THE LEGAL AUTHORITY AND LIMITATIONS
OF TEACHERS CONTRACTS

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THE LEGAL AUTHORITY AND LIMITATIONS
OF TEACHERS CONTRACTS

THESIS

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By

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CHAPTER I

INTRODUCTION

The Purpose of the Study

For generations a favorite saying has been "as is the teacher so is the school." But it is only recently that we have awakened to the fact that decided improvement in teachers depends largely upon the extent to which they have a definite status duly recognized by law.

The legal status vitally concerns all persons engaged in education and everyone seriously interested in educational progress. This study has been made to clear the haziness in the minds of both teachers and employers as to just what the teacher's legal status is and how it may be protected and extended.

The major purpose of this study is to determine the nature and characteristics of the contractual relationship between boards of education and public school teachers; the conditions, standards, and principles involved in such contractual status; the rights and liabilities of the contracting parties; and the relationship between the teacher's contractual and professional status. The purpose is also to determine by analysis of a group of contract forms the nature of the stipulations found in the average contract.
The practical purpose contemplated as an outcome of the above stated objectives is to make available such analysis and classification of legal principles for the guidance of superintendents of schools and boards of education in contracting with teachers, and to indicate wherein improvements in the contractual status may enhance the professional welfare of teachers.

The Problems Raised

The study is divided into four major parts, namely: certification as a prerequisite to contractual status, the hiring of teachers, the dismissal of teachers, and the analysis of a group of contracts to ascertain their form and stipulations. The major questions which an attempt is made to answer in these divisions are in part as follows: Why must an eligibility status of the teacher precede or accompany the contractual status? What are the characteristic elements of the eligibility status and what are the standards by which they are determined and administered? Who selects and appoints the eligible teacher? By what authority and under what rules of law? What are the limitations, if any, upon the selective and appointive power in relation to the public school teacher? For how long a term may teachers be appointed and what relation exists between such term and the best educational practice? What are the statutory and common law requisites of the teacher's contract of employment?
When, by whom, and under what conditions may public school teachers be dismissed? What grounds constitute a legal dismissal of the teacher? What procedure should be followed in gaining recourse against an improper dismissal? At what time are boards of education liable personally for their errors? What distinction exists between discharge and dismissal? What is the nature of the contracts issued in this State? What provisions are most commonly found in contracts? In what way may contracts be improved so as to be an aid to the teacher instead of being a body of laws governing their every action? These and many other questions form the basis of this study.

Solutions to the Problems

Court decisions constitute an important phase of the law of public school administration so it is only logical to turn to the decisions of the American courts for our solutions to the problems presented. For the latter part of the study it has been necessary to send out a personal letter to two hundred school superintendents requesting samples of their contract forms and any group of rules and regulations which they consider a part of their contracts.

Selected groups of cases were studied in each phase of the divisions mentioned and arranged to fit into a group of legal principles involving the relation of the agencies of the public school system and the teachers that arise through
their contracts. The school laws of Texas were investigated to analyze the prerequisites to the teacher's contractual status.

Limitations of the Study

It is important to note the limitations of this study. It is not an attempt to analyze and classify the legislative acts of the various states relating to the teacher's contractual status, such as certificate requirements, powers of boards of education to employ and dismiss teachers, and so forth. The statutory standards in reference to each of the above suggested topics would vary with the different jurisdictions and would constitute an independent and fruitful field of investigation. This study, however, is limited to the ascertaining of the basic legal principles controlling the contractual status of teachers as revealed in common law decisions. Evidently, statutory regulations will modify and differentiate decisions, principles, and standards within the various territorial jurisdictions, but there will be a common core of principles and standards running through the decisions rendered within the various jurisdictions. Obviously, it is our purpose to discover, isolate, and organize this common core. Attention is also called to the fact that this inquiry limits itself to the contractual status of teachers. The contractual status is a single phase of the legal status. Thus, the rights and liabilities of teachers toward
pupils and parents in reference to discipline often become
important questions in connection with legal status in mat-
ters of tort, but not of contract. Throughout this study
the word "teacher" refers to the public school teacher, and
comprises principally those persons actually engaged in the
impartation of instruction in the grades of the public
school, the kindergarten, and the State normal schools.
However the term is broad enough to include superintendents
of city schools, supervisors and directors of instruction,
principals, and other supervisory officers.
CHAPTER II

CERTIFICATION AS A PREREQUISITE
TO THE CONTRACTUAL STATUS

The Necessity for Issuance of Certificates

The inalienable right of any individual to contract for his labor is a right that is as old as history itself. In modern times this right has been engulfed with limitations for the protection of the masses. Those occupations or professions, that by their very nature are vital to the life and well-being of the community, are regulated by the legislative enactment requiring persons engaging in any of them to obtain a license from the State. These licenses are issued upon examination or by special training or by both.

Teaching is such an occupation. On the every hand it is regulated by enactments. The certification of a teacher by the State does not guarantee to the teacher that he will teach in the State, but is merely a prerequisite to his right to contract. Certification is the evidence of a teacher's eligibility. It is the legal badge of successful achievement in meeting particular professional requirements for a specified purpose. Public education being a State function, the State may prescribe such qualifications for
teachers as public policy may demand. The certification of teachers, originally a district function, is now a State function. The necessity of having a certificate is clearly defined by the State:

Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempt under the terms of this law.¹

There are no definite rules throughout the States concerning the certification of teachers. Nor is there any unity as to the types and kinds issued in the various States. Therefore let us examine the types of certificates issued by the State of Texas, and the requirements necessary to fulfill in order to obtain each.

Types of Certificates

Three kinds of certificates are issued allowing the holder to contract to teach in the public schools of the State. They are: elementary certificates, high school certificates, and special certificates.

Classes of Elementary Certificates
And How Obtained

Elementary certificates are divided into three classes, namely, elementary certificates of the second class, elementary certificates of the first class, and elementary permanent certificates. To obtain an elementary certificate of the second class an applicant must go to the county superintendent and make application stating the type of certificate desired, and attach to the application three letters of recommendation from reliable citizens of the county. The county superintendent will then investigate, and if the applicant is found satisfactory, will submit his name to the County Board of Examiners. Upon receipt of the county superintendent's report and four dollars as examination fee, the applicant will be given the examination.\(^2\) The applicant shall be examined in spelling, reading, writing, arithmetic, English grammar, elementary physiology, and hygiene with special reference to narcotics, school management, and methods of teaching descriptive geography, Texas history, United States history, Texas school law relating to teachers and pupils, and, in addition, on any two of the following subjects: elementary agriculture, elementary composition, drawing and music. If the applicant makes a general average on all the

\(^2\)Ibid., Art. 2879.
subjects of not less than eighty-five per cent and a grade of not less than sixty per cent, he may receive an elementary second class certificate. This certificate is inter-changeable into a second class high school certificate by taking the examination for a second class high school certificate while the second class elementary certificate is in force. The second class elementary certificate is in force until the third anniversary of the thirty-first day of August of the calendar year in which the examination is held. 3

The first class elementary certificate may be obtained by completing one or two years in a standard first class college recognized by the State Department of Education. If only one year of college work is completed the certificate is in force until the second anniversary of the thirty-first day of August of the calendar year in which the certificate is issued. 4

To obtain the permanent elementary certificate the applicant must be one who has "completed the second year of college work in a Texas State normal college, and who has specialized in the materials of elementary education, including a minimum of thirty-six recitation hours of practice teaching in the elementary grades under the supervision of a

3 Ibid.
4 Ibid., Article 2888.
critic teacher."  

Applicants having completed two years of standard college work and two courses of professional training are entitled to a first class elementary certificate good for six years. The applicant may on having taught five years on this certificate exchange it for a permanent elementary certificate. Also those applicants having completed four years college work in a standard recognized college with only two years of professional training, may obtain, after having completed one year of successful teaching, a permanent elementary certificate. Permanent certificates may be obtained without teaching experience only by having completing the required work necessary for obtaining a degree or certificate of graduation from a recognized four year institution.  

Classes of High School Certificates and How Obtained  

High school certificates are divided into three classes, namely: high school certificates of the second class, high school certificates of the first class, and permanent high school certificates. The second class high school certificate is granted to an applicant only temporarily. It may be obtained by examination or by the completion of college

5Ibid.  
6Ibid.
credit under five courses. Both may be required. The first class high school certificate is divided into three classes. First, those certificates valid for a period of two years have as their prerequisite the completion of five full courses in a recognized college. The courses must be inclusive of at least one course in education, and one course in English. Not more than two courses may be taken in one subject. Second, those certificates valid for a period of four years have as their prerequisite the completion of two full years of college work and at least two courses in education. At least one of these courses in education must deal with the teaching of high school students. Third, those certificates granted for a period of six years have as a prerequisite the completion of three years of education, one course of which must include a minimum of thirty-six recitation hours of practice teaching and one course of which shall bear upon training for high school teaching.

The permanent high school certificate is the highest type certificate that is issued in the State of Texas. This certificate requires the applicant to have completed four years in a recognized college or university, and to

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7 Ibid.  
8 Ibid.  
9 Ibid.  
10 Ibid.
have received a bachelors degree or its equivalent. Four courses of education must have been completed, one of which must bear upon high school teaching, and one of which shall consist of a study of methods, observation of methods, and practice in teaching.11

Should a person have completed four years of college work and received a degree and have had only two years of education which would entitle him to a six year high school certificate, he may apply, after having completed three years of experience in teaching, and obtain a permanent high school certificate.12

Classes of Special Certificates and How Obtained

Certificates are issued for the teaching of special subjects not included in the above mentioned certificates. Subjects embraced by these certificates are: kindergarten, agriculture, domestic art, domestic science, commercial subjects, public school drawing, expression, manual training, physical training, public school music, vocal music, instrumental music, industrial training, and foreign languages.13

Three classes of kindergarten certificates are issued. Those valid for two years, four years, and six years. To

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11 Ibid.
12 Ibid.
13 Ibid.
obtain a certificate valid for two years it is necessary for the applicant to have completed one year's work in kindergarten training in a college or university recognized as first class by the State Department of Education. To obtain the certificate valid for four years it is necessary to have completed two years work in a kindergarten training school for teachers. After three years of successful teaching of kindergarten work the four year certificate may be changed into a permanent kindergarten certificate.14

Special certificates other than the above mentioned kindergarten certificate do not have special provisions set out for each individual certificate, but the requirements are considered collectively. To receive the lowest class certificate valid for only three years, it is necessary to have completed ten college courses, one of which shall be in English, at least one in education, and at least one in the special subject on which the certificate is issued. One of the courses must include special methods of teaching the subject on which the certificate is granted. A special certificate valid for four years is issued on the completion of fifteen college courses, one of which shall be in English, at least one in education, and at least three of which shall be in the subject on

14Ibid., Art. 2889.
which the certificate is granted. This four year certificate may be changed into a permanent certificate after the completion of three years of successful teaching in the field for which the certificate is granted. A permanent certificate may be issued on training by completing twenty (20) courses, one of which shall be in English, at least one in education, and at least four of which shall be in his special subject. The school in which the work is done must be recognized by the State Board of Education as first class.15 Persons having taught the special subject in which he is applying for a certificate at least three years prior to September 1, 1925, shall be exempt from the requirement to hold a teacher's special certificate so long as he or she continues to be employed to teach the same subject, provided that any person who has been engaged in teaching music, writing, and drawing in the public schools of Texas for ten years shall be exempt from the present law and be given a life certificate in that subject.16

The Right of Local Boards to Demand Extra Requirements

The fact that an individual has complied with all of the requirements of the State legislature and obtains a certificate to teach does not restrict the independent

15Ibid.
16Ibid., Art. 2889a, Sec. 2.
school districts from requiring additional preparation before teachers may teach in their systems. Local boards still retain the power to determine the professional status of the teachers they employ and may add to the eligibility requirements of the State, provided such additional requirements are reasonable and not in lieu of, or in conflict with, the laws of the State. ¹⁷ Thus the right of the local board to require that a teacher pass an examination prescribed by the local examining committee in addition to the possession of a statutory certificate is upheld by the Appellate Court of Missouri.

