RELATING TO CLAIMANTS TO LAND BY ADVERSE POSSESSION AGAINST PUBLIC SCHOOL DISTRICTS.
RELATING TO THE POWER AND AUTHORITY OF SCHOOL BOARDS TO EMPLOY TEACHERS OR SUPERINTENDENTS BEYOND THE TERM OF THEIR OFFICE.

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FILED 64

Hon. Morgan M. Moulder
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Sir:

We acknowledge receipt of your letter of date of February 7, 1934, in which you state an inquiry as follows:

> "I have been requested by the Montreal School District of Camden County to ask your opinion on the following questions:
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> The School District of Montreal was the grantee in a warranty deed to about five acres of land, said deed being dated and delivered about forty years ago. For more than thirty years they have had possession of only about two acres of said tract, the remaining three acres having never been under the possession or control of said School District, but under the possession and control of other parties who have been deeding the same for the past thirty years or more. Does the property which has been held adversely for a period of more than thirty years by private parties belong to the School District or to the private parties? Does adverse possession apply to and run against public property?
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> The Board of Trustees of the Camdenton Consolidated School District met

prior to the annual school election during the year 1933 and the members of the Board entered into a contract with the superintendent of school, employing that person to teach school and superintend the school for a period of three years. Camden County has a population of about 12,000 people and the Town of Camdenton has a population of about 600 people. Can the School Board of such a School District employ a teacher or a superintendent of schools for a period longer than one year? Would the contract entered into be void or not? Public sentiment is against the superintendent and we all desire to be rid of him if possible. We do not believe that the contract which he influenced the Board at that time to make with him is good and have every reason to believe that it is void, especially in view of the fact that an entire new school board has been elected since the signing of the contract and the new board does not desire to continue his employment.

I would very much appreciate your opinion in this matter, as the School Board is at a loss to know what they should do."

I.

No title resting upon adverse holding can be created against the lands of the public school district acquired by grant in fee.

Section 859, R. S. Mo. 1929 provides as follows:

> "Nothing contained in any statute of limitation shall extend to any lands given, granted, sequestered or appropriated to any public, pious or charitable use, or to any lands belonging to this state."

C. J. 2, p. 224, paragraph 471 F, says:

> "While title by adverse possession cannot be acquired to school lands against a county where the organic or statutory law of the state, or both, contain express provisions to the contrary, ****. On the other hand title by adverse possession to school lands cannot be acquired in jurisdictions where lands appropriated to a public or charitable use cannot be so acquired."

In State ex rel. Public Schools v. Crumb, 157 Mo., l. c. 564, the court said in part as follows:

> "It is only necessary to add that the plaintiff's rights are not barred by limitation. (Section 6772, R. S. 1889)

In the case of The City of St. Louis v. The Mo. Pac. Ry. Co., 114 Mo. l. c. 24, the court said in part as follows:

> "The force of that statute (section 6772 R. S. 1869) renders it unnecessary to remark upon any of the earlier decisions on this topic. As the law now stands we entertain no doubt that in respect of such property as is here in view, so held by the city for public use as a highway, the lapse of time in asserting the public right to possession constitutes no bar to the present action.
>
> The fact that the street has not been graded, paved or otherwise improved by the city does not affect the principle asserted. The time when such improvements shall be begun rests in the discretion of the municipal authorities, and the circumstance that they have not seen fit yet to exercise that discretion does not impair the city's standing as owner."

In the case of People ex rel. v. Ricketts, 94 N. E., 71, the court said in part as follows:

> "A public use may be limited to the inhabitants of a small locality; but the use must be in common and on the same terms, however few the number who avail themselves thereof, and a "public use", whether for all men or a class, is one not confined to privileged persons."

In the case of Trustees of Caledonia County Grammar School v. S. Blanche Kent, 86 Vt., l. c. 166, the court said in part as follows:

> "****It was held in this case (84 Vt. 1), that by statute the Statute of Limitations cannot extend to lands given, granted, sequestered, or appropriated to a public, pious, or charitable use; and, referring to what was there held, we have said in the foregoing opinion, that it being established that the land in question was granted for a public use, the Statute of Limitations does not apply."

