

SELECTED ASPECTS OF THE LEGAL STATUS
OF THE PUBLIC SCHOOL TEACHER
IN OKLAHOMA

By

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CHAPTER I

INTRODUCTION

This study was concerned with bringing together selected legal principles which are of particular significance to the public school teacher in Oklahoma as he is forced to make decisions of a legal nature in the practice of his profession. The welfare, both of the public and of the profession, rests upon statutes which specify acceptable levels of preparation and otherwise encourage and protect the individual teacher in the performance of his duties and functions. Aside from general public considerations, the teacher should find this study helpful in understanding the rights and privileges he enjoys and which he may legally enforce. The contents of this study, while not a substitute for technical legal training and experience, should yield a fair measure of general information in matters with which teachers are concerned. It is hoped that the present study will be a useful document in considering the most important aspects of the legal status of the public school teacher in Oklahoma.

Statement of Problem

The State of Oklahoma in providing for public education has created school districts and delegated to boards of education in these districts the right to elect their own public school teachers. The state has also delegated to local boards authority over teachers, although in some matters the teacher is responsible directly to the state. Relations between the teacher and the board of education, and the teacher and the

community are regulated either by statutes enacted by the legislature of Oklahoma or by some accepted principles or rules of common law. Through an analysis of these relationships and court decisions relating to teachers, this study undertakes to determine the legal status of the public school teacher in Oklahoma insofar as that status is governed by basic law, Oklahoma statutes, judicial interpretations, opinions of the Attorney General of the State of Oklahoma, and the rules and regulations of the Oklahoma State Department of Education.

Clarification of Terms

The definitions that follow in this section are applicable to the entire study.

"The Public School Teacher" in Oklahoma is one who has been licensed by the State of Oklahoma to perform professional educational functions in a public school system.

"Legal Status" is defined as the teacher's position or standing as permitted or authorized by law.

"Constitution" refers to the basic law of the state as it was originally adopted and as it has been amended.

"Statutes" refers to laws enacted by the Oklahoma state legislature and by the people through the use of the initiative or referendum.

"Judicial decisions" refers to pertinent decisions by courts of proper jurisdiction, state and federal.

"Opinions of the Attorney General" refers to official written opinions pertaining to the public schools over the signature of the Attorney General of the State of Oklahoma.

"Rules and Regulations" include the regulations of the State Board of Education and the Local Boards of Education.

"The State Department of Education" includes the State Board of Education, the State Superintendent of Public Instruction and divisions.

"American Jurisprudence" is the second series of Ruling Case Law which is encyclopedic in style, similar to Corpus Juris but containing only the leading cases.

"Corpus Juris" is a many volumed series of case law principles reported in encyclopedic form. Textual matter provides a running account, and copious footnotes give citations to cases in point.

"Legal Textbooks" are the most recent textbooks dealing with school law. This secondary source of school law material was used for background study.

"Assault" is an attempt to beat another, without touching him.

"Battery" is an unlawful beating or other wrongful physical violence inflicted on another without his consent. The offer or attempt to commit a battery is an assault. There can be an assault without a battery; battery always includes assault.

"Breach of contract" is failure without legal excuse to perform part or the whole of a contract.

"Certificate" is a document designed as notice that some act has been done, or some event occurred, or some legal formality complied with; evidence of qualification.

"Collateral attack" is an attempt to destroy the effect of a judgment by reopening the merits of a case or by showing reasons why the judgment should not have been given, in an action other than that in which the judgment was given; that is, not in an appeal.

"Common Law" as used in this study, legal principles derived from usage and custom, or from court decisions affirming such usages and customs.

"Estoppel" is a bar raised by the law which prevents a man from alleging or denying a certain fact because of his previous statements or conduct.

"In loco parentis" means in place of the parent; charged with some of the parents' rights, duties and responsibilities.

"Laches" is omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.

"Mandamus" is a writ to compel a public body or its officers to perform a duty.

"Quantum meruit" as used here is an implication that the defendant had promised to pay plaintiff as much as he reasonably deserved for work or labor.

"Ratification" is confirmation of a transaction by one who before ratification had the optional right to relieve himself of its obligation.

"Right" is a power or privilege in one person against another.

"Ultra vires" are acts beyond the scope of authority.

"Respondeat superior" as used here means that a master is liable in certain cases for the wrongful acts of his servant.

Background and Purpose of Study

The purpose of this study is to analyze the laws, court decisions, and administrative regulations of bodies governing schools and to present an orderly summary of such laws, regulations, and interpretations as they affect the legal rights and responsibilities of teachers.

