

SCHOOLS:

School Board may contract with a Superintendent of Schools, for more than one year.

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74

December 17, 1943

Bertha Harrison Reed
Superintendent of Schools
Jasper County
Carthage, Missouri

Dear Madam:

This office is in receipt of your letter of recent date, in which you request an opinion concerning the power of a school board to elect a superintendent of schools for a period in excess of one year.

Omitting caption and signature, your request reads as follows:

"Again, Mr. McKittrick, may I ask for information?

"Is it within the legal jurisdiction of a school board to elect a superintendent of their schools for a period in excess of one year?"

Inasmuch as your request does not state whether this is a common school district, or one operating under a six-member board, we shall proceed on the theory that your inquiry was directed to the three man board.

The question raised in your letter has been one to which considerable discussion has been devoted. Due to the fact that there is no statutory prohibition preventing the employment of a superintendent for more than one year, some difference of opinion has developed concerning a situation where a board of directors has employed a teacher or superintendent for a period extending beyond one year.

Before discussing the question and interpreting the statutes and decisions as they apply, it will be both pleasant and profitable to review the statutes as they apply to the board of directors and their powers as enumerated by statute.

Turning to section 10420, R. S. Missouri, 1939, we find the qualifications of the board of directors. That portion of this section useful for our purpose reads as follows:

"The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding his, her or their election or appointment, and shall be at least twenty-one years of age. Said directors shall be chosen by the qualified voters of the district at the time and in the manner prescribed in section 10418 of this article, and shall hold their office for the term of three years, and until their successors are elected or appointed and qualified, except those elected at the first annual meeting held in the district under the provisions of this chapter, whose term of office shall be for one, two and three years, respectively. ****"

Turning now to that section of the statute devoted to the power of the board to employ teachers, we find that section 10342 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; * * * "

In construing this section, we find that the decisions require the contract with the teachers must be in writing, but that it need not conform to all of the formal requirements of the statute,

and we further find that where the offer and acceptance of the teacher and the board has been written into the minutes and signed by the clerk of the board, the contract is a valid one.

See *Boswell v. District*, 10, S.W. (2d) 665
Edward v. District, 297, S. W. 1001
Massie v. District, 70 S. W. 1108.

Looking now to that portion of our statute devoted to the construction of the teacher's contract, we find that at section 10343, R. S. Missouri, 1939, this language.

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

Directing our attention now to authorities, other than our own statutes and decisions, we find the general rule stated in clear and unmistakable language at 24 R. C. L. , 579:

"In the absence of an express 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 fraudulent collusion binds the succeeding board. It has even been held that under 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. * * *"

The decisions within this state, bearing on the question under consideration, will be found in two

leading Missouri cases. We do not find that they have been overruled, modified or criticized and they express the feeling of our courts on this question.

In *Tate v. District*, 23 SW 2d. 1013, 1. c. 1021 and 1022, we find:

"* * * 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 schoolboard'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 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 well be 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 peremptory instruction requested by defendant. The assignments of error respecting the aforesaid actions of the trial court must be denied.***"

The other leading case, *Aslin v. Stoddard County*, 106 S. W. (2d) 1. c. 476. In this case the pronouncement authorizes a county court to employ a court house janitor for a reasonable time, the performance of which would extend beyond the term of office of some of the members of the court. Quoting from this decision, Cooley, Commissioner, had this to say:

" We regard said case of *Manley v. Scott*, supra, 108 Minn. 142, 121 N. W. 628, 29 L. R.A. (N.S.) 652, as in point and as being soundly reasoned. The County court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs. * * *"

"In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold.* * *"

Bertha Harrison Reed

-6-

Dec. 17, 1943

CONCLUSION.

From the above and foregoing, we therefore, conclude that the board of directors of a common school district may contract with a superintendent of schools or a teacher for more than one year.

We further conclude that a contract, if it be for a reasonable time, and without fraud or collusion may extend beyond the term of office of some of the members of the board. The contract between superintendent and the board is not with the members of the board as individuals, but with the board as a continuing body.

Respectfully submitted,

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Assistant Attorney General

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APPROVED:

ROY McKITTRICK
Attorney General of Missouri