It must be admitted that in the interest of a higher educational qualification the defendant board of directors had the right, in addition to having a statutory certificate, to require her to take an examination in which she should maintain a certain standard of fitness as a teacher. ¹⁸

So, too, has it been held that the local board, in addition to the statutory certificate, may require the teacher to pass a physical examination, ¹⁹ or to possess additional years of teaching in kind and amount. ²⁰

Again it was held in the case of Daviess County Board of Education v. Vanover that teachers' requirements may be increased by any local board of education to meet their

¹⁸Ibid.
school needs. The court said:

The local boards of education have the power to prescribe qualifications of teachers, at least so far as such requirements do not transgress the minimum requirements fixed by the statutes for teachers to obtain the right to teach. The power to administer trade, and standardize the schools and to promote them in every way surely carries with it the right to set high standards for the teaching force. Nor is this power curtailed in any way by any privilege given by the statutes to a teacher possessing the kind of a teacher's license or certificate which the appellee holds.21

The Revocation of Certificates

An interesting question is involved in predicating the rights of a teacher who has had a certificate revoked by official authority. The revocation of a certificate obviously is not a judicial nor a discretionary act of the revoking officer, but is rather a ministerial act to be interpreted strictly by the statutes under which revocation is prescribed. The county superintendent may revoke only for statutory cause and must follow the statutes in detail, proceeding on no other ground, or otherwise equity will intervene. The principle is well stated by the Supreme Court of Indiana:

A license has none of the elements of a contract and does not confer an absolute right, but only a personal privilege to be exercised under existing restriction and such as may thereafter be reasonably imposed. Statutes authorizing the issuance of such licenses are enacted to promote the good order and welfare of the State, and may

ordinarily be repealed at the pleasure of the legislature. . . . The enforcement of regulations enacted in the proper exercise of police powers of the State cannot be resisted as taking of private property without compensation. . . . It is equally well settled that statutes conferring a ministerial power upon a board to issue and to revoke licenses are not invalid and do not clothe such tribunals with judicial power. . . . It is the generally accepted doctrine that where a statute or ordinance authorizes the revocation of a license for causes enumerated, such license cannot be revoked upon any ground other than one of the causes specified.22

Applying this principle, we should expect to find that due notice to the teacher against whom statutory revocation is employed is necessary and, too, that a statute authorizing the county superintendent to suspend or remove a teacher for certain causes does not authorize the revocation of the teacher's certificate.23 The authority to revoke a certificate lies in statutory sanction as does the authority to issue a certificate.24 Nor may a superintendent revoke a certificate arbitrarily without examination or investigation.

Renewing of Certificates

It is the accepted rule in Texas as in a majority of the States that teachers must renew their certificates while the certificate is still in force.25 This may be done

22Stone v. Fritts, 169 Ind. 361, (1923).
24Ibid.
in Texas by completing additional academic and professional work. In Kentucky the court held in the case of Fugate v. Fields that:

The breath of life cannot be blown into a corpse. . . . If Fields desired to continue teaching under this certificate by having it renewed, it was incumbent on him to so bestir himself as to be entitled to have it renewed; that is, to acquire the needed scholarship prior to the date of its expiration. If he had acquired the additional scholarship during the life of the certificate, he would be entitled to a renewal even though he was delayed in the production of the evidence thereof, but have the additional scholarship he must.27

In some States it is necessary that a teacher hold a certificate covering the full term of his employment at the time of entering upon the contract to teach. The State of Washington Supreme Court held:

No rule of law is better settled than that, if a contract is entire, it can be enforced only in its entirety, and a breach as to any material part of an entire contract is a complete discharge, and releases the other party of his obligation to perform.28

The Necessity of Holding a Certificate Before Contracting

There are two theories of law by which courts have found it possible under certain circumstances to permit the teacher uncertificated at the time of negotiating the contract to enter upon a valid contract. One is the ratification theory,

26Ibid.
and the other is the implied contract theory. These theories will be considered in the order mentioned.

Whether or not a teacher uncertificated at the time of contracting, who obtains a certificate prior to entrance upon employment, may have the contract ratified depends upon the court's view as to whether the original contract is void when initiated or whether the original contract is valid when initiated, but voidable in case the teacher fails to secure the certificate. The former view is held by the Colorado Supreme Court in School District v. Kirby, while the Arkansas Supreme Court in Lee v. Mitchell holds that a board may not restrain a teacher from entering upon his contract where the certificate has been secured prior to the opening of the school but subsequent to the signing of the contract. Evidently there is a conflict of opinion on this point due to the difference of interpretation placed upon the status of the original contract. The weight of authority would seem to indicate that where a statute requires a teacher to hold a certificate at the time of entering into a contract, the contract made by an uncertificated teacher is void and cannot thereafter be ratified. But where the statutory prohibitions refer to the employment rather than the contract of employment, the subsequent acquisition of a certificate by the uncertificated teacher, before, at, or even after his entry

upon employment may amount to a ratification of the original contract.

The reason why a teacher uncertificated at the time of contracting cannot subsequently ratify a contract by the acquisition of a certificate and entrance upon teaching, where the statutory prohibition refers to the contract of employment rather than the employment, is well stated in the following excerpt from the Texas Court of Civil Appeals:

The original contract was void, because it was repugnant to the statute, and it could not have been ratified and certainly cannot be vitalized by obtaining a certificate and endeavoring to have it read as though of a date anterior to the execution of the contract... He did not have it when he entered into contract and that instrument being null and void in its inception could not be vitalized and purified by any subsequent events, but it is so nugatory and ineffectual that nothing can cure it.31

It is a well established fact that in Texas, as well as in many other States, that no compensation will be given from State or local funds for the payment of teachers whose certificates do not in every respect comply with the law. Failure to comply to this provision by any board of education will result in the removal of State support and accrediting.32

Summary

It has been found in this chapter that the right of a teacher to contract is preceded by the acquiring of a certifi-

31 Richards v. Richardson, 168 S. W. 50, (1914).
cate. These certificates are divided into different classes and divisions to show the accomplishment of the individual holding them. This is done to better protect the people of the State, and to aid them in the selection of their teachers. The fact that a person has obtained a certificate to teach does not limit the local board from requiring additional requirements before the applicant may enter into a contract with its schools.

It was found that the authority issuing certificates has the right, under certain conditions, to revoke certificates. Also a certificate must be renewed while the old certificate is in force or it loses its legality. The court ruled that it is necessary for an individual to hold a certificate good for the entire period contracted for, and that it must not expire during the year or the contract is void. The court held further that individuals may contract for positions before they obtain a certificate if the statutes require only that a certificate be held before employment and makes no specific requirements or stipulations concerning the holding of a certificate before the contract is entered into.
CHAPTER III

POWERS AND LIMITATIONS OF SCHOOL BOARDS

IN THE SELECTION OF TEACHERS

The Power of Boards to Contract

Chapter II deals with the eligibility prerequisites which the State prescribes for teachers as a necessary basis for entrance upon the contractual status. The law requires the lawyer, the doctor, and the teacher to secure a proper certificate or license to undertake certain types of professional work, for which evidence of adequate training and preparation is required. After obtaining the certificate or license the doctor or the lawyer may enter permanently upon the practice of his profession. Not so with the teacher who, except under indefinite tenure jurisdiction, must secure an appointment and a contract to teach for a limited term before entering upon professional service. These contracts to teach must be continually renewed throughout the professional career of the teacher. This apparently simple difference between competitive and non-competitive professional service has a significant bearing upon the development of the profession of teaching.

The public school teacher must enter into a contractual status with an employing board in order to serve the com-
munity, while his co-professional in law or medicine on the competitive basis of employment looks not to one employer, but to many. The dismissal of the doctor or the lawyer by his client does not mean dismissal from the professional service within a particular locality, while, on the other hand, the dismissal of the teacher by his employer not only means elimination from service within that particular community but often elimination from the profession. Therefore, the contractual status of teachers becomes a problem worthy of the most careful investigation and study. Professional status is inseparably linked with contractual status. We turn now to an analysis of the factors in the preliminary stages of the contractual status, namely, the selection and the appointment of the teacher.

If a teacher must enter into a contractual status in order to enter upon professional duties, the question immediately presses, with whom must he contract? In the early colonial days the people in town meetings voted to establish and support a school and then voted to select a schoolmaster for it. Here the people hired the teacher. As the country became more thickly populated and the problem of education became more acute, the business of education was taken over by the State and statutes were passed setting up an organization for the management of schools. One of the first functions taken into consideration was
the hiring of teachers. This function was delegated to a
school committee, whose powers were designated and limited
by statutes, and also by such provisions of the constitu-
tion of the State as are self-enforcing.

The State of Texas has empowered its local boards of
education with the sole power of entering into a contract
with a teacher.

Said trustees shall be a body politic and corpo-
rate in law, and shall be known by and under the
title and name of district trustees of district
number............., and county of...................
State of Texas; and such may contract and be con-
tracted with, sue and be sued.1

The Relation of the County Superintendent
to the Teachers' Contracts

Any contracts entered into by common school districts
and by independent school districts with a scholastic popu-
lation each of fewer than one hundred fifty (150) are not
valid until approved by the county superintendent.2 This
fact necessitates the division of schools into four classes;
common schools, independent schools of fewer than one hun-
dred fifty (150) scholastics, independent school districts
of more than one hundred fifty (150) scholastics, and city
school districts wherein there is more than 100,000 popu-
lation. The common schools and the small independent
school districts of less than one hundred fifty (150) scho-

1State Department of Education, op. cit., Art. 2748.
2Thomas Y. Taylor, 123 S. W. 129. (1927).
lastics are under a supervisory control of the county superintendent. He must examine all the contracts between the trustees and teachers of his county; and no teacher can recover compensation under contract with trustees without showing approval of the county superintendent.

The county superintendent must approve a teacher's contract if after examination he finds it legal in form and substance and not obtained through fraud. The county superintendent has the authority to refuse to sign a contract if in his estimation the school could not pay the salary stipulated in the contract.

The provision in a teacher's contract that it would be consummated only upon approval of the county superintendent was held not to be a delegation to the superintendent of the trustees' power to elect and contract with teachers, but only a recognition of the statutory requirement of the superintendent's approval. Also the county superintendent has discretionary power in determining whether or not teachers' contracts should be approved. His refusal to approve a teacher's contract has been held not arbitrary where a strong minority, if not a majority, of the citizens of a district

3State Department of Education, op. cit., Art. 2693.
7Miller v. Smiley, op. cit.
were not in favor of approval.\textsuperscript{8}

The Time Limit on a Contract

The time limit on a contract is fixed by statutory law for the several classes of schools. In a common school district a contract cannot be let for more than two years with any superintendent, principal, or teacher.\textsuperscript{9} In the independent school districts a contract may be valid for a period not to exceed three years, and if the scholastic population exceeds 5,000 a contract may be executed for a period of five years.\textsuperscript{10}

The Right to Have Unwritten Contracts

In many States of the Union it has been held by the courts or by rulings of the Attorney-General that teachers' contracts in independent school districts having more than one hundred fifty (150) scholastics need not reduce their contracts to writing, if the minutes of the board contain all the terms of the contracts, and the teachers have accepted appointment in writing.\textsuperscript{11}

The above mentioned rules and laws apply directly to the Texas Public School System; however, investigation shows

\textsuperscript{8}Ibid.
\textsuperscript{9}State Department of Education, \textit{op. cit.}, Art. 2750a.
\textsuperscript{10}Ibid., Article 2781.
\textsuperscript{11}State Department of Education, \textit{op. cit.}, p. 93.
that the same rules are more or less general throughout the States.