Both administrators and classroom teachers find it necessary to know the law and regulations under which they operate. These laws and their interpretation by the courts and by various administrative agencies are found in many sources. The difficulties involved in locating pertinent materials have emphasized the value of a compilation showing in one volume the substance of the legal aspects of education which affect teachers.

A study such as this is timely for two reasons. In the first place the body of law affecting teacher status has grown until the study and analysis of any one question is a formidable task for the public school teacher. In the second place the study is timely because the teachers are more interested in their status than heretofore. Today, teachers in Oklahoma are asking for the reasons behind laws and regulations. Most of this is the result of recent activities of the organized teaching profession in Oklahoma. For example, the Oklahoma Education Association has sponsored workshops in the seventy-seven counties to appraise the laws under which they teach.

Amazingly little has been done to inform the public school teacher in Oklahoma of the rudiments of his legal rights and responsibilities. No manual has been prepared specifically for the public school teachers in Oklahoma. Other professional people, such as accountants, doctors, and architects, have legal units in their training courses. The need for such a study of the legal status of the public school teacher in Oklahoma, who deals with many people and many problems, seems apparent.

Method and Procedure

In making this study, a method of approach similar to that used by members of the law profession in studying questions of law was adopted.

That is, in each area covered, pertinent portions of legal textbooks and encyclopedias were referred to in order to obtain a broad and comprehensive outline of the problems presented. Such references as were made in these works to rules of law applicable to teachers in Oklahoma were noted for further study and examination.

After determining the general outline and problems involved in each area to be covered, the next step was to make a study of the current statutes of Oklahoma and establish the existence or absence of any pertinent statutory law. Notation was made of the provisions of law applicable, as well as the absence of such provisions on each point covered. Use was made of Oklahoma Statutes Annotated in developing this portion of the study.

Next a study of decisions of the Supreme Court of the State of Oklahoma and the Court of Criminal Appeals of the State of Oklahoma was made, for the purpose of determining the judicial construction of statutes applicable. In the absence of pertinent statutory enactments, the judicial pronouncement of the rules of law to be applied, their application, and the results obtained were studied.

In this stage of the study, use was made of Oklahoma Statutes Annotated for reference to cases decided by the courts construing statutory law, and of Oklahoma Digest for references to cases of these courts pertaining to the particular problem, whether construction of statutes was involved or not. With the references thus obtained from these sources, as well as those previously noted in legal textbooks and encyclopedias, the actual decisions referred to were studied in Oklahoma Reports, Oklahoma Decisions, and Reports of the Criminal Court of Appeals. A brief, consisting of statements of facts, questions involved, and holding

of the court with its reasoning, was made of each case studied. Where points involving questions of constitutionality of law were involved, the appropriate portions of the Federal and Oklahoma Constitutions were examined.

Opinions of the Attorney General of Oklahoma relative to the problems involved here were then studied and the contents and questions involved were noted and briefed. Reference was also made to the rules and regulations of the State Department of Education pertaining to the subject of this study.

After exhausting the authorities in Oklahoma (in some instances no authority was found in reference to particular problems covered), the legal textbooks and encyclopedias were again studied for the purpose of determining the general rules of law applied in jurisdictions other than Oklahoma.

After completing the foregoing steps of study, the information obtained--statutory law, judicial decisions, Attorney General's opinions, State Department of Education rules and regulations, and provisions of constitutions pertaining to each particular area of the study--was assembled and grouped accordingly.

Organization of the Study

This study is organized into six chapters. Chapter I includes the introduction, statement of the problem, clarification of terms, background and purpose of the study, and the method and procedure.

The general rights, duties, and limitations of teachers are not only outlined and established by state laws but are also circumscribed by judicial interpretation of these laws. The most significant of these are listed in Chapter II.

Chapter III presents the criteria used in determining whether or not an individual teacher's contract is legal and how it is executed according to the statutory requirements. The election of the teacher to his position must be accomplished in the mode required by the statutes of Oklahoma.

According to the great weight of authority, a teacher is not a public officer, is not immune from liability because employed by a government agency and is personally liable for acts of negligence while performing his duties as a teacher. A teacher stands in the relationship of in loco parentis to his pupils and must so act as not negligently to injure them.

The liability of a teacher for breach of contractual obligations and his liability for torts are contained in Chapter IV. Chapter V enumerates the grounds upon which boards of education may discharge teachers. The discharged teacher has an obligation to seek another position in order to mitigate the damages, and he also has a right to a hearing before being discharged from his position.

