teacher that is 'legally qualified'. The question that the superintendent wants to know is, whether the school board is bound by the resolution calling for the contract with this prospective school teacher? Before this contract is formally executed in writing and before the teacher is required to commence her school, she expects to be qualified. All such teachers contracts are wholly executory and contingent. When does the qualifications commence, at the time the contract is authorized by the board, or at the time the contract is signed, or at the time the teacher is ready to commence teaching the school?

Section 9209, R.S. Mo. 1929 which refers to the employment of teachers was amended in 1933 by attaching a provision in reference to the board of education of first class high schools. Section 9209, Session Laws of Missouri, 1933, page 387, reads as follows:

"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."

Among other things this section specifically sets out "employ legally qualified teachers for and in the name of the district;"

Section 9210, R.S. Mo. 1929, among other things states:

"The contract required in the preceding section shall be construed under the general law of contracts, each party thereto being equally bound thereby."

* * * * *

In the case of Bailey v. Jamestown School District No. 11, 77 S.W. (2d) 1017, the plaintiff who was a duly qualified school teacher made an application to the board of education for employment for the ensuing year. On the day of the application, she was selected by the board and employed at a certain salary for a certain term and a record was duly made on the minutes of the meeting of the board of education and she was duly notified. She also duly notified the board of her acceptance. No formal contract was signed and the board of education

employed another teacher in her stead and without a consent and over her protest. She brought suit against the Jamestown School District and was awarded a judgment for a period of eight months at the rate of sixty dollars (\$60.00) per month although she did not teach in that district or any other district. The Supreme Court in this state in affirming the judgment, said:

"* * * We conclude that the signed application of the plaintiff and the signed minutes of the board, coupled with admission that plaintiff was notified by the clerk, accepted the employment, stood ready to sign the usual form contract, which was not left unexecuted by any fault of the plaintiff, and the evidence that plaintiff at all times was ready, offering, and willing to perform the duties, presents facts that justified the finding of the court to the effect that there was a contract.

A contract is the agreement which the parties made and not the writing which evidences the agreement. *Edwards v. School District*, 221 Mo. App. 47, 297 S.W. 1001, 1002."

Section 9234, R.S. Mo. 1929, reads as follows:

"No teacher shall be employed in any school supported by the public funds, or any part thereof, until he has received a certificate of qualification therefor, signed by the county superintendent of the county, the state superintendent, or a certificate or diploma issued by the state university or some teachers college of this state entitling him to teach in the public schools."

And Section 9235, R.S. Mo. 1929 reads as follows:

"Any teacher who shall enter a public school in this state to teach, govern or discipline the same, before complying with the provisions of sections 9209 and 9234, shall forfeit all right, title and claim to any compensation therefor, and shall be deemed guilty of a misdemeanor and punished by a fine not to exceed one hundred dollars; and any director who shall indorse or encourage said teacher in such unlawful conduct shall in like manner be deemed guilty of a misdemeanor and punishable by a like fine."

In the case of Crabb v. School District No. 1, 93 Mo. App., page 254, the court held:

"* * * We do not think, taking sections 8021 and 8022, to be read together, they mean that the teacher must have a certificate of qualification at the time of making a contract to teach school in the future. The object of the statute is that the qualification may exist during the term of the employment. The language of the statute is that, 'no teacher shall be employed,' and has reference to the employment and not to the contract for employment. It means that he shall not be engaged in teaching without the required certificate, and the following section imposes a forfeiture and punishment if he does so."* * * * *

"But it is further contended that as the school term began on the fourth day of September, and plaintiff's

certificate in evidence issued to her by the State Superintendent of Schools, was dated the fifth day of September, she was not a qualified teacher at the beginning, and, therefore, she is not in condition to enforce said contract. Time, it is true, is a material essence of the contract in suit. But can it be said that the plaintiff's failure to have a proper certificate on the fourth day of September, when defendant's school opened, taken in connection with the fact that she received one on the next day dated the fifth of September, have the effect of forfeiting her rights under the contract? There are instances when time becomes of such material consequence, that a failure of a party to comply with his contract in that respect at the time agreed upon, works a forfeiture of his rights under such contract; but the courts are not swift to enforce forfeitures, and only do so in extreme cases.