In the case of Howard v. Oroville School District, 22 Cal. A., l. c. 551, the court said in part as follows:

> "In our opinion there is no reason for not applying the same rule to property which is dedicated or reserved to a public use when the title is held by the municipality as is applicable when it is held by the state. The same principles which prevent an adverse possession from ripening into a title when the title to the property belongs to the public and is held for public use apply in the one case as in the other. It is immaterial where the title, that is the record title, is held, whether by the state at large or by a county, or by some municipal department or other official body. There can be no adverse holding of such land which will deprive the public of the right thereto, or give title to the adverse claimant, or create a title by virtue of the statute of limitations."

It is, therefore, the opinion of this department in view of our statutory law and the construction of said law by our courts, as well as similar statutes in other jurisdictions,

that no title resting on adverse holding can be created against a public school district in a grant to them in fee, for they hold the same for a public use within the meaning of the law.

II.

There is nothing in our statutes that impliedly prohibits the members of a school board from making a contract in good faith without fraud or collusion for a reasonable length of time beyond the term of office of the members of the board.

We assume that the school district of Camdenton is organized under Article IV, Chapter 57, R. S. Mo. 1929 relating to schools.

Section 9327 R. S. Mo. 1929 relates to school districts in cities, towns and consolidated districts and provides as follows:

"The government and control of such town or city school district shall be vested in a board of education of six members, who shall hold their office for three years and until their successors are duly elected and qualified ***"

Section 9328 R. S. Mo. 1929 provides:

"The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resi-

> dent taxpayers of the district *** who shall hold their office for three years ***"

Section 9329 R. S. Mo. 1929, among other things, provides:

> "A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor ***"

We are assuming that a majority of the board voted for the contract of employment of the school superintendent.

Section 9333 R. S. Mo. 1929 provides in part as follows:

> "The board of education of any town, city or consolidated school district shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the state.***"

We are assuming that the Camdenton Consolidated School is a district of the third class as defined under Section 9194 R. S. Mo. 1929.

Under the provisions of Section 9333 (supra), the Board of Education of a town, city, or consolidated district, has the same power to perform the same duties except wherein it is otherwise specifically provided, as the boards of other school districts acting under the school laws applicable to all classes of schools. Therefore, we must resort to Article 2 of Chapter 57, which embraces

the law applicable to all classes of schools for authority of school boards of the class of schools under discussion to employ teachers and superintendents , as no other provisions under Article 4 of said chapter are found, and Section 9209 R. S. Mo. 1929 provides specifically the method of employment, and applying the provisions of Section 9333 (supra), we find that said section, 9209, (supra) would apply to the employing of teachers and superintendents of schools of that class here under discussion. Section 9209 R. S. Mo. 1929 provides as follows:

> "The board shall have power, at a regular or special meeting, to contract with and employ legally qualified teachers for and in the name of the district;*** 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.***"

Now referring to Section 9201, R. S. Mo. 1929, we find the contract referred to and provided for in said section, 9209, (supra) is construed in said section 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. Neither party shall suspend or dismiss

> a school under said contract without the consent of the other party. The board shall have no power to dismiss a teacher; but should the teacher's certificate be revoked, said contract is thereby annulled. The faithful execution of the rules and regulations furnished by the board shall be considered as part of said contract; Provided, said rules and regulations are furnished to the teacher by the board when the contract is made. ***"

In so far as we can discover, there is no specific limitation fixed by the statute upon the term or time for which a legally organized school board may employ a teacher or superintendent of schools, but of course this general rule would apply to-wit; that the time must not be an unreasonable one under all the circumstances.