No conclusions are drawn in this study. However, a summary and recommendations are made in Chapter VI.

CHAPTER II

GENERAL RIGHTS, DUTIES, AND LIMITATIONS OF TEACHERS

In the Statutes of Oklahoma and in case studies from court decisions are found some pronouncements regarding the rights and duties of the public school teacher, together with those that limit his authority. The most significant of these are listed here, with the exception of those dealing with the teacher's contractual rights, which are treated in another chapter.

However, this is not a complete list of the enumerated rights and duties. Other rights and duties are given to teachers as they are delegated by their particular school boards or because they are necessarily implied in those specifically given. Those listed here have their origins only in the Statutes of Oklahoma and in the decisions of the Supreme Court of Oklahoma and other states.

Legal Rights of Teachers

A right is an enforceable claim to the action or non-action of another person. Teachers have certain rights given to them because they are teachers. They can enforce these rights against the school board, the administrators, the patrons, or society in general. Such rights include the right to be absent with pay during illness, the right to make reasonable rules for maintenance of discipline, the right to a hearing before a teaching certificate can be revoked, and other rights discussed

in the following pages. There is no presumption that this listing includes all the legal rights of teachers.

Control and Discipline of Child: The teacher of a child attending a public school shall have the same right as a parent to control and discipline such child during the time the child is in attendance in the classroom presided over by the teacher.¹

Jurisdiction Over Children Coming and Going from School: The teacher of a child attending a public school "shall have the same right as a parent to control and discipline such child during the time the child is in transit to the school or classroom presided over by the teacher."²

It is not only the legal right, but the moral duty, of the school authorities, to require children to go directly from school to their homes...The state makes it compulsory upon parents to send their children to school...the least that the state can in reason do is to throw every safeguard possible around the children who in obedience to the law are attending school. The dangers to which children are exposed upon the streets of cities are matters of common knowledge...Parents have a right to understand that their children will be promptly sent home after school, and to believe that something untoward has happened when they do not return in time. No trader or merchant has the constitutional right to have children remain in his place of business, in order that they may spend money there, while they are on their way to and from school."³

Another court held that "a teacher may forbid scholars from quarreling and swearing on the way home and punish them for the infraction of such rule."⁴

¹Oklahoma Statutes 1951, Title 70, Article 6. Hereafter cited as O.S. 1951, 70:6-15.

²O. S. 1951, 70:6-15.

³Jones v. Cody, 132 Mich. 13, 92 N.W. 495, (1902).

⁴Deskins v. Gose, 85 Mo. 485, 55 Am. Rep. 387, (1885).

Maintaining Discipline: In the conduct of the public schools it is essential that power be vested in some legalized agency in order to maintain discipline and promote efficiency. In considering the exercise of this power, the courts are not concerned with the wisdom or lack of wisdom of the act done. The only concern of the court is the reasonableness of the regulation promulgated. To hold otherwise would be to substitute judicial opinion for the legislative will.⁵

Right to Enforce Discipline: The right of the schoolmaster to require obedience to reasonable rules and a proper submission to his authority, and to inflict punishment for disobedience, is well settled. It is said in the Encyclopedia of Education that "by English and American Law a parent may correct his child in a reasonable manner, and the teacher is in loco parentis."⁶

Reasonable Rules for Maintenance of Discipline: School authorities and teachers may make reasonable rules and regulations for the maintenance of discipline. The courts are not concerned with the wisdom or lack of wisdom of the act done. The only concern is the reasonableness of the regulation. Thus schools have passed rules and regulations governing such practices as the wearing of transparent hose, low-necked dresses, or any style of clothing tending toward immodesty in dress, or the use of cosmetics.⁷

Detaining a Child After Class: The detention or keeping pupils in for a short time after the rest of the class has been dismissed, or the school has closed, as a penalty for some misconduct, shortcoming, or mere omission, has been very generally adopted by the schools, especially those of the lower grades. It is now one of the recognized methods of enforcing

⁵Flory v. Smith, 145 Va. 164, 134 S. E. 360, (1926).

⁶Sheehan v. Sturges, 53 Conn. 481, 2 A 841, (1885).