The Binding of One Board by Another

The prevailing rule as gathered from the authorities seems to be that where there is no limit placed on the exercise of power conferred upon school trustees or boards to contract with and employ teachers, a contract by such trustees or board employing a teacher for a term to commence or continue after the expiration of the term of such trustees or board is valid and binding upon successors in office.

The rule may be stated as follows:

In the absence of express or implied statutory limitations, 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 be made in good faith and without 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 members, and subsequent to the reorganization of the board as a whole, or even subsequent to the term of the board as a whole. But the hiring for an unusual time is strong evidence of fraud and collusion, which, if present, would invalidate the contract.\(^{12}\)

Thus it has been held that a school board may contract to employ a teacher for a period to commence in the future after the expiration of the term of the board, and the fact is immaterial that the employment is for the purpose of forestalling the new board, where fraud on the part of the board

\(^{12}\text{Gates v. School District, 53 Ark. 468, (1888).}\)
making the contract is not alleged. The courts invariably hold that the board is a continuous body and, while the personnel changes, the corporation continues unchanged. Such corporation has the power to contract, and its contracts are contracts of the board and not of the individual members.

_Gardner v. North Little Rock Special School District_ exemplifies the rule just stated. In this case the board engaged a superintendent for the period of two years, and although a written contract was entered into, the board discharged the superintendent at the end of the year. It was claimed in this case that the board could not make a valid contract for a two year term. The court held:

The proper rule seems to be that unless a statute prescribes a time limit upon the duration of such a contract, the board may make a contract for a reasonable length of time, and the reasonableness of the contract is to be determined by all the circumstances. The mere fact that there are changes in the personnel of the board during the life of the contract does not of itself render it unreasonable in duration of time.

_Gates v. School District_ represents one of the most widely cited cases on the authority of boards to bind their successors in office. The plaintiff on May 3, 1888 was elected superintendent of schools for one year beginning July, 1888. On May 10 the plaintiff accepted the position. The annual


school board election was held on May 19, at which time new members were elected and failed to recognize the plaintiff as superintendent and proceeded to the election of another superintendent. In this jurisdiction the statute provided that:

Boards of directors shall have power to employ the superintendent of the schools.\textsuperscript{15}

The court pointed out that this power is granted in the broadest of terms without placing any limitations or restrictions on its exercise. It was contended in this case that the selection of the superintendent during each year should be left to the exclusive control of the particular board for each year. The court said in reference to this contention:

As a matter of policy an argument might be made on either side of that contention. There is nothing in the law to sustain the affirmative. Public interest might suffer from unwise contracts covering an extended term in the future. They might suffer equally for want of power to make a contract when a good opportunity offered. But with the question of policy we have no concern except so far as an aid in ascertaining legislative intent. . . . There is nothing in the act that the legislature intended either more or less than it said. We therefore conclude that there is no law that forbids the school board to make a contract for a superintendent for a term beginning after some members of the board go out of office.\textsuperscript{16}

Religious Beliefs and the Contractual Status

The religious beliefs of teachers, or lack of belief, does not act as a limitation upon the exercise of the wide


\textsuperscript{16}Ibid.
discretionary power of school boards in their power of selection and appointment. On this point the Illinois Supreme Court says:

The statute has not prescribed any religious belief as a qualification for a teacher in the public schools. The school authorities may select a teacher who belongs to any church or no church as they may think best.\(^{17}\)

The Texas Statutes Article 301a\(^{18}\) provide that it shall be unlawful for any board of education, teacher's employment agency, or any organization hiring teachers or interested in the placement of teachers in the profession, to inquire concerning the religion of persons seeking employment in the public schools of this State.

In the case of *Haysong v. School District* the Supreme Court of Pennsylvania declares:

Unquestionably these women are Catholics. . . believing fully in the distinctive creed and doctrine of Catholicism. But this does not disqualify them. Our constitution negatives any assertion of incapacity or ineligibility to office because of religious belief. . . . If by law, any man or woman can be excluded from public office of employment because he or she is a Catholic that is a palpable violation of the spirit of the constitution. . . . Men may disqualify themselves by crime, but the State no longer disqualifies them because of religious belief.\(^{19}\)

Another interesting question as to the discretion of the board of education is raised in the so-called religious garb cases. There are two such outstanding cases, one in New York

\(^{17}\text{Millard } v. \text{ Board of Education, 121, 297, (1927).}\)

\(^{18}\text{State Department of Education, op. cit.}\)

\(^{19}\text{Hayson } v. \text{ School District of Gallitzien, 164 Pa. St. 629, (1930).}\)
and one in Pennsylvania. The facts of each are practically the same, but opposite decisions are reached in each case by the courts. In the Pennsylvania case the facts are as follows. Two sisters of the order of St. Joseph held regular certificates granted them in their religious names. A contract to teach in the public schools of Gallitzan Borough was issued to each of these sisters in their religious names by the Board of Education of Gallitzan. While teaching in the public schools they wore at all times the familiar and distinctive garb of the order, together with the crucifixes and the rosaries of the order and sect. There was no evidence that they used the garb or insignia to attract particular attention to themselves or endeavored to use them to teach religious or any form of Christian instruction. They were required by their vows to the church to wear such garb and such insignia. Children in the school addressed these teachers as Sisters. The evidence showed that the Board of School Directors of Gallitzan Borough intended to employ none but Catholic Sisters in certain rooms. It also appeared in evidence that certain religious instruction and exercises of the Catholic church preceded and followed the opening and closing of the public school session. Protestant children were not required to attend or participate in these exercises or instruction. The question was: Did the instruction in the school become sectarian under the conditions
herein enumerated? The court held that it was not called upon to determine whether the directors acted wisely or not, but to determine under the law whether sectarian instruction had actually been given or was liable to be given in the public schools. The policy of the directors of Gallitzan in discriminating in favor of persons belonging to a particular class might indicate a reprehensible indifference on the part of the directors to the policy of the law to divorce all matters tending to sectarianism from the public schools. The court, however, found it to be the policy of the school law of the State, which lodges in boards' discretionary powers to employ teachers, not to interfere in the exercise of that power unless it be arbitrarily exercised to the detriment of the school. This discretion, when it does not transgress the law, is not reviewable by the courts. Referring to the finding of the court Mr. Justice Dean said:

The dress is but an announcement of the fact that the wearer holds a particular belief. . . . Are the courts to decide that the cut of a man's coat or the color of a woman's gown is sectarian teaching because they indicate a sectarian religious belief?20

The dissenting judge in this case, however, reached an opposite conclusion in reference to the facts. Mr. Justice Williams said:

They (Sisters) have ceased to be civilian or secular persons. They have become ecclesiastical per-

sons known by religious names and devoted to religious work. . . . The question presented on this state of facts is whether a school that is filled with religious or ecclesiastical persons as teachers . . . wearing their ecclesiastical robes and hung about with the rosaries and other devices peculiar to their church and order is not necessarily dominated by sectarian influence and obnoxious to the spirit of the constitutional provisions and school laws.21

In the New York case the facts are almost the same as in the Pennsylvania case. The State Superintendent of Public Instruction had ordered that all teachers wearing clothes of a peculiar religious order must stop or lose their jobs. The court in this case held that the wearing of secular garments in the class rooms would naturally influence and teach the children the particular religious custom of the teacher. The act of the Superintendent was upheld.22

The Texas statutes declare that no teacher shall teach in any way any religious belief in the class room.23 This seems to imply that no religious garb shall be worn in the class rooms of the Texas public schools. So far as the writer knows there have been no cases in the Texas courts concerning this matter.

The Right of Teachers to Affiliate with Labor Organizations

The question of whether a board of education has the

21Ibid.
power to refuse to appoint a teacher that is affiliated with a labor organization has been adjudicated in two states. Like the preceding questions of discretion in reference to religion and religious garb, this is plainly one of the reasonableness of the discretionary power to be exercised by the boards of education. In Frederick v. Owen the resolutions of the board treated affiliation with labor unions as equivalent to resignation by the teacher, and said that all teacher contracts or appointments to teach should contain a stipulation to the effect that no teacher should be appointed or reappointed who did not freely first assent to these requirements of the board.\textsuperscript{24} The court held:

\begin{quote}
Neither the superintendent nor any of his assistants nor any of the teachers have any vested right in the position which they hold. The right to longer occupy these positions terminates at the end of the period for which the appointment was made, and thereafter the right to continue therein depends upon the judgement of the superintendent and the board insofar as assistants and teachers are concerned, and of the board alone so far as the superintendent is concerned. It was necessary that this power of selection, appointment, and re-appointment should be vested somewhere, and the legislature saw fit to vest it in the superintendent and the board of education. The statutes will be searched in vain to find any provision tending to show that any teacher has been appointed who was not qualified for the position to which she was appointed. . . .
\end{quote}

\textsuperscript{24}Frederick v. Owen, 35 Ohio C. C. 539, (1928).
omit to appoint for these stated reasons, and then punish them for contempt if they fail to do so? . . . It is difficult to conceive of anything that would be more certainly productive of confusion in practical application than the proposition that the courts may state to public officers the various grounds upon which they shall not determine against appointing an applicant for a position under the control of such officers. 25

The court said such procedure would be . . . like attempting to define political affiliations which are not good grounds for refusal of public appointment and punish if denying appointment on political grounds. 26

A similar case arose in Chicago. In this instance the city board passed a ruling that no teacher in the Chicago system was to be a member of any trade union or federation of trade unions. The penalty for not complying with this rule was to be dismissal or any less penalty that the board of education saw fit to enforce. The court laid down the following rule:

No person has a right to demand that he or she shall be employed as a teacher. The board has the absolute right to employ or reemploy an applicant for any reason whatever, or for no reason at all. The board is responsible only to the people of the city from whom the members have received their appointments. It is no infringement upon the constitutional rights of anyone for the board to decline to employ him as a teacher in the school, and it is immaterial whether the reason for the refusal to employ him is because the applicant is married or unmarried, is of fair complexion or of dark, is or is not a member of a trade union, or whether no reason is given

25 ibid.
26 ibid.
for such refusal. The board is not bound to give any reason for its action... Questions of policy are solely for the determination of the board and, when they have once been determined by the board, the courts will not inquire into their propriety.27

Nepotism

In the State of Texas the statutes make it unlawful for any school board to enter into a contract with any teacher that is in any way related within the second degree by affinity or within the third degree by consanguinity to any member of the board.28

Summary

A school teacher has no fixed tenure of office except in jurisdictions where such tenure is determined by law. The teacher's right to teach is a contractual right, fixed by boards whose authority to contract, where not expressly or impliedly limited by statute, may extend to a reasonable length of time beyond the official term of its members. To determine what length of time is reasonable it is necessary for the court to investigate all of the facts concerning the case. In Texas it was found that the term of employment of teachers was specifically limited by statutes for each of the three classes of schools. It was found that in


certain classes of schools the contracts of the teachers must be signed by the county superintendent before they are valid. Furthermore the county superintendent has some discretionary power and under certain conditions can refuse to sign a contract. It was found that under certain conditions it is not necessary to reduce the contract form into writing if the terms of the contract are recorded in the minutes of the board, and the teacher's acceptance is made in writing.