We do not find any case in Missouri where the contract has been made and sustained for a period in excess of the school term for the following ensuing year after the making of the contract, but I do find a case decided recently wherein a common school district in December made a contract to employ a teacher for a term of eight months beginning the succeeding August. The members of the School Board employing this teacher went out of office in the following April and the new board employed another teacher for the term beginning in August and notified the teacher with whom the written contract had been made in December that her services were not needed and would not be accepted.

This teacher with the December contract went to the school house in August and undertook to teach the school and was prevented from doing so; she then sued the district upon the contract and alleged that she had been unable to secure other employment, and the Supreme Court, Division No. 1, on December 31, 1929, sustained the contract and affirmed the decision of the lower court, wherein upon a jury trial she was awarded the full amount

of her contract for the eight months school at $90.00 per month.

The defendant school board set up, among other things, the defense that the school board in December, which went out of office in April next ensuing, had no authority to make a contract or to employ a teacher beyond the term of the board, because one member of the board's term expired in April (and it subsequently developed the other two resigned), and this was one of the questions the court passed upon, and upon this question the court in

Tate v. School District No. 11 of Gentry County,
25 S. W. (2d) 1020-1021-1022

said:

> "The foregoing statutes reflect the clear and unmistakable intention of the General Assembly, which is the law-enacting authority of our state, that the government and control of each of the common school districts in the state shall be vested in a board of directors composed of three members, whose terms of office shall not expire concurrently, but that the term of office of only one of the three members composing said board shall expire during each school year, thereby reflecting the intention of the General Assembly that such governing board of directors of a common school district shall be a continuous body or entity, of which a majority of the members composing the board shall continue in office during the next succeeding school year. While provision is made in the statutes for a change in the personnel of the membership of the board of directors by the vote of the qualified electors of the school district at each annual meeting of the

school district, yet the intention of the Legislature is clearly reflected in statutes that the board of directors of a common school district is a continuous body or entity, and that transactions had, and contracts made, with the board, are the transactions and contracts of the board, as a continuous legal entity, and not of the individual members.

Section 11137 R. S. 1919, provides, interalia: "The board shall have power, at a regular or special meeting, to comtract with and employe legally qualified teachers for and in the name of the district; all special meeting 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 legislative grant of power to the board of directors of a school district to employ, and to contract with, legally qualified teachers, is made general by the statute. No express limitation is made upon the grant of power by any language of the statute; nor is any limitation upon the power granted to be reasonably implied from the language and context of the statute. The statute does not limit, or undertake to limit, either expressly or impliedly

the period of employment of a teacher to the single and particular school year in which the contract of employment is made by the school district board of directors.

In support of its contention and insistence that the board of directors of the defendant school district had no lawful power of authority to make the contract of employment with plaintiff for her services as teacher for the next ensuing school year, appellant has placed reliance upon the rulings made in Loomis v. Coleman, 51 Mo. 21, Crabb v. School Dist. 93 Mo. App. 254; and Burkhead v. Independent School District, 107 Ia. 29, 77 N. W. 491. All of the cited cases are clearly distinguishable from the case at bar. The Loomis case, supra, involved the construction of the Public School Act of March 19, 1870 (Laws of Mo. 1870, pp. 138-158). That act (Sec. 2 Id. p. 140) provided for a board of directors for each school district in the state, composed of three directors, all of whom were elected annually, by ballot, by the qualified voters of each school district, and "who shall hold their office for the period of one year, and until their successors are elected and qualified." Under said act, the board of directors of a school district was not made a continuous body, such as is provided by the present and existing statute. In the Loomis Case, it appeared that the three members of the new board of directors of the school district were elected on Saturday and qualified on the next succeeding Monday,