⁷Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538, (1923).

discipline and promoting the progress of the pupils in the public schools of the state. It is a mild and non-aggressive method of imposing a penalty. However mistaken a teacher may be as to the judgment or propriety of imposing such a penalty at any particular time, it has none of the elements of false imprisonment about it, unless imposed from wanton, willful, or malicious motives. In the absence of such motives, such a mistake amounts only to an error of judgment in an attempt to enforce discipline in the school, for which...an action will not lie.⁸

Striking, Threatening, or Abusing Teachers: Any parent of a child attending a public school who strikes, threatens to strike, or otherwise abuses the teacher of such child shall be guilty of a misdemeanor.⁹

Pupils with Disease: Teachers may exclude from the schools any pupil showing symptoms of any contagious or infectious disease. It is not an error of judgment or a mistake upon some obstruse question of medical science, but an abuse of discretionary power, that justifies the courts in interfering with the conduct of the school board. In a Pennsylvania case it was conceded that the board might rightfully exclude the plaintiff's son if he were actually sick with, or just recovering from, the smallpox. Though he might not be affected by it, yet, if another member of the same family were, the right to exclude him notwithstanding he might be in perfect health, would be conceded. How far shall this right to exclude be carried? This is a question addressed to the official discretion of the proper officers, and when that discretion is honestly and impartially exercised the courts will not interfere.¹⁰

⁸Fertich v. Michener, 111 Ind. 472, 11 N.E. 605, (1887).

⁹O.S. 1951, 70:6-14.

¹⁰Duffield v. School District, 162 Pa. 476, 29 A. 742, (1894).

Suspension of Pupils: Any pupil who is guilty of immorality or persistent violation of the regulations of a public school may be suspended by the principal of such school. Such suspension shall not extend beyond the current school year. Any pupil suspended from school shall have the right to appeal from the decision of such principal teacher to the board of education of the school district. The board of education shall make a full investigation of the matter and determine the guilt or innocence of the pupil. The law provides that the decision of the board shall be final.¹¹

Teachers' Membership in a Union or Professional Organization: Membership in any association, organization, or union shall not be required of any teacher in any school district by the school district superintendent, the school district board of education or by the State Board of Education. It is provided further that no teacher seeking employment in any school district shall be required to sign a contract nor shall such teacher be required to make any verbal agreement which stipulates that such teacher must become a member of any association, organization, or union.¹²

Sick Leave, Hospital and Medical Benefits: The law provides that the board of education of each school district in the State shall provide for sick leave for all teachers employed in the district and shall pay such teachers the full amount of their contract salaries during any absence from their regular school duties for a period of time and under such conditions as the board may determine. (In actual practice this

¹¹O.S. 1951, 70:20-1.

¹²O.S. 1951, 70:6-1.

right is of little value to teachers because the board of education has the privilege of determining the length of time and the conditions under which it may be granted.) The board of education may also provide hospital and medical benefits and sick, accident, health and life insurance for any or all of its employees.¹³

Leave of Absence: Teachers who are members of the Armed Forces, including officers and enlisted men of the Reserve Corps of the Army, the Navy, the Marine Corps, the Coast Guard, the Women's Auxiliary Corps, or any other component of the Armed Forces of the United States, including members of the National Guard, shall, when ordered by the proper authority to active duty or service, be entitled to a leave of absence from such civil employment for the period of such active service without loss of status or efficiency rating and without loss of pay during the first thirty (30) days of such leave of absence.¹⁴

Hearing to be Given Before Certificate Can be Revoked: Although certificates or licenses to teach may be revoked by the State Board of Education for willful violation of any rule or regulation of the State Board of Education or of any federal or state law or other proper cause, such certificate may be revoked only after a sufficient hearing has been given the teacher before the State Board of Education.¹⁵

¹³O.S. 1951, 70:6-3.

¹⁴O.S. 1955, 70:6-4(d).

¹⁵O.S. 1951, 70:2A-4, Subsection 9.

Duties of Teachers

A duty is an act which may be commanded by another, and disobedience results in a penalty. Teachers have duties fixed by law which the school board may command them to perform. Other laws established duties for the school board, some of which may involve duties of the teachers. Under these laws school boards have certain powers. Here several of the important duties of the teacher are outlined.

Teachers Looked Upon as Exemplars: This higher standard of living is deemed essential in the conduct of teachers for the reason that teachers are looked upon as exemplars. As stated by one court: "A teacher in the public school system is regarded by both patrons and pupils in the light of exemplar, whose conduct and words are likely to be followed by the children taught; therefore no conduct or language should be indulged in by the teacher which is calculated to invite criticism."¹⁶

Teaching Duty Outside Classroom: The day in which the concept has held that teaching duty was limited to classroom instruction has long since passed. All of his duties are taken into consideration in his contract for employment at the annual salary.¹⁷

Records of Attendance of Pupil: It shall be the duty of the principal or head teacher of each public, private or other schools in the State of Oklahoma to keep a full and complete record of the attendance of all the children in the school district.¹⁸

¹⁶Gover v. Stovall, 237 Ky. 172, 35 S.W. (2d) 24. (1931).