The authority of the school board in shaping the policy of schools, employing teachers, and in other ways performing the natural function of governing the school is almost unlimited. The court has refused jurisdiction in many cases of school policy and has attempted to regulate only when there has been a practice of fraud. The action of one board of education has the power to bind the ensuing even though the contract let would exceed the tenure of any of the members of the board. Also individual members of the school board cannot be held liable for the action of the board as a whole, when there is no practice of fraud, but mere mistakes in policy. It was found that the boards' wide discretionary power is not limited by religious qualifications, nor can the school patrons compel the school board to command teachers to refrain from the wearing of secular clothing in the classroom. The Texas School Laws are very specific on this point, however, and specify that the teachings of a doctrinal Chris
anity, or the wearing of secular garb in the school will not be tolerated. It was found to be unlawful for any board or other agency employing teachers to inquire concerning their religious affiliations. If it be the wish of the board to dismiss a teacher, or fail to rehire the same because of his affiliation with trade unions, it is wholly within the power of the board. In Texas the board is compelled by the statutes to refrain from hiring any individual that is of certain relation to any member of the board.

At the beginning of this chapter it was pointed out that teachers, unlike the members of the profession of law or medicine, in addition to being certified by the State, must enter into a contractual status in order to practice their profession. It has been discovered from the investigations undertaken in this chapter that a teacher must secure his contract to teach from a board of school directors who alone are authorized by law to enter into such contracts with teachers. It was also discovered that this power to appoint or contract with teachers is quite often limited by statutes either expressed or implied, and the term is not to extend beyond the school year which is determined by the board of directors. Where no statutory limitations, either expressed or implied, are placed upon a board’s authority to contract with teachers, the courts hold that the board’s power to appoint is not for an indefinite term but may be for a reasonable time extending beyond the term of the contracting board as a whole, and
that hiring a teacher for an unusual time is strong evidence of fraud.

It has been implied that the courts construe a wide range of discretionary power to boards of school directors on the ground that boards chosen by the people are the educational policy forming body for the State, and not the courts; and if boards abuse their discretion, the electorate have their remedy through the ballot box.
CHAPTER IV

POWERS AND LIMITATIONS OF BOARDS

IN THE DISMISSAL OF TEACHERS

Up to this point we have investigated the conditions under which teachers become eligible to contract, are selected and appointed to a teaching position, and enter into and execute contracts. In this chapter the conditions under which a teacher may be removed, dismissed, or discharged will be considered. It will be necessary to inquire into the authority and rights of boards of school control to remove or dismiss, and the conditions under which the right may be exercised; the mode of removal or dismissal; and the rights and remedies of the aggrieved teacher.

The Distinction Between Removal and Dismissal

The terms "removal" and "dismissal" are often used interchangeably. Strictly, the word "removal" in reference to teachers' contracts implies some personal dereliction of duty, while the more inclusive term "dismissal" means termination of contract from whatever cause.

The failure of a teacher to have his contract renewed at the completion of a school year comes within the category of the dismissal of teachers, but as the teacher's contract has terminated and the board of education is in no way obli-
gated to renew the contract, it will not be considered as dismissal in the discussion of this paper.

The question of reassignment or transfer often involves the issue of dismissal. Thus where a principal before the expiration of his contract is removed from a certain principalship and is reassigned to another at a smaller salary, it becomes an important issue as to whether the reassignment under such conditions amounts to removal.\textsuperscript{1} Again, suspending a school on account of a fire does not remove, dismiss, or discharge a teacher,\textsuperscript{2} while, on the other hand, the failure of the school to meet the statutory quota of pupils, or to maintain adequate class enrollment may accomplish the legal removal or discharge of teachers.\textsuperscript{3}

Wherein the Authority of Dismissal Lies

In Texas, as in many States, there are no definite statutory provisions setting out where the power to dismiss lies. In States such as these it is necessary to resort to the common law to ascertain wherein the power lies.

In the absence of expressed statutory provisions in reference to the removal or dismissal of teachers there is considerable authority that boards of school control have the implied power to dismiss for sufficient cause, which,

\textsuperscript{1}Leary \textit{v.} Board of Education, 79 N. Y. S. 806; People \textit{v.} Board of Education, 174 N. Y. 169, (1916).

\textsuperscript{2}Clune \textit{v.} School District, 166 Wis. 495, (1931).

\textsuperscript{3}De Hart \textit{v.} School District, 263 S. W. 242, (1928).
at common law would justify an employer in discharge of his servant. In short, the right to employ a teacher carries with it by necessary implications the authority to dismiss a teacher for adequate cause.

In *Freeman v. Bourne* a special joint school committee was authorized to select a superintendent for a union school district. Such superintendent was selected, and before the expiration of his contract, the joint committee dismissed the superintendent on the grounds of his unfitness to hold the position longer. The question arose as to whether the committee had the authority to dismiss in the absence of statutory sanction to dismiss. The court held:

In the selection and employment of an officer of this character there is an implied condition which authorizes his dismissal. . . . Whatever action is taken in respect to the employment of a superintendent must be by joint committee and, if there is any power of dismissal, it rests with the same body.4

In *Tadlock v. School District* it is said that the power to hire a school teacher presupposes the right to dismiss her, and that in rural schools the implied right to dismiss a teacher for adequate cause is vested in the board of school directors and the county board of education jointly.5

In a decision by the Arkansas Supreme Court concerning the dismissal of a teacher we find one of the best arguments

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in favor of the right of the board to dismiss in the lack of statutory limitations. The court held:

It is unreasonable to believe that from a board thus charged with the welfare of the school would be withheld the power to remove when he either could not or would not properly do his duty. . . . If dismissal is necessary, the power to direct it should be exercised speedily and the vacancy promptly supplied. It cannot be inferred that the legislature intended to give the exclusive power to an officer at a remote place, whose action would necessarily be subject to delay, and withhold it from the local authority who can act promptly, and who is most interested in a prompt and efficient action.6

An examination of the dismissal authority in reference to teachers reveals that in general such power, along with the power to employ, to manage and supervise schools, has been expressly vested in boards of school control and that in such instances the dismissal authority, like the authority to employ, cannot be exercised by the voters of the district or other political units.7

The Relation of Statutory Law And Teachers' Contracts

Some statutes give absolute power of dismissal to boards of school control without specification of cause or procedure; and again some boards' rules and regulations provide for the dismissal of teachers at pleasure. In such cases, it is


generally said that such statute, rule, or regulation enters
into and forms a part of the contract made by the board with
a teacher and authorizes the teacher's dismissal whenever in
its judgment public necessity or convenience requires it.\textsuperscript{8}

The principle is well stated in the cases of \textit{Weatherly
\textbf{v. City of Chattanooga}} as follows:

Parties who deal with governmental agents and
agencies are bound to take notice of the limitation
of their powers, and the rules which limit and con-
trol the exercise of their functions. One of these
rules was that all teachers were employed at the
pleasure of the board. This necessarily means that
they were subject to be discharged at the discretion
of the board whenever in the exercise of its judg-
ment, public necessity or convenience required it.
These rules, by operation of the law, incorporated
themselves into and became a part of the contract,
of which the complainant was bound at risk to take
notice.\textsuperscript{9}

\textbf{Provisions in Contracts for Dismissal on Notice}

Many teachers' contracts contain in their provisions
that the contract may be terminated by the board of education
at any time they see fit. Others provide for a thirty day
notice to be given the teacher before the contract shall be
terminated. The legality of this principle in the formula-
tion of contracts will be next considered.

In \textit{Thompson \textbf{v. Gibbs}} the court holds that the favorable
as well as the unfavorable terms of the statute relating to


\textsuperscript{9}Weatherly \textbf{v. City of Chattanooga}, 48 S. W. 136, (1928).
a teacher's dismissal are likewise written into the contract, and the school board will not be permitted to circumvent a statute providing for dismissal for cause only, by including in the power to dismiss arbitrarily without cause.\textsuperscript{10}

In this case, the defendant Gibbs was elected to the presidency of an academy and was in the act of accepting the place when, induced by the complainants, he declined it and entered into an agreement with the complainants to take charge of, and to teach a district school in regard to which this controversy occurred. At the time of negotiating, he was led to believe that his employment would extend over a period of eight months. He signed a written contract, however, containing the usual stipulation, but stating no definite term of employment. Across the face of the contract the directors wrote that they reserved the right to annul the contract every four months. At the end of the four months, without any charge being made against him and without offering any excuse for their action, the complainants notified the defendant that they no longer required his services and immediately employed another teacher in his stead. The court in this case said:

If the school directors can legally impart into their contracts a clause such as the one in question, then the case illustrates the wrong and injustice which may be done under cover of law. . . . But independent of the injury that may be done to the individual, public policy would forbid the recognition

\textsuperscript{10}Thompson v. Gibbs, 97 Tenn. 489, 34 L. R. A. 548, (1926).
of such power unless it is distinctly conferred by the statutes. . . A system which gave such arbitrary authority to school directors could not result otherwise than by lowering the character of teachers and demoralizing the public schools. . . . As has been well-urged, if school directors can provide in this case for annulling contracts at the end of four months, they can also reserve the right to terminate them at the end of one month, or at their own pleasure.\(^1\)

In the case of *Henry School Township v. Meredith*, the stipulation in a contract purporting to employ a teacher for a term beginning on a specified date, and that it was to be good as long as the trustees see fit, does not authorize the trustees to terminate the contract arbitrarily and without cause. The court held:

The appellee's performance of the contract could not rightfully be thus interrupted and terminated by her employer without any cause whatever, unless it can be properly held that such right was derivable from the reservation in the contract in the words. . . . This contract is to hold good as long as the trustees see fit. . . . To constitute a contract, there must be subsisting agreement between at least two parties. An agreement which is not to hold except as one of the parties sees fit would not be a contract. . . . It cannot be concluded that by the insertion of such words it was contemplated by both the trustee and the teacher that on any day after the latter had entered upon the service for the term, the former, arbitrarily and through caprice or prejudice, or without any reason or cause whatever, could terminate the service under the contract at once.\(^2\)

In *Dees v. Board of Education* a teacher's contract providing a dismissal of the teacher upon thirty days'
notice was held effectual, but the Supreme Court of Michigan, in that case, is very careful to point out that the legislature had seen fit to confer special dismissal authority upon the Detroit Board of Education and does not pass upon the question of whether the ordinary school districts of Michigan under the statute could not incorporate a like clause in a teacher's contract. 13

It was found that it is universally held that boards may not by contract provide reservations for dismissal of teachers for other causes than those enumerated in the statutes. True, they cannot by contractual reservations contravene statutory dismissal provisions nor without statutory authority reserve the right to dismiss at pleasure. Such contractual reservations must be exercised in good faith and without passion, prejudice, and upon grounds affecting the teacher's efficiency and usefulness. This view is supported by the weight of authority. 14

The Right of Boards of Education to Add to the Statutory Cause for Dismissal

The principle upon which boards by contractual reservations may add to the statutory causes for dismissal is well stated in School District v. Colvin. In this case a clause


in a contract between the board and the teacher reserved the right to discharge the teacher whenever he failed to give satisfaction. The Kansas statutes provided that the district board in conjunction with the county superintendent may dismiss for incompetency, negligence, or immorality. Can the board reserve by contract the right to dismiss for failure to give satisfaction? Answer in the affirmative was given by the court for the following reason:

Under the statute the district board in conjunction with the county superintendent may dismiss the teacher for certain causes, no matter what the terms of the contract may be. So far it is a new feature in the law intended as a remedy for any providence on the part of the board in making a contract. It would be a public calamity if a teacher employed for a year should prove negligent or immoral and there was no way to rid the district of such a teacher. It was wise in such a case to make provision by law for his discharge, and it was thought wise to connect the county superintendent with the board in any such action. If all the contracts were made as the one in this case was made, there would be necessity for such enactment. The law was made for the benefit of the district. It does not prevent the board from making any other contract with the teacher. In this case they have made one which is not prohibited either by law or public policy.15

It has been generally concluded in the cases cited that the power of the boards in dismissing a teacher is limited by the statutes as well as common law. Boards not limited by statutes in the dismissal of teachers do not have the authority to dismiss at their own pleasure. A cause of dismissal must be shown before the board may use their discretionary

powers of removal. Otherwise the teacher will have recourse at court.