before the contract of employment was signed by and between the plaintiff, Loomis, and the old board of directors. Hence, it was properly ruled by this court in the cited case that "it is clear that the old directors were then out of office and that their assumed action was wholly ultra vires." In the Crabb case, supra, it was contended that the contract of employment of plaintiff as teacher of a district school was void for uncertainty and indefiniteness, in that the contract specified no time at which plaintiff's employment was to begin. It was ruled by the Kansas City Court of Appeals in that case that the law implies that the services of the teacher are to be rendered within the ensuing school year and that the contract of employment was referable to the time when defendant's board of directors should fix the beginning of the school term within the ensuing school year. The power of the board of directors of the defendant school district to make the contract of employment was not involved in the cited case, and was not a question or issue for decision in that case. In the Burkhead case, supra, a contract of employment whereby plaintiff was employed as superintendent and teacher of the schools of defendant's school district for the period of five years, was held to have been made in violation of certain statutes of the State of Iowa, which by implication were deemed to reflect the intention of the Legislature of that state that such contracts of employment shall be limited in duration to the single and ensuing school year, as determined by the board of directors of the school district. In ruling such

case, however, the Supreme Court of Iowa said (77 N. W. loc. cit. 492): "By section 2745 of the Code, the school district is a body politic and as such may sue and be sued. The board of directors represents the district from a legal standpoint, is the district. It is a continuous body. The officers change but the corporation continued unchanged. The contracts are of the corporation, and not of the members of the board individually. It is not essential, then that contracts be limited to the terms of office of the individuals making up the board." -- citing numerous authorities in support of the rule so announced.

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 school board'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 areasonable 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 thus stated in 24 R. ca. L. 579: "In the absence of an expressed 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 fraud and collusion, binds the succeeding board. It has even been held that, under the 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, but a hiring for an unusual time is strong evidence of fraud and collusion, which, if present, would invalidate the contract. Of course, any statutory implication that the powers of the board are limited to the current term would invalidate contracts for a term extending beyond that of the board."

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The prevailing rule is sound and, is grounded upon good sense and reason. The contract of employment between plaintiff and defendant school dis-

> trict, 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 be well 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 preemptory instructions requested by defendant. The assignments of error respecting the aforesaid actions of the trial court must be denied ****."

Section 11137 R. S. of Mo., 1919 corresponds to and appears as Section 9209 R. S. of Mo., 1929. It will be seen from the foregoing opinion that the court holds the school districts of Missouri are a continuous body or entity of which a majority of the members composing the board continue in office during the next ensuing year. The court also holds that the weight of authority is in the absence of a statutory provision limiting <u>expressly</u> or by <u>implication</u> the time for which a contract for employment of a school teacher may be made to a period within the contracting school board's 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, providing such contract is made in good faith, without fraud or collusion and for a reasonable length of time.

It seems to be an established rule according to our court that in the absence of an expressed or implied statutory limitation a school board may enter into a contract to employ a teacher for a term extending beyond that of the board itself,

and if such contract is made in good faith and without fraudulent collusion, it binds the succeeding board, but a hiring for an unusual time, the courts hold is strong evidence of fraud and collusion, which if present, would invalidate the contract. Of course, any statutory implication that the powers of the board are limited to one current term would invalidate contracts extending beyond the term of the board.

According to the decisions a three year contract might be said by our court as a matter of law to be such an unreasonable or unusual period as to bespeak or indicate fraud in the making of the contract, but I have been unable to find any contract for three years that has been so declared to be legal or illegal in this state. In the case referred to, State v. School District, supra, in the course of the opinion, the court said:

> "The eight months 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 indicate fraud in the making of the contract."

We see, therefore, that this Missouri decision we have referred to does not decide the identical question as to whether or not a three year contract would be such an unreasonable period of time as to void the contract or even to indicate fraud in the making of it.

In what we have said, of course, we have assumed that no facts surrounding the making of the contract or in connection therewith show any fraud or collusion and that the fraud or collusion, if found at all, would have to arise from the mere fact of the contract being made for three years.

The court in the Missouri decision referred to does say, however, that there is nothing in the Missouri statutes that impliedly prohibits the members of a school board from making a con-

tract in good faith, without fraud or collusion for a reasonable length of time beyond the term of office of the members of the board.

Yours very truly,

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APPROVED:

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