¹⁷McGrath v. Burkhard, 280 P. (2d) 864, (Calif.), (1955).

¹⁸O.S. 1951, 70:10-11.

Limitations Placed Upon Teachers' Activities

A limitation is a restraint of action which may be commanded by another or by the law and disobedience results in a penalty. The statutes and the courts have prescribed a number of limitations on the duties and activities of teachers. School boards in Oklahoma also have the right to fix limitations for teachers. It is not the intent here to report all the limitations placed upon the teacher's activities.

Unlawful to Teach Without Certificate: It shall be unlawful for any person to serve, or to contract or agree to serve, as superintendent, principal, supervisor, librarian, school nurse, classroom teacher or other instructional, supervisory or administrative employee of a school district unless such person holds a valid certificate of qualification issued in accordance with the rules and regulations of the State Board of Education to perform the services he performs or contracts or agrees to perform.¹⁹

Manual Labor: Compelling a child to do manual labor as a form of punishment or discipline is improper.²⁰

Punishment must be Reasonable: No precise rule can be laid down as to what shall be considered excessive or unreasonable punishment. In inflicting punishment, the teacher must exercise sound discretion, and must adopt it, not only to the offense but to the offender.²¹

¹⁹O.S. 1951, 70:6-7.

²⁰State ex rel Bowe v. Board of Education, 63 Wis. 234, 23 N.W. 102, (1885).

²¹Sheehan v. Sturges, 53 Conn. 481, 2 A 841, (1885).

First Aid Treatment by Teachers: A teacher is not permitted to give medical treatment except in case of emergency, but if there is an emergency the teacher is under a duty to render first aid to the best of his ability. However, a teacher has no legal right to administer medical treatment except in case of emergency. This was brought out in a case when a teacher immersed a boy's infected hand in a pan of hot water and held it there for ten minutes, thereby scalding the hand and aggravating the infection. The teacher was liable for negligence since he had no authority to exercise his lay judgment in the treatment of injuries or diseases except in cases of emergency.²²

Teachers Forbidden to Reveal Information Concerning Pupils: It shall be unlawful and a misdemeanor for any teacher to reveal any information concerning any child obtained by him in his capacity as teacher except as may be required in performance of his contractual duties.²³

Clothing of Teachers: Some control over the habiliments (costume) of teachers is necessary in the proper conduct of public schools. Where restrictive regulations with respect thereto are reasonable, they will be upheld.²⁴

Accepting or Giving Pay in Connection with Obtaining a Position: Oklahoma law makes it illegal and a misdemeanor for any teacher to receive or promise to receive any gratuity or reward for assisting another teacher

²²Guerrieri v. Tyson, 147 Pa. 239, 24 A (2d) 468, (1942).

²³O.S. 1951, 70:6-16.

²⁴O'Conner v. Hendrick, 184 N.Y. 421, 77 N.E. 612, (1906).

to obtain a position in any public school of this state.²⁵ It is also unlawful and a misdemeanor for any teacher to give or promise to give to any person any gratuity, reward, or commission for helping that teacher obtain employment as a teacher in any public school in Oklahoma.²⁶ A teacher would commit an illegal act if he paid for services rendered in securing employment for him.

A Teacher Not to Serve as Clerk of Board: Oklahoma law provides that no superintendent, principal, instructor, or teacher employed by a board of education shall be elected or serve as clerk of that board.²⁷

Employment of Relative Unlawful: It is unlawful for any executive, legislative, ministerial or judicial officer to appoint or vote for the appointment of any person related to him by marriage or blood within the third degree. Two persons are related to each other within the third degree if one is the father, mother, grandfather, grandmother, brother, sister, uncle or aunt of the other. The appointment of teachers by school boards is subject to this provision of Oklahoma law. However, for the purposes of this law, a divorce of husband and wife terminates all relationship by marriage.²⁸

Transfer of Teachers: In absence of a statutory restriction upon a board of education to transfer a teacher from one class or grade to another,

²⁵O.S. 1951, 70:6-13.

²⁶O.S. 1951, 70:6-12.

²⁷O.S. 1951, 70:4-24.