The following group of cases are taken from decisions of the Texas courts, relating to situations in which teachers and the boards of education found difficulty in settling their contract disputes.

The Definition of "Year" as Stipulated in Contracts

In the case of Brazoria Independent School District v. Weems the court set out two important principles in the formulation of contracts. In this case Mrs. Weems was elected for a two year term at the salary of $135.00 per month. The court held that this contract for two years did not provide for compensation throughout the entire twelve month period of each year, but only for the eight month period as had been the prevailing school term for the past several years. Although the contract may have read "for a term of two years", it implied a term of eight month for two consecutive school years.16

The Refusal to Promote Pupils
As Grounds for Dismissal

The court also held in the same case that the action brought by parents on the grounds that she was not capable because she had refused to promote their children to the grade that they (the parents) thought their children de-

served to be promoted, does not constitute a legal basis of complaint. 17

The Right of Boards of Education to Withhold Teachers' Salaries

In Powell v. Matthews we find an instance where a teacher was hired to teach for a period of nine months at a salary of $165.00 per month. The board of trustees, wishing to dismiss the teacher and finding no legal grounds upon which to base their dismissal, resorted to spending their available school funds, with which they paid their teachers, to various improvements on the school. This being done the teachers' vouchers were of no value. The teachers appealed their case through the legal channels, namely, the county superintendent, county board, State Superintendent of Public Instruction, and the State Board of Education. Each of these officers ruled in favor of the teacher. The board ignored the ruling of all these agencies and continued to refuse payment of salary. The teacher then resorted to the courts for redress of grievance. He contended that the board had misappropriated the funds and were thus liable for his salary as individuals. The court said:

After a full investigation of the record, we have concluded that the appellants (school trustees) wrongfully disbursed and exhausted the fund out of which appellee's salary as a teacher was payable.

17 Ibid.
and, in defeat of the payment of his last two months salary for which the warrants were drawn, and are legally liable personally for the wrong by which the appellete suffered the damages sued for.18

The trend of present day contracts with teachers is for the board to distribute their pay over a period of twelve months. This has given rise to many interesting questions that heretofore have not arisen. Some of these questions are yet to be answered, and we can only speculate as to the decision of the courts. One question that is sure to arise in the near future may be stated as follows: An individual is hired to teach for a period of nine months with his salary distributed over a twelve month period. In April, after having taught only eight months he is appointed to a much better position and asks the board to release him from their contract so that he might engage in business. The board grants him permission to terminate his contract, but refuses to pay him the full salary he has earned by teaching eight months. It may be the contention of the board of education that the teacher was paid for twelve months and that when he terminated his contract the remuneration stopped. However, it may be the contention of the teacher that by their very nature school contracts extend for a period of only nine months, and that was the length of the period he contracted to teach. He might further contend that the money to be

paid to him in the summer months, for which he did no work, was a portion of the salary he had earned during the eight months of teaching and was held only in trust for him. 19

As stated above, the facts above mentioned are purely hypothetical, but they constitute one of the many questions to be decided in the future.

The Obligation of Teachers to Spend Summer Vacations in the School District

It has been held by a court of civil appeals in Texas that teachers employed for a twelve month period, but whose duties in the school were to teach only a nine month term, did not terminate their contract if they, being assigned no duties to perform, left the city of their employment and attended a Teachers College during the three vacation months. 20

The Right of Teachers to Contract with a Board of Education for More than One Position

In Dodson v. Jones it was held by the court that a teacher could not receive a salary from the district for holding down two occupations in the school. The facts of the case involved a teacher, Mr. Jones, who entered into a contract with the board of trustees to teach the school for seventy-five dollars per month for nine months, and also entered in-

19 Interview with Mr. E. H. Farrington, Placement Dept., North Texas State Teachers College, Denton, Texas, (1938).

to a contract with the board of trustees to act as janitor for the school at a salary of fifty dollars per month. The county superintendent, Miss Eva Strickland, refused to approve the vouchers of Mr. Jones. The court held that the dual nature of the contract of the appellee was an attempt to get around the ruling of the legislature providing that teachers holding only first class certificates shall not be paid more than seventy-five dollars per month for their services as teachers, and therefore the county superintendent was justified in refusing to sign the voucher for services rendered as a janitor.\textsuperscript{21}

\textbf{Notification of Election as It Renders a Board Liable}

In the case of \textit{Thompson et al. v. Shifflet}, we find a case involving a breach of contract on the part of the board of education. The main contention by the board is that they issued no contract to the appellant. The facts of the case were that a Miss Judie Shifflet was notified by a member of the board of education of Aberdeen, Texas, to report for duty as a teacher on November 1, and that they would have the contract ready for her to sign when she arrived. Miss Shifflet, in compliance with the request, reported in Aberdeen, Texas, on or about October 15, in preparation to teach school and to sign her contract. Upon arrival she found that the board

\textsuperscript{21}Dodson v. Jones, 190 S. W. 253, (1916).
had hired another teacher and claimed that they had entered into no contract with her to teach their school. Miss Shiffllet contended that the letter telling her to come on was in itself a form of a contract. The court held:

The representation was made to the plaintiff that she had been elected to teach the school, and was made with intent to have her act on it, for she was not only informed that she was elected, but told to come on.

The rule is that where affirmative representations are made and designed to be acted upon by another, and he does act upon such representations, believing them to be true, when they are in fact false, the party making such false representations is rendered liable for the consequences thereof, regardless of the question of his knowledge of such falsity, or intent to deceive.22

We find as a result of this case that letters notifying one of his election to a definite job and telling him to come on and teach at a given time constitutes a contract within itself, regardless of the candidate's fitness or refusal of the county superintendent to sign the contract.

The neglect of a teacher to have her contract approved by the county superintendent in compliance with Article 2750 of the Public School Laws23 invalidates her contract, and she has no recourse at law if the board wishes to dismiss her.24


The Right of Retiring Boards to Contract with Teachers

Teachers possessing a legal contract signed and approved by the county superintendent to teach a school may not be dismissed on the grounds that the action was taken by members of the board that were not realted for the term to be covered in the teachers' contracts. In the case of Town of Pearsall et al. v. Woolls we find an instance of this.

Woolls had been teaching in Pearsall for several years and was realted by the old board four days before the new board took office. After the new board took office it elected another teacher to take the place of Mrs. Woolls. Mrs. Woolls then appealed to the school authorities and prayed the court to issue a writ of mandamus compelling the board of trustees to allow her to teach. The court held that her contract was legal in every respect and issued her a writ of mandamus compelling the board to recognize her contract.25

Undisputed Grounds for Dismissal

Dismissals of teachers which have been upheld by the courts may be classed under five big heads: immoral conduct, unprofessional conduct, insubordination, negligence, inefficiency, and incompetency. It will not now be our problem to examine the factors underlying each of these classes.

Actual or reputed immorality of a teacher is sufficient

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cause for dismissal. Thus in the employment of a superintendent of schools, there is an implied condition authorizing his dismissal when he is not able or fit to perform his duties. Indictment of a school superintendent for adultery was held sufficient grounds for dismissal although the verdict was afterwards set aside and the prosecution dismissed, since not only good character, but good reputation, is essential to the greatest usefulness in his position. 26

The power of school directors to dismiss a teacher is not limited to breaches of contract of teaching, but extends to acts rendering a teacher objectionable. School directors are justified in rescinding a contract with a teacher when they learn that he is on bail for attempted rape, or is charged with other immoral acts. 27 Cruel treatment and profane or abusive language is said to constitute incompetency or immorality under the law. 28

Unprofessional conduct is another ground upon which the court upholds the right of the board to dismiss a teacher. Obviously not all unprofessional conduct would be immoral, but in some instances it would constitute reasonable grounds for dismissal. Thus a teacher's advocacy before public school pupils of the election of a particular candidate for public office was held to be unprofessional conduct warranting dis-

missal of a teacher. Where a Quakeress, a school teacher, stated that she would not uphold her country in resisting invasion, that she did not want to help the United States in carrying on the war, and would not urge her pupils to do Red Cross work or to buy thrift stamps, it was held that the finding of the board of the superintendent's dismissing her on the ground of incompetency and inefficiency would not be disturbed by the court.

School directors have the power to dismiss a teacher because she refuses to comply with reasonable regulation of the board, as, for instance, a rule requiring teachers to be vaccinated. So, too, a teacher may be discharged for refusing to receive back a pupil whom he has suspended after his action has been overruled by the school directors. Refusal to obey the rules of the board prohibiting the reading of the Bible in the public schools, or to obey the rules or regulations, was held to be sufficient cause for dismissal.

Gross neglect, or inattention to duty is a cause for dismissal. Thus, failure of a teacher to reopen a school

33Board of Education v. Pulse, 7 Ohio N. P. 58, (1931).
34Kennedy v. Board of Education, 82 Calif. 483, (1922).
after vacation at the time informally fixed by the school board is a case for negligence for which the board may dismiss under the statute.\textsuperscript{35} Continued tardiness and indifference to needs of children are held to be good grounds for dismissal.\textsuperscript{36} However, failure to keep a grade register as required by the State Superintendent of Public Instruction, where contract required the teacher to keep a correct list of pupils, was held not to be cause for dismissal.\textsuperscript{37} For was the failure of a teacher to perform substantial janitor work, such as carrying fuel, making fires, and preparing the building for occupancy considered statutory negligence in performance of duty in the absence of stipulation in the teacher's contract to perform such work.\textsuperscript{38}

Dismissal for inefficiency and incompetency is a very vague charge for dismissal. These two words do not always carry the same meaning. Often incompetency is a general term used to cover many of the shortcomings already noted. Thus cruel treatment and profane and abusive language were said to constitute incompetency or immorality under the law. However, incompetency in a teacher more generally connotes teaching inability, either from insufficient learning or in-

\textsuperscript{35}Parrick v. Board of Education, 100 Kans. 569, (1935).
\textsuperscript{36}School Directors v. Birch, 93 Ill. App. 489, (1933).
\textsuperscript{37}Carver v. Battle Creek, 113 Mich. 524, (1933).
capacity to impart learning to others, and is therefore a cause for dismissal. Lack of requisite qualities of temper or discretion in an otherwise good teacher was held to be statutory cause for dismissal. The fact that the board has tolerated the teacher's misconduct or inefficiency for a long time does not operate as a waiver of its right to discharge him therefore, as the teacher's undertaking to discharge his duty in a moral and skillful manner is assumed for the benefit of the school and patrons and not for the benefit of the board. Failure to manage and control the school may constitute an inefficiency sufficient to warrant dismissal. However, inability of a physical training teacher to act as football coach was not valid ground for the discharge of a high school athletic instructor.

Acts Which Do Not Constitute Grounds for Dismissal unless Provided for by Statutory Law

Theoretically, a legislature could enumerate many causes for dismissal and within constitutional limits could prescribe any cause as sufficient dismissal cause. In this

42 Eastman v. Rapids District, 2 Iowa 590, (1936).
section will be enumerated some of the causes for which boards have attempted dismissal that have been held illegal, as not coming within the power granted by the statutes prescribing dismissal for cause. The divisions under which each shall be discussed are marriage, anticipated causes, refusal to be transferred, and popular dissatisfaction.