If the defendant had been forced to employ another teacher by reason of plaintiff's failure to have a proper certificate on the fourth day of September, the case would perhaps have been different. The defendant's board knew that the plaintiff was to have a certificate to teach, for she exhibited a telegram from the state superintendent that one had been issued to her, which, however, when it came, was dated the fifth of September, one day after the school opened. If the defendant is to be permitted to exact the literal terms of the contract, and demands the

'pound of flesh' the plaintiff's rights under her contract are forfeited. But ought it to be permitted? It is good law that a party who commits the first breach of his contract is not in a condition to enforce it against the other contracting party. Doyle v. Turpin, 57 Mo. App. 84. The defendant's records introduced show that the defendant was the first to commit a breach of its contract. These records show that on the thirty-first day of August the defendant's board employed another teacher in place of the plaintiff and put it out of its power to comply with the contract. Under such circumstances it should not be permitted to deny plaintiff's right to recover because of her failure to have, for a single day, a teacher's certificate, for she substantially complied with her contract in that respect." * * * * *

Under this case, the court held that it was not necessary for the teacher to have a certificate of qualification at the time of making the contract to teach in the future, but such certificate must exist during the employment of the teacher. According to your letter of request, the teacher whom the board of education employed by resolution which was unanimously adopted, could qualify at the time of the beginning of school, she could be legally appointed by the school board. Under the above case of Bailey v. Jamestown School District No. 11, supra, the fact that the board of education unanimously adopted a resolution in employing this teacher was such an offer that the county could not retract the offer at this time and a legal contract had been made although the written contract had not been signed by the teacher and the president of the board as set out in Section 9209, supra.

In the case of Tate v. School District No. 11 of Gentry County, 23 S.W. (2d) 1013, the court found that where

a teacher on date of certificate of qualification as required by Revised Statutes of 1919, Section 11137, and received removal certificate on the date on which her term was to begin under contract with defendant school district, statute was sufficiently complied with, and the district cannot defeat its liability to pay her salary by showing that on the day of the contract she was not in possession of certificate of qualification to teach in county for full time of employment.

Section 11137, R.S. Mo. 1919, is the same section as Section 9209, R.S. Mo. 1929. In the case of Tate v. School District No. 11 of Gentry County, supra, the court also held:

"* * * * It has been consistently and repeatedly ruled that a proper and reasonable construction of the statute does not require that the teacher shall have, at the time of employment, a certificate which extends to the end of the term of employment, provided that, during the term of employment, such teacher has the proper certificate. School District v. Edmonston, 50 Mo. App. 65, 70; Crabb v. School District, 93 Mo. App. 254, 260; Hibbard v. Smith, 135 Mo. App. 721, 727, 116 S.W. 487."
* * * * *

In the case of Crabb v. School District, 93 Mo. App. 254, the Sections 8021 and 8022, respectively, of the Laws of 1889, are almost identically the same as Section 9234 and 9235, R.S. Mo. 1929.

CONCLUSION

In conclusion will say that it is the opinion of this department that in view of the decision in the case of Tate v. School District, Gentry County, supra, the school district, by the unanimous resolution of the school board, resolved

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and elected the teacher to teach the district and the board, by proper entry, entered the resolution hiring the teacher in the minutes of the meeting of the school board, was such an offer to the teacher that cannot be retracted or avoided by reason of the teacher not having a qualified certificate at the time the teacher was employed. The teacher still may have the qualified certificate at the time of the commencement of school under the contract and cannot be avoided by the school district at this time.

According to the above authorities set out, it is also the opinion of this department that the qualification commences at the time of the beginning of the school term under any contract that she may sign, and, therefore, the qualification only commences at the time the teacher is ready to commence teaching school at the beginning of the school term.

It is also the opinion of this department that if the majority of the members of the board of education employ another teacher at this time in accordance with their resolution made by the two members of the board other than the president, the school district would not only be subject to pay the second teacher but also under the ruling in the case of Tate v. School District No. 11, supra, they would be subject to payment of the teacher first elected.

Respectfully submitted

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APPROVED:

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