²⁸O.S. 1951, 21:481.

the board has discretionary power to assign, reassign, and transfer its teachers.²⁹

Summary

One characteristic of a profession is that its legal status is defined by state law. This is done, usually, because of a profession's importance to the welfare of the people and to the state. In setting up such legal provisions for teachers the state acknowledges that they are a selected group distinguished by preparation, experience and essential personal qualifications. It grants to the individuals of such a group certain rights, duties, and limitations. On the other hand, it expects the individual members of the group to recognize that they have certain obligations to society. These obligations have been defined in the Statutes of Oklahoma and in case studies from court decisions.

²⁹Consolidated School District No. 4, Bryan County v. Millis, 192 Okla. 687 (1943).

CHAPTER III

TEACHERS' EMPLOYMENT CONTRACTS

Teachers in Oklahoma are generally held to be state employees rather than state officers. Therefore, their status is contractual rather than statutory. That is, the source of a teacher's right to his job is his contract. Of course, a valid contract between the teacher and the school district is essential to the existence of any mutual obligations between them. The criteria used in determining whether or not an individual teacher's contract is legal are the same used in determining the legality of any contract. Rules and regulations of the board of education, as well as those passed after the contract is signed, are considered part of the contract.

In Oklahoma a teacher's right to sign a contract is dependent upon his ability to meet certification requirements. The certificate is not a contract between the teacher and the state, but it is more or less a commission issued by the state. A teacher in Oklahoma cannot legally be employed before he possesses a legal certificate.

Teachers as Employees Rather Than Officers of a School District

Much of the professional life of a teacher is determined by the definition given his position, whether he is a public officer or a public employee; and if he is considered an employee whether he is one whose conditions of employment are fixed by contract, individual or collective, or by legislation; and if his conditions of employment are fixed by

legislation whether that legislation creates for him a contractual relation with the state or its agent, the employing school board.

Teachers might intuitively covet the status of officer, but the fact that teachers are, instead, employees, has several advantages. Officers are not likely to have their salaries increased during their term of office.³⁰ Officers' tenure is less secure inasmuch as they often serve "at the pleasure of" their superiors.³¹ Furthermore, the length of service of public officers is sometimes fixed in state constitutions. For instance, the Oregon Constitution forbids the legislature to create any office the tenure of which shall be longer than four years. However, Oregon's teacher tenure laws, applicable in certain cities of that state, were upheld since teachers are employees, not officers.³² In New Mexico, where this question was recently raised, the court said: "A school teacher employed by a common school district is 'employee' not 'officer,' and the relationship between school teacher and the school board is contractual only."³³

The Supreme Court of Oklahoma has considered these characteristics in distinguishing between the two types of servants:

A public office is the right, authority and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, either executive, legislative or judicial, to be exercised for the benefit of the public, and unless the powers conferred are of this nature, the individual is not a public officer.³⁴

³⁰Sieb v. City of Racine, 187 N.W. 989, (Wis.), (1922).

³¹State v. Martin, 163 S.E. 850, (Va.), (1932).

³²Alexander v. School District No. 1, 164 P. 711, (Ore.), (1917).

³³Brown v. Bowling, 56 N.M. 96, 240 P. (2d.) 846, (1952).

³⁴The Guthrie Daily Leader v. Ed. D. Cameron, Territorial Auditor, 3 Okla. 677, 41 P. 635, (1895).

Another case states that:

The specific position must be created or authorized by law; there must be certain definite duties imposed by law on the incumbent; and they must involve the exercise of some portion of the sovereign power. 'A position which has these three elements is presumably an 'office,' while one that lacks any of them is a mere employment.'³⁵

Although the position of public school teacher has many of the characteristics of public office holding, the courts have been almost unanimous in classifying a teacher as an employee rather than an officer.

The Nature of a Contract

A contract may be defined as a legally enforceable obligation.³⁶ Expressed in other words, a contract is an agreement that is of sufficient importance to justify the courts in setting the machinery of the law in operation for its enforcement. The essential elements of a contract may be stated as follows: (1) Legal capacity on the part of the contracting parties; (2) Mutual assent of the contracting parties to the terms of the contract, or what is commonly known as a "meeting of the minds"; (3) A valid consideration; (4) Rights and liabilities sufficiently definite to be enforceable; and (5) An agreement of such a nature as not to be prohibited by the statutes or the common law.³⁷

The teacher's contract must conform to all the general requirements of contracts in general. To the same effect the Supreme Court has said: "Except in so far as controlled by statute, the making, requisites and

³⁵Oklahoma City v. Century Indemnity Co., 178 Okla. 212, 62 P. (2d) 94, (1936).