It has been decided by the Supreme Court of several States that the marriage of a female teacher during her term of service does not constitute reasonable grounds for dismissal. The argument is well stated in Richards v. District Board. In that case a teacher on the permanent list in May 19, 1915, had signed an acceptance form containing a resolution of the board that marriage of women teachers should terminate their services. On January 4, 1915, this particular teacher was married and was subsequently removed under said resolution of the board. A statute provided among other things that teachers placed upon the permanent list shall continue to serve until dismissed in the manner herein provided, but such rules shall be reasonable and for the good of the schools. The court held that the board has no power to dismiss a teacher for a cause which is not reasonable. The essential arguments of the decision are found in the following excerpt:

44 Richards v. District Board, 78 Ore. 621, (1917).
Marriage either does or does not furnish a reasonable cause. If it is not a reasonable cause then the board was utterly powerless to dismiss because their authority is limited to the cases within the purview of the statute and the law contemplated dismissal for reasonable cause only. . . . The board cannot by contrast enlarge a power which is limited and restricted by the very power which created the power. The board cannot do indirectly what it is prohibited from doing directly. An apt illustration appears in Thompson v. Gibb. . . . The act of marriage status does not necessarily impair the competency of all women teachers is conceded by the school authorities, when they employ married women as they are now doing in this district. . . . The reason advanced for this rule adopted is that after marriage a woman may devote her time and attention to her home rather than to the school. It would not be just or reasonable to adopt a rule that if a woman teacher joined a church it would work automatically for dismissal. . . . It is impossible to know in advance whether the efficiency of any person will be impaired because of marriage, and a rule which assumes that all persons do become less competent because of marriage is unreasonable because such regulation is purely arbitrary. If a teacher is just as competent and efficient after marriage, a dismissal because of marriage would be capricious. If a teacher is neglectful, incompetent, and inefficient she ought to be discharged whether she is married or whether she is single.45

It should be noted that this case decides that a by-law of the board of education stipulating marriage to be a cause of dismissal is unreasonable under a statute that requires all dismissals of boards of education to be for reasonable causes only. Other cases hold that a board rule dismissing a female teacher for marriage is not within the purview of the statutes which enumerate the cause for dismissal to be incompetency, neglect of duty, intemperance, profanity,

45 Ibid.
cruelty, gross misconduct, insubordination, or general inefficiency. Marriage is not covered by any of these causes and therefore does not constitute grounds for removal.46

In People v. Board of Education,47 it was held that a teacher in the city of New York could not be dismissed by the school board for neglect of duty on account of her absence for the purpose of bearing a child, the court basing its decision on the ground that if the board of education was without authority to remove a female teacher on account of marriage, it could not dismiss her because of an act which is a natural incident of her marriage. A higher court, however, later reversing the decision for lack of jurisdiction did hold that the absence of a married woman teacher to bear a child might be of such length as to confer jurisdiction on the board to remove for neglect of duty, though it might not have jurisdiction to remove for mere absence for that purpose.48

It is generally held that a teacher, prior to entrance upon service, cannot be dismissed for anticipated incompetency or inefficiency. A bare fear that such grounds for dismissal may arise in the future is insufficient.49

People v. Board of Education, 144 N. Y. 37.

47People v. Board of Education, 144 N. Y. 57.
48Ibid.
Although a board would have no power to discharge a teacher on the ground that his services were unsatisfactory before he had performed any service under the contract, it does have the power to discharge a teacher on the ground of immorality or general unfitness before his services begin.\(^{50}\)

Dismissal of a teacher for failure to meet popular approval of pupils and parents cannot be justified, or conversely, popular dissatisfaction with a teacher is no cause of his dismissal. The courts have held that the dissatisfaction must clearly be with the teacher's school, and not on account of his personal unpopularity. Actual incompetency or unfaithfulness must be shown.\(^{51}\)

The courts have ruled that the refusal on the part of a teacher to be transferred to a position for which he was not employed does not constitute good ground for dismissal, and the discharge of the teacher for refusal to be so transferred constitutes a breach of contract for which the teacher may recover damages.\(^{52}\)

**Indirect Causes for the Removal of Teachers**

A teacher may be removed from his position for reasons in no wise dependent upon the dismissal grounds heretofore discussed. Thus, the necessity for the abolition of a teaching position, the exigency of an insufficient quota of

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\(^{52}\)McGutchem v. Windsor, 55 Mo. 149, (1932).
pupils, lack of funds, and the transfer or reassignment of a teacher to another position, are often indirect causes of a teacher's removal from a given position. What are the teacher's rights under such circumstances?

It sometimes happens that a teacher's services are no longer needed because of a change in conduct of the schools. Boards under statutory authority to reorganize or modify the conduct of a school may find it necessary to abandon certain teaching positions, thereby accomplishing the dismissal of teachers who otherwise would not have been dismissed for cause. Thus, it was held that the board of education in the city of New York not only was authorized under the statute to establish evening schools, but also was authorized in its discretion to change the system of conducting them, and, if the results of the change involved the abolition of the former position of principal, such principal had no recourse for the retention of said position.53

Even in tenure jurisdictions where a teacher serves during the term of good behavior, or until removed for cause, boards under statutory authority may abolish old positions and create new ones, perfect consolidation, or economize in the management of the schools in the reduction of the teaching force.54

If a contract is terminated because of lack of funds it must be shown that every legal means available under the law is exhausted in the attempt to collect the revenue due the school. It is not sufficient for the treasurer of the board to report the lack of funds and dismiss the teachers when there are collectable delinquent taxes sufficient to meet the deficit that would be incurred by the retention of the teachers.55

It has been held that a teacher’s contract might be terminated before the time of its expiration when the quota of pupils fall below the statutory quota set up by the State.56 In instances such as these the teacher has no recourse at law as the legislature has firmly fixed the ratio of teacher and pupil relation and it is not for the court to decide as to its merit.

The transfer of a teacher from one position to another position with a reduction of salary has been judged by the court as an unlawful removal.57

Channels through Which a Teacher May Seek Redress for Grievances

In the dismissal of a teacher, in States having tenure codes, there are definite procedures outlined by the State

legislatures through which the boards must go before the dismissal is final. However, in States having no tenure codes, it is necessary for the dismissed teacher to appeal her case to higher authorities before she may have any redress for unfair dismissal. The teacher must place her case first before the county superintendent. Next she may appeal to the county board. If the verdict rendered by the county board is not satisfactory to her she may appeal to the State Superintendent of Public Instruction, and from his decision she may appeal to the State Board of Education, and thence into the legal channels of the courts. In addition to the statutory right of appeal, the dismissed teacher has access under certain conditions to three types of remedial court procedure. The dismissed teacher may ask the court to pass upon the wrongfulness of the dismissal; she may bring action for damages upon a breach of contract; or she may seek her reinstatement through the equity processes of the court.

Where a teacher has been dismissed, it appears that in most jurisdictions the court will not interfere with the exercise of a board's statutory discretion to dismiss such a teacher provided it has acted within its jurisdiction and has complied with all the statutory requirements of the dis-

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But in an action for breach of contract, the courts will go into the wrongfulness of the dismissal and submit to the jury the question of fact in reference to the case. Where the statutes do not set out the formalities for a dismissal procedure, there is some authority that in an inquiry as to whether the teacher was wrongfully dismissed, the courts will go so far as to submit the teacher's professional competence to the jury.

Summary

In setting out briefly these large principles we have found from the decisions and citations in this chapter that the dismissal of teachers involves four groups, the teacher dismissed, the school board, the State Department of Education, and the courts. Only after the teacher has taken action for her reinstatement through the administrative bodies of the public schools may she resort to the courts.

The power of the school board to dismiss a teacher is almost without limitations, but it does not extend to the extent of dismissal at pleasure, but must be a dismissal for a cause and it is within the power of the courts to review the opinion of the board and establish if the cause is just.

60 People v. Chicago, 278 Ill. 318, (1929).

61 P. E. Henslik, Rights and Liabilities of School Boards, p. 44.

Thus contracts that contain in their provisions a clause giving the board the right to dismiss a teacher on thirty day notice without cause are not legal contracts.

In States having definite procedure of dismissal of a teacher, prescribed and defined by the legislature of the State, the court will not examine the case unless improper procedure or fraud can be shown. The courts as a rule are reluctant to intervene in cases of school jurisdiction unless there are obvious irregularities or injustices done.

It was further found that the general practices of the boards of education and the laws of the State dealing with schools, although not written into the contract, become a part of the contract. Thus it is the duty of the teacher to familiarize himself with the customs of the boards and laws relating to the schools.

The boards of education are administrative officers and may not be held personally liable for their mistakes or action while acting as a body unless it can be shown that fraud was practiced. If it be found by the court that the board of education dismissed a teacher wrongfully against authoritative advice and refused to follow the statutes in dismissal procedure they may be held liable as individuals, the same as if they had entered upon a fraudulent practice.

Regardless of contract, however, at any time a teacher proves herself to be incompetent or negligent she may be
removed by the board and they will be acting completely within their sphere of power. Should the board resort to spending the funds set aside for the payment of teachers, so as to force the teacher to resign or teach without pay, in order to remove the teacher by means other than those prescribed in the statutes, the court will protect the teacher and hold the individual members of the board liable for her salary.

A letter, telegram, or any other form of communication advising a teacher that he or she is elected to teach in a school and advising her to come is the same as a contract, and regardless of whether or not her contract is approved by the county superintendent, she has a cause of action against the board if another teacher is hired in her stead.

There are many grounds upon which the teacher may be dismissed, regardless of whether they are set out by the statutes. These are: immoral conduct, unprofessional conduct, insubordination, inefficiency, and incompetency. The board of education may add any other to this group that in its opinion renders the teacher objectionable.

As there are grounds upon which the board has undisputed right to dismiss, there are others which the courts have generally held do not cause a legitimate cause for dismissal. They are: marriage, anticipated causes, refusal to be transferred, and popular dissatisfaction.
CHAPTER V

AN ANALYSIS OF TEACHER CONTRACT FORMS

The Method of Securing Data

The initial legal relationship between teachers and boards of education is through the contract of employment. This contract is a mutual agreement that the teacher is to instruct under the supervision of the board of education. Many of the conditions of employment are implied in the agreement "to teach." Some are set up in the statutes. Yet in most cases certain conditions of employment, requirements, obligations, and information are specified in the contract itself. "A contract," says Black, "is an agreement, upon sufficient consideration, to do or not to do a particular thing."¹ According to this definition all teachers are under contracts because there is a legal obligation on each party to fulfill the legal terms of the employment.

In the preceding chapters of this investigation the legal aspects of teachers' contracts have been discussed. It is the purpose of this chapter to make an analysis of teachers' contracts in order to ascertain the various factors provided for in a series of contracts issued to teachers throughout

the State of Texas in 1937. The major stipulations found in each contract form will be classified and an analysis made of each provision, in its relation to the other factors in the contract as well as its relation to the complete field of contracts studied.

The material for this study was gathered from the superintendents of 120 schools varying in scholastic enrollment and academic classification. A questionnaire was submitted to 200 superintendents, requesting copies of their contract forms as well as any rules and regulations prescribed by the schools affecting the teachers in the performance of their duties as teachers in the schools. The schools were selected according to the population of the towns in which they were located, no attempt being made to investigate schools other than independent school districts. Table 1 will show the divisions made and the number of contracts received from the schools in the various divisions, as well as the distribution of the questionnaire.

