

PUBLIC : Section 10342 A, Laws of Mo., 1943,
OFFICERS. : p. 890, is not retroactive in re-
: quiring terms of new teacher's
: contract to be same as terms of
: teacher's contract for year preced-
: ing effective date of act.

June 12, 1944

Honorable Edward Cusick
Prosecuting Attorney
Pulaski County
Waynesville, Missouri



Dear Mr. Cusick:

This will acknowledge the receipt of your letter of June 6, requesting an opinion of this office, which is as follows:

"I have been asked for an opinion relating to the effect of Section 10342A, an amendment of the school laws, passed by the last Legislature and appearing at page 890 of the Session Acts for 1943, same approved April 23, 1943.

"A school district in Pulaski County, Missouri, having made a contract with a teacher in August, 1943, for the 1943-44 school year, failed to give the notice required, relating to termination of the teacher's contract. It is understood that the district has since employed another teacher; and the question is who is entitled to employment, having this section in mind. The section in question clearly extends the contract of the teacher for another year in case of failure of notice by the school board of termination. However, after consideration, I have questioned whether or not this section would apply to a contract which had been entered into before the effective time of the section. This presents the question when this particular section became effective, having been approved April 23, 1943. Would this section become effective ninety days after it was approved or ninety days after the adjournment of the Legislature? The first instance would make it effective about July 23, 1943, the latter about November 23, 1943. The contract in question was entered into about the first of August, 1943.

"For your information is passing upon this question, we find that at least one other state court has held that inasmuch as a contract is made in contemplation of the laws then in effect, unless the act has a retroactive provision, it would not apply to a contract entered into before its enactment, as the provision for continuance of the contract could not have been in contemplation at the time entered into.

"Inasmuch as this matter might arise in other counties I would greatly appreciate your attention and advice upon the same, I remain,"

In an opinion of this office on August 31, 1943, to Honorable Dwight H. Brown, Secretary of State, it was held that a law where there was no emergency clause contained therein became effective ninety days after the adjournment of the session at which it was enacted. Under this interpretation, the law here in question became effective on November 23, 1943.

Sec. 10342A, Laws of Mo., 1943, p. 890, provides:

"Except as may be otherwise provided by law, the provisions of Section 10342 relative to the time and manner of employing teachers shall apply only to their original employment; and their re-employment shall be subject to the regulations hereinafter set forth. It shall be the duty of each and every board having one or more teachers under contract to notify each and every such teacher in writing concerning his or her re-employment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give such notice shall constitute re-employment on the same terms as those provided in the contract of the current fiscal year; and not later than the first day of May of the same year the board shall present to each such teacher not so notified a regular contract the same as if the teacher had been regularly re-employed. Any teacher who shall have been informed of re-election by written notice of tender of a contract shall within fifteen days thereafter present to the employing board a written acceptance or re-

jection of the employment tendered; and failure of a teacher to present such acceptance within such time shall constitute a rejection of the board's offer. Any contract given a teacher may be terminated at any time by mutual consent of the teacher and the board. When the board of directors of any school district deems it advisable to close the school and send the pupils elsewhere rather than employ a teacher, said board of directors shall have power to terminate any contract continued under the provisions of this section by giving the teacher written notice of such termination not later than the first day of July next following the teacher's re-employment." Approved April 23, 1943.

The act here required to be performed would be in April of 1944. This would clearly be after the effective date of the law in November, 1943. It is difficult to see how this could be regarded as retroactive. The legislature is merely specifying the terms of the teacher's contract for the 1944-45 school year, in the event you fail to give the notice required by the law. The legislature has said that, in that event, the teacher will be considered as hired for the coming year and the terms of the new contract shall be the same as those provided in the contract of the current fiscal year. Nothing would be done that would affect or in any way change rights already accrued under the former contract.

In 43 Am. Jur., Sec. 248, it is stated:

"In the absence of any constitutional prohibition, state legislatures have power to enlarge, repeal, and limit the authority of public officers * * *."

It has frequently been held in this state that the power of an officer to enter into a valid contract must be exercised in manner and form as directed by the Legislature. *Aetna Ins. Co. v. O'Malley*, 124 S.W. (2d) 1114; *State v. Bank of the State of Mo.*, 45 Mo. 528; *State of use of Public Schools v. Crump*, 57 S. W. 1030; *State ex rel. Blackman vs. Hays*, 52 Mo. 578.

In 59 C. J. 171, Sec. 285, it is stated:

"Statutes qualifying or limiting the grant of authority to contract are mandatory, and contracts not conforming thereto are not binding on the state."

June 12, 1944

It would seem therefore that the legislature has here exercised its recognized prerogative to qualify and limit the authority of public officers. The act in question does not impair the obligation of contracts where it does not effect former contracts but merely prescribed the terms of a new contract to be entered into after the effective date of the act.

CONCLUSION.

It is therefore the conclusion of this office that Sec. 10342A, Laws of Mo. 1943, p. 890, is a valid exercise of the legislative prerogative to qualify or limit the authority of public officers, nor would requiring terms of new teachers contract to be same as contract for year preceding passage of law be a retroactive provision.

Respectfully submitted,

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Assistant Attorney General

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APPROVED:

ROY MCKITTRICK
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