³⁶Samuel Williston, A Treatise in the Law of Contracts (New York, 1936), I, p. 1

³⁷Newton Edwards, The Courts and the Public Schools (Chicago, 1955), p. 200.

validity of a contract of employment of a teacher in the public schools is governed by the rules relating to contracts generally."³⁸ That is, it must be between competent parties, supported by adequate consideration, be sufficiently definite to indicate what the parties intended, and conform to any special statutory provisions that may be applicable. There must be an offer and acceptance, communication of the acceptance to the offer, and, in Oklahoma, a written contract.

The law of contracts as it relates to education has remained relatively stable. School boards have, of course, no inherent power to contract. Since they are arms of the state created for the purpose of exercising purely governmental functions, the measure of their contractual power is found in the laws of the State of Oklahoma and in them alone. All who deal with a school board do so at their peril because they, too, must judge of the powers that have been vested in the board. Moreover, the rule is well established that, where a contractual power is vested in a school board and the mode of making the contract is prescribed, the mode is a measure of power, and contracts made in any other mode are void. Thus, where the statutes require that contracts be written, oral contracts are void.

While a contract gives both the teacher and the school board security, it is equally binding upon both the teacher and the board. The legal rights of each party to the contract are largely based on state law. The teacher, because he is an employee rather than an officer, occupies a contractual rather than a statutory status. Nevertheless, all statutes that are apropos become a part of a teacher's contract, at least by

³⁸Smith v. School District No. 1, Marshall County, 187 Okla. 184, 102 P. (2d) 131, (1940).

implication. Not only must a teacher obey all rules that are in effect at the time he contracts, but he must obey all reasonable rules which the board may enact after he has been employed. In general, the contract is the source of the teacher's right to his position.

The Certification Requirement

The basic purpose of certification is improving the quality of teaching. The state of Oklahoma licenses practitioners of medicine, dentistry, law, accounting, teaching, and other professions in order to make sure that service is provided by competent individuals. The certification laws embody the requirements of the state. The State of Oklahoma has established a system of certification requiring teachers to secure appropriate licenses for the type of positions to be held. In the granting of teachers' certificates the State Board of Education established certain qualifications which must be met by the teachers, and then delegates to the administrators of the various school districts the duty of seeing that the requirements are met.

The State of Oklahoma has given the State Board of Education full and exclusive authority over all matters pertaining to standards of qualifications and the certification of persons for supervisory and administrative positions and services in the public schools of the state and shall formulate rules and regulations governing the issuance and revocation of certificates.³⁹

After it is issued, the certificate of a teacher is not subject to collateral attack. In other words, it cannot be used as a basis of

³⁹O.S. 1951, 70:2A-4, Subsection 9.

dismissal even though the certificate is held by one who is not qualified to receive it. The genuineness of a certificate being admitted, it will be presumed to have been duly issued, and the officer issuing it will be presumed to have satisfied himself of the proper qualifications of the recipient and of the existence of the facts justifying his action in the matter.⁴⁰

A teacher's certificate may be revoked for willful violation of any rule of the State Board of Education or any federal or state law or other proper cause, but only after sufficient hearing has been given before the State Board.⁴¹ A certificate may be cancelled if such certificate was obtained by misrepresentation or fraud, or if it was issued through error and if it is found that the holder was not qualified to receive it.⁴²

A person may not receive compensation for teaching unless he holds the proper certificate, and the courts have ruled that this provision of law must be observed. A North Dakota court held, for example, that:

There is no force in the position that the defendant, having received the benefit of the teacher's services, is liable. Such a doctrine would defeat the policy of the law, which is to give the people of the state the benefit of trained and competent teachers. The law recognizes only one evidence that that policy has been regarded,---the certificate of qualification. If the defendant could be made liable by the mere receipt of the benefit of the services rendered, the law prohibiting the employment of teachers without certificates, and declaring void all contracts made in contravention of that provision, would be, in effect, repealed, and the protection of the people against incompetent and unfit teachers, which such statute was enacted to accomplish, would be destroyed. Where a contract is void because of the express declaration of a statute, or because prohibited in terms, the retention by a municipality of the fruits of such a contract will not subject it to liability, either under the contract or upon a quantum meruit.⁴³

⁴⁰Kimball v. School District No. 122, 23 Wash. 520, 63 Pac. 213, (1900).

⁴¹O.S. 1951, 70:2A-4, Subsection 9.

⁴²Teacher Education and Certification Handbook, State Board of Education, State of Oklahoma, Department of Education, p. 62.

⁴³Goose River Bank v. Willow Lake School Township, 1 N.D. 26, 44 N.W. 1002 (1890).