Of the 120 contracts received, 22 superintendents reported that they used no contract printed form, but merely a notification of election and a request for an acceptance on the part of the teacher. Table 2 will show the groups into which these schools fall, and the per cent of cities answering from each group.
TABLE 1

DISTRIBUTION OF CITIES TO WHICH QUESTIONNAIRE WAS SENT

<table>
<thead>
<tr>
<th>Population of City</th>
<th>Number Sent</th>
<th>Number Received</th>
<th>Per Cent Answering</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 -- 1000 .......</td>
<td>20</td>
<td>9</td>
<td>45</td>
</tr>
<tr>
<td>1000 -- 1500 .......</td>
<td>20</td>
<td>11</td>
<td>55</td>
</tr>
<tr>
<td>1500 -- 2000 .......</td>
<td>20</td>
<td>14</td>
<td>70</td>
</tr>
<tr>
<td>2000 -- 3000 .......</td>
<td>20</td>
<td>8</td>
<td>40</td>
</tr>
<tr>
<td>3000 -- 4000 .......</td>
<td>20</td>
<td>16</td>
<td>80</td>
</tr>
<tr>
<td>4000 -- 5000 .......</td>
<td>20</td>
<td>10</td>
<td>50</td>
</tr>
<tr>
<td>5000 -- 6000 .......</td>
<td>20</td>
<td>17</td>
<td>85</td>
</tr>
<tr>
<td>6000 -- 7000 .......</td>
<td>20</td>
<td>16</td>
<td>80</td>
</tr>
<tr>
<td>7000 -- 10,000 ...</td>
<td>20</td>
<td>14</td>
<td>70</td>
</tr>
<tr>
<td>10,000 and over ..</td>
<td>20</td>
<td>15</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>200</td>
<td>120</td>
<td>...</td>
</tr>
</tbody>
</table>

Distribution of School Systems
Using No Contract Forms

It may be seen from Table 2 that 18.3% of the schools investigated used no contracts at all. At this time there is an ever increasing number of schools contemplating doing away with the formal contract altogether. Numerous letters from superintendents who have used oral contracts have stated that such contracts are as satisfactory in every detail as a written formal contract. In schools located in towns of
1,500 to 2,000 population we find the greatest per cent of unwritten contracts used. However, in towns of 4,000 to 6,000 population the formal printed contract is the most prevalent.

**TABLE 2**

**DISTRIBUTION OF CITIES REPORTING NO CONTRACTS USED**

<table>
<thead>
<tr>
<th>Population of City</th>
<th>Number</th>
<th>Per Cent of Cities Answering</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 -- 1000 .......</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>1000 -- 1500 .......</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>1500 -- 2000 .......</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>2000 -- 3000 .......</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>3000 -- 4000 .......</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>4000 -- 5000 .......</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>5000 -- 6000 .......</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>6000 -- 7000 .......</td>
<td>0</td>
<td>..</td>
</tr>
<tr>
<td>7000 -- 10,000 ...</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>10,000 and over ..</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>22</td>
<td></td>
</tr>
</tbody>
</table>

Statements from some superintendents in school systems which use no contracts are given below. These quotations show that some superintendents think there is something inherently unjust about a contract with a teacher. They are thinking in terms not of contracts themselves, but of unfair
restrictions put into them. Some do have contracts, but these contain only the notice and acceptance. The implications found in these letters are that contracts must necessarily be cold-blooded and inhuman.

The average teacher's contract is a snare and a delusion, a continual source of dispute, discomfort, and discourtesy. May I assure you with what deep thanksgiving I inform you that our Board of Education has at last reached the point where the teachers are not hired by contract, but under the same terms as other civilized beings. They are hired, first, because of satisfactory training; second, personality; third, because they have the ability to teach children. The teachers who meet these requirements stay with us. If somebody else offers them more than we can pay, it is but just that they should go where their services are more valued. In this way only will teachers, the teaching profession, and public opinion of the teaching profession be advanced.

We do not have any written contract with our teachers. Some Texas cities have such contracts, but we feel that they are unnecessary, as the State law specifically provides that a teacher's election, together with her acceptance, constitute a legal contract. The law further provides that a teacher's certificate is subject to cancellation if she resigns without agreement on the part of the employer after August first, or during the school term. I may say that in our practice we have never used this feature of the law.

We do not enter into any formal contract with our teachers. As we never make an effort to retain a teacher whose head is set on going, we have found no need for having this contract in a written form.

We have no contract. Any teacher who gives us two weeks notice will be released. Otherwise we will hold her pay.
The Size and Shape of Contract Forms

The size and shape of contract forms vary greatly. They range in size from a 3 by 5 inch sheet to a 9 by 15. The colors of the form vary with the school. Variations in the mechanical set-up of the contract forms are many. The type, style, size, and spacing of print, grade of paper, and proportion and shape of the form in many cases show efforts toward neatness and attractiveness. Other forms are poorly mimeographed on cheap paper, making a rather ugly appearance. A few with decorative borders appear to be engraved. Some stock forms made up for general sale by school supply companies are found, but almost all teachers' contract forms, except State forms, show local variations.

Provisions in Contract Forms

Of the 120 replies received it was shown that 22 schools used no contract forms. This leaves a total of 98 contract forms containing definite provisions in regard to the teacher. Table 3 will give an analysis of the most prevalent stipulations in the contract forms investigated.

The Duties of Teachers as Stated in Contract Forms

In Table 3 we have found that 71% of the contracts investigated prescribe specific duties for the teacher to perform. In Table 4 an analysis is made of the various specific duties required by the contracts.
<table>
<thead>
<tr>
<th>Items in Contract</th>
<th>Number of Schools</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length of term</td>
<td>98</td>
<td>100</td>
</tr>
<tr>
<td>Salaries and salary payment</td>
<td>98</td>
<td>100</td>
</tr>
<tr>
<td>Signature or notification</td>
<td>98</td>
<td>100</td>
</tr>
<tr>
<td>Prescribing the duties of teachers.</td>
<td>70</td>
<td>71</td>
</tr>
<tr>
<td>Cause for dismissal</td>
<td>36</td>
<td>37</td>
</tr>
<tr>
<td>Certificates of teachers</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Resignation of teachers</td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td>Time limit for acceptance</td>
<td>57</td>
<td>53</td>
</tr>
<tr>
<td>Subject to assignment</td>
<td>45</td>
<td>46</td>
</tr>
<tr>
<td>Reference to pension deduction</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Provision for absence payments</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Right to transfer teachers</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Forced closure of school</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Miscellaneous subjects</td>
<td>22</td>
<td>22</td>
</tr>
</tbody>
</table>

It is interesting to note from Table 4 the number of stipulations that could be taken care of by administrative rules, and which in a contract become superfluous matter.

In 53% of the contracts stipulations are made concerning the action of teachers outside the class room. These stipulations vary with the contracts. Some contracts set
forth very rigid disciplinary rules, while others prescribe that the teacher conduct himself in a manner for the benefit of the school. Table 5 will give an analysis of these rules.

**TABLE 4**

**ANALYSIS OF THE SPECIFIC DUTIES OF TEACHERS**

<table>
<thead>
<tr>
<th>Specific Duties</th>
<th>Number of Cases</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>To report a definite number of days before school opens</td>
<td>65</td>
<td>66</td>
</tr>
<tr>
<td>To leave inventory of all supplies on hand at the end of the year</td>
<td>45</td>
<td>44</td>
</tr>
<tr>
<td>To recommend materials to be purchased</td>
<td>43</td>
<td>44</td>
</tr>
<tr>
<td>To sponsor such extra-curricular activities as assigned</td>
<td>28</td>
<td>29</td>
</tr>
<tr>
<td>To remain for a given period after school closes</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>To give instruction in special subjects</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>To do professional work on Saturday</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>To devote remaining part of school day as principle directs</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>To teach loyalty to the state</td>
<td>58</td>
<td>59</td>
</tr>
<tr>
<td>To cooperate in any undertaking</td>
<td>60</td>
<td>61</td>
</tr>
<tr>
<td>To report each morning at a given hour</td>
<td>68</td>
<td>67</td>
</tr>
<tr>
<td>To teach in summer school if requested</td>
<td>7</td>
<td>7</td>
</tr>
</tbody>
</table>
TABLE 5

REQUIREMENTS OTHER THAN SCHOOL DUTIES

<table>
<thead>
<tr>
<th>Duties Required</th>
<th>Number</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not to devote time to any other calling</td>
<td>36</td>
<td>37</td>
</tr>
<tr>
<td>Not to be under contract elsewhere when this contract is signed</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>To reside in the district or city</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>To visit each home represented</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>To attend summer school when requested</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Not to dance at home or away</td>
<td>55</td>
<td>36</td>
</tr>
<tr>
<td>Not to attend social functions on school nights</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>To go to church regularly</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Not to have dates during period of contract</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Not to use tobacco in any form</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Not to wear bright nail polish or flashy clothes, slacks, or anklets</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>To contribute to all worthy charities</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>To remain in the city at least three (3) week ends of each month</td>
<td>18</td>
<td>19</td>
</tr>
</tbody>
</table>

The purpose of the rules and regulations as listed in Table 5 is to place disciplinary regulations upon the teacher in order to make him conform to the best advantage of the school even while off duty. The purpose to be served is sorely missed, and only tends to confuse the teacher as well as the board in regard to the terms of the contract. Noth-
ing is accomplished by writing into a contract a body of rules and regulations. These problems are administrative by nature and can best be handled as the problem arises. No two sets of facts in any violation are the same; therefore it is necessary to handle cases differently. In some instances it may be necessary to resort to the removal of a teacher's certificate for certain conduct, but in no way is the school, or the teacher, protected by having a long group of rules and regulations written into the body of a contract.

**TABLE 6**

**MARRIAGE OF TEACHERS AS A GROUND FOR DISMISSAL**

<table>
<thead>
<tr>
<th>Size of City</th>
<th>Number</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 -- 1000</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>1000 -- 1500</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>1500 -- 2000</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>2000 -- 3000</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>3000 -- 4000</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>4000 -- 5000</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>5000 -- 6000</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>6000 -- 7000</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>7000 -- 10,000</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>10,000 and over</td>
<td>8</td>
<td>40</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>44</strong></td>
<td></td>
</tr>
</tbody>
</table>
As shown in Table 6, 44 of the contracts investigated contain clauses providing for the termination of the contract should the teacher marry without the consent of the board. The per cent as shown in the last column is based on the 20 requests for contracts from each town of the size shown in column one. The tendency at this time of the larger schools is to remove the ban on married teachers. We have shown in Chapter IV that the court holds that the marriage of a teacher does not make her unfit to teach; likewise many boards of education are finding it satisfactory to retain married teachers. There is no sound reason for the dismissal of a teacher for marriage. To remove a teacher because she chooses to lead a normal married life, is only to lose to the profession the best-balanced, and perhaps the most capable, of the group.

Contract Stipulations Regarding Absence of Teachers

Statements relative to the absence of teachers occur in 14% of the contracts. These in the main refer to payment for absence because of illness or death in the family. The schools providing for the payment for absence were found in cities of four thousand (4000) population, or above. Full pay for a limited time is specified in 4.7% of the contracts, while in 85.8% there is no provision for any form of payment. It was found that 2.4% provides for payment of the teacher at
at the discretion of the board, while 4.7% pays the difference between the pay of the substitute's salary and the salary of the teacher. Two schools stated that they grant no leave the first year, but in the ensuing years arrangements would be made. The following table shows the types of stipulations.

TABLE 7

ABSENCE OF THE TEACHER

<table>
<thead>
<tr>
<th>Stipulations</th>
<th>Number</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full pay for a limited time for absence because of illness</td>
<td>4</td>
<td>4.7</td>
</tr>
<tr>
<td>No pay for absence for any cause</td>
<td>84</td>
<td>85.8</td>
</tr>
<tr>
<td>Full pay from two to five days for death in the immediate family</td>
<td>2</td>
<td>2.4</td>
</tr>
<tr>
<td>Payment for absence at discretion of the board</td>
<td>2</td>
<td>2.4</td>
</tr>
<tr>
<td>Deduction of pay for substitute</td>
<td>4</td>
<td>4.7</td>
</tr>
<tr>
<td>No pay for absence during the first year</td>
<td>2</td>
<td>2.4</td>
</tr>
</tbody>
</table>

Contract Stipulations Regarding Unforeseen Closing of School

Provisions to take care of the unforeseen closing of schools are in six per cent of the contracts. These are listed in Table 8. It may be noticed that few contracts contain any provisions relating to the unexpected closing of schools.
TABLE 8
UNFORESEEN CLOSING OF SCHOOLS

<table>
<thead>
<tr>
<th>Stipulations</th>
<th>Number</th>
<th>Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full pay on all occasions when school is closed</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>The term may be extended to make up the time lost</td>
<td>2</td>
<td>2.4</td>
</tr>
<tr>
<td>No pay</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>Board may declare vacations without pay</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>One half pay</td>
<td>1</td>
<td>1.2</td>
</tr>
</tbody>
</table>

Transference of Teachers

In thirty two per cent of the contracts it was found that the teacher is subject to transference without a change of salary at the discretion of the superintendent or the board of education. In twenty eight per cent of the contracts the stipulation is only to teach, nothing in the way of an assignment being made to the teacher in the contract.

Time Limit for Acceptance of Contracts

In fifty eight per cent of the contracts a time limit is set within which to accept the contract. If the contract is not legally signed within that time, it becomes null and void.
Contract Stipulations Regarding Cause for Dismissal

Generally the contracts enumerate causes for dismissal of the teacher. In many contracts the stipulations merely imply dismissal causes. The following list of reasons are taken from the forms investigated.

1. Immorality, improper conduct, inefficiency, neglect of duty, and cruelty.
2. For good and sufficient reasons, for cause.
3. For any reason upon specified amount of notice.
5. Physical unfitness.
6. Prolonged absence.
7. District shortage of funds.
8. Disloyalty to the school.
9. If average attendance for month falls below a certain per cent of the enrollment.
10. Failure to be on hand at opening of school term.
11. Dishonesty.
12. Upon second garnishment of wages.
13. Upon work at other callings.

Summary

In conclusion we have found that in the 198 contract forms studied twenty two per cent use no contracts at all, and many officials of this group feel that a contract is a useless instrument causing only confusion between the teacher and the board. It was shown that the items in the contract
vary with the contract forms. In general the stipulations provide the length of the term of the contract and the salary payment, and require the acceptance of the school by the teacher in writing or by signing the contract. The other items range from seventy one per cent prescribing the duties of teachers to six per cent providing for the forced closure of the school. In fifty three per cent of the contracts, stipulations are set out prescribing the duties of the teacher outside the classroom. This was shown to be an attempt to regulate the morals of the teacher by contract and not by administrative rules. It was found that forty four per cent of the contracts provide for the dismissal of women teachers when they marry. In cities of above 10,000 population the greatest tendency to do away with married teachers was found, as forty per cent of those contracts have provisions against married women teaching in their schools. The smallest per cent of contracts found discriminating against married teachers was found in cities of two to three thousand. Statements providing for payment of a teacher for absence from school because of sickness or death in the family were found in fourteen per cent of the contracts. No school located in cities of less than 4,000 population has any provisions for the payment of teachers in case of absence. In six per cent of the schools there are provisions made for the teacher in case of unexpected closure of the school. These provisions
range from full pay to no pay at all. Also it was found that thirty two per cent of the schools provide for the transference of a teacher to any part of the system by the board or superintendent, and fifty eight per cent of the contracts made necessary an acceptance within a specified time.
CHAPTER VI

CONCLUSION

In the various States of the Union the individual State has complete control of its educational policy. The administrative organization which controls the school system is provided for by statutory law, as well as the legislative enactments providing the basis rules to be administered. The courts enter into school administration as an interpreting agency. The problems that naturally arise cannot be settled without often causing undue injury to some individual. That individual has recourse at law. Therefore in the study of any phase of school administration the courts are the last resort. From the study of the decisions of the courts it is possible to gain an understanding, as well as an interpretation, of the laws governing the American public school system.

The legislatures of the States have unlimited power in setting up laws for the administration of school affairs, when these laws do not conflict with the constitution of the State. Therefore, it is interesting to note that the cases coming within the scope of this study are seldom based upon a contention that the legislature acted unconstitutionally, but more often problems of the right of the individual under
the law.

The legislature of each State of the Union has set up requirements which must be met before any individual may enter into a contract to instruct, supervise, or act as administrator in the public schools of the State. These requirements vary throughout the States. Their purpose is to raise the standard of educational qualification for teachers and in this way provide for a more competent teacher in each classroom. Furthermore the purpose of the requirements is to assist the local boards in employing the teacher whose qualifications they desire. Each teacher is registered and is issued a certificate based upon college or university credit, as well as experience in the teaching profession. An example of the classes and types of certificates that may be issued by the States is shown in Chapter II.

It was found that a certificate to teach is not a maximum qualification that can be required by the independent units hiring teachers, but rather a minimum requirement which the teacher must obtain before the right to contract to teach is granted.

The certificate, once it is issued, is not a guarantee to the teacher that it can never be revoked. It is merely a license issued by the State to the individual which gives that individual the right to teach in the schools of that State. The license may be removed for just cause by the agency issuing the license. The nature of the contract is
limited by the type of certificate issued. In the absence of statutory law regarding the right of a teacher to sign a contract before the certificate is issued, but which teacher obtains before the period of actual teaching begins, the court holds the contract valid.

The selection and contracting of teachers is usually done by local boards of education, which have been selected to manage the affairs of the individual school. The power of this board in the selection of teachers is almost unlimited. In those school districts which have 150 scholastics, the county superintendent acts as a check upon the action of the board. Any contract made by a board of education with a teacher must be signed and approved by him. Contracts issued by the boards may be for a longer duration than the term of the individual members of the board, but any teacher hired for an excessive period of time may have the contract broken by order of the court on the ground that there was a practice of fraud.

The right of a board to decline to issue a written contract to teachers is legitimate, as a verbal understanding between the board and the teacher regarding their respective responsibilities constitutes a contract. In some States boards may not inquire into the religious beliefs of a teacher, nor may a teacher be refused a license to teach because of religious beliefs.

The contracting board acts as an independent unit of
administration. The authority for their acts is usually set out by the statutes or by administrative rules prescribed by the State Board of Education. The right to contract is only one of the many administrative duties of the local boards. They hold a position of trust, and if they betray the trust placed in them by the people of the school district, they may be removed. No member of the board may derive personal gain from his service on the board. No member of his family nor even a distant relative may enter into a contract with the board, nor receive any remuneration from that body.

It is not within the scope of the jurisdiction of the board of education to enforce requirements upon the teachers by contracts that will deprive them of any personal liberty, such as the right to belong to labor unions, religious groups, or secret organizations. It is within the power of the board to refuse to hire members of any of the above mentioned groups; but once a teacher is hired, the board cannot restrain the constitutional right of an individual by contract.

The agency issuing the contract to the teacher has the power to dismiss the teacher at any time if just cause is shown. Often there are enumerated in the statutes various causes for dismissal; but in the absence of any statutory provision setting out the causes, the local board or agency hiring the teacher has the power to dismiss him on the ground in common law that would allow and justify an employer in dis-
missing any individual working for him. There is, however, a great distinction between dismissal and removal. It is to be understood that removal follows some personal dereliction of duty, while the more inclusive term, dismissal, means termination of contract from whatever cause. This does not, however, give the board the right to terminate a teacher's contract at its own pleasure, nor may there be written into the contract clauses providing for the termination of the contract at the pleasure of the body issuing it.

As schools are agencies of public service, it is necessary that they be managed and regulated to the best advantage of the public at large. Because of this fact the court has held that local boards may add to the statutory grounds for dismissal any reasons for dismissal that would render the teacher unable to fulfill his duty to the community in the most beneficial way.

There are grounds upon which dismissal may be instigated that cannot be questioned. They are: immoral conduct, unprofessional conduct, insubordination, negligence, inefficiency, and incompetency. Dismissal on grounds other than these may be denied by the courts. In areas having tenure laws, the grounds for dismissal are more specific. In those jurisdictions dismissal is effective only for provisions as set out in the statutory laws of the State.

Teachers may be removed from a position for reasons other than those specified as grounds for dismissal. They
are: lack of funds, abolishing of the position, insufficient quota of pupils, transfer or reassignment of a teacher to another position, and consolidation of the school district into another district.

If the teacher, in his own opinion, is dismissed unjustly, he must follow a definite procedure to gain a redress. If there is no claim of a practice of fraud he must first carry his complaint to the county superintendent, then to the county board, next to the State Superintendent of Public Instruction, and from the decision of the latter, he may appeal to the State Board of Education. If he is not satisfied with the decision of any of these agencies, he may appeal to the courts for redress of grievance. If it is the contention of the teacher that there was a practice of fraud on the part of the contracting agency, it is not necessary for him to go through the above mentioned channels, but he may appeal directly to the courts.

The term "year" as used in a teacher's contract implies that the year shall constitute nine months, unless otherwise stipulated. The right of a teacher to leave the school district after the school year has been completed cannot be questioned by the courts.

In the cases investigated it was found that the court was reluctant to investigate the action of any agency of the school administration unless there was an injustice done or unless there was a definite practice of fraud. The court
held in many cases that the problem was purely one of school administration and not subject to review by the courts. Nor would the courts hold any board member personally liable for his action as a member of a board unless it could be clearly shown that the intention of the board had been to act fraudulently.

The purpose of the analysis made of the contract forms in this study is to show the various provisions that commonly appear in contract forms. The tendency to do away with contract forms in the public schools was found to be prevalent among many school districts. Many superintendents and boards of education have the opinion that a contract in itself is inherently evil, and binds the teacher to a group of rules and regulations that destroy his personality. According to a large portion of the contracts studied, this fact would be true; but in reality they, as well as a majority of the contracts studied, miss the true sense of a contract. The contract should not be a body of rules and regulations. The rules and regulations are administrative in nature and have no place in the contract itself. To place these rules into the body of a contract only tends to make the contract less understandable, and thus less effective. The attempt to compel the cooperation of a faculty by contract is a mistake and often results in difficult law suits, as the two contracting parties are unable to understand its provisions.
The contract should be an instrument of protection for both parties, and it can accomplish this aim only by being brief and specific. The contract should contain the following provisions:

1. Notice of election.
2. Period for which elected.
3. Teaching assignment.
4. Request for acceptance.
5. Signatures of both parties involved.

Any other material in a contract is superfluous and likely to cause the contract to be misunderstood unless it is handled with the greatest of skill. It is not necessary to write into the contract reasons for dismissal as these reasons are rather constant, and are a part of the contract whether they are written into the body of the contract or not. To enumerate in a contract any detailed duties of the teacher, in order to make the duties seem more important, is the recognition on the part of the school officials that they have poor management of school affairs. Because of the variety of the content of the contract, the teacher has a tendency to ignore the contract as a whole.

It has been shown in the preceding chapters that there are definite provisions, rules, and regulations that teachers must follow while working in the profession of teaching. These rules are established by the legislature, the State
Department of Education, and the courts. Contracts need not carry all the above-mentioned rules and various other rules that the local boards wish to prescribe. At any time a teacher fails to conduct himself to the advantage of the school he is subject to dismissal.
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