In Oklahoma a certificate has been characterized as a "license and not an absolute right." Concerning it, the court said:

The power and control of the legislature over such a license appears well established: 'A license....is not a property right; it is not a contract, and the Legislature 'may impose new or additional burdens on the licensee,' and reserves the right 'to alter the license, or to revoke or annul it even though the licensee has expended money in reliance thereon.'⁴⁴

The Supreme Court of Oklahoma has made an interesting distinction concerning the eligibility of a county superintendent in terms of meeting the requirements for a certificate or license. In one instance, it was held that a candidate for nomination to the office of county superintendent who had all of the necessary qualifications for a certificate, but who did not actually possess the certificate, could not file for the office.⁴⁵ In a later case, the same court held, however, that a county superintendent who possessed a certificate at the time of induction into office was eligible to continue in office, even though he had not possessed the certificate at the time of either the primary or general election.⁴⁶ The latter rule apparently has the greater weight of authority.

Legal Effect of Signing a Contract Before a Certificate is Issued

Frequently a contract is signed by a teacher and school district before a certificate is issued, but the teacher acquires a certificate before he begins his teaching duties. The question then arises as to whether such contract is valid.

⁴⁴Hodge v. Stegall, 206 Okla. 161, 242 P. (2d) 720, (1952).

⁴⁵Martin v. County Election Board of McClain County, 206 Okla. 597, 245 P. (2d) 714, (1952).

⁴⁶Murphy v. Darnell, 268 P. (2d) 860, (Okla.), (1954).

The statute provides that a teacher may not enter into a contract to teach unless he has a valid certificate and the teacher must have a valid certificate at the time of the making of the contract.⁴⁷ It is unlawful for any person to serve, or to contract or agree to serve, as a teacher of a school district unless such person holds a valid certificate of qualification.⁴⁸ If a teacher without a proper certificate is employed for a position, the contract of employment is not binding. It is also unlawful for a Board of Education in Oklahoma to employ a teacher who does not possess a teaching certificate.⁴⁹

Necessity of Board Action

It is well established that, in order to enter into a valid contract with a teacher, a board of education must act in its corporate capacity. The law contemplates that a board of education, in the exercise of the discretion vested in it, should meet and counsel together. Action taken by school board members acting separately is not the action of the board, though all may agree, and the district will not be bound thereby. The Supreme Court of Oklahoma has expressed the rule clearly:

The power to make or alter contracts for a district is vested in a board of directors, and in order to bind the district and to make or alter a valid contract in respect to the hiring of teachers, it is necessary that the members of the board act as a board in its capacity as such. In such a case the acts and declarations of individual members of the board, independent and apart, will not create a contract enforceable against the district.⁵⁰

⁴⁷O.S. 1951, 70:6-7.

⁴⁸O.S. 1951, 70:6-7.

⁴⁹O.S. 1951, 70:6-6.

⁵⁰School District No. 39, Pottawatomie County v. Shelton, 26 Okla. 229, 109 P. 67, (1910).

The reasoning of the courts in sustaining the rule as previously stated is well illustrated by an excerpt from a decision rendered by the Supreme Court of Missouri. The Court stated:

The board of directors of a school district is an entity which can act and speak only as such. The separate and individual acts and decisions of the director members, even though they be in complete agreement with each other, have no effect. They must be assembled and act as a board.⁵¹

Similarly, the Supreme Court of Oklahoma stated in another case:

A public body such as a school board, consisting of several persons, authorized to perform acts of a public nature, and to which public acts are entrusted, such as employment of teachers for the public schools, must perform such duties as a board and to do so it is imperative that all should meet together, or at least be notified of such meeting, and have the opportunity to meet together to consult over the employment of such teachers,⁵² before a binding contract upon the district can be entered into by them.

However, in another case the Courts of Oklahoma held that a teacher's contract need not be signed by all members of the board at the same time and at the same place to be considered valid, so long as the board was in agreement as to the employment of the teacher.⁵³ In as much as there had been a "meeting of the minds" between the school board and the teacher as to the terms of the contract, this constituted a valid agreement in itself and the fact that written contract was not precisely executed by the members at the same time and place was immaterial.

The Board of Education in every case must employ the teacher. Such authority cannot be delegated by the board to a superintendent of schools, or to any other person. In making such appointment, the selection of

⁵¹State v. Consolidated School District No. 3, 281 S.W. (2d) 511, (Mo.), (1955).

⁵²Ryan V. Humphries, 50 Okla. 343, 150 P. 1106 (1915).

⁵³School District No. 16 v. Barnes, 40 Okla. 489, 144 P. 1046, (1914).

each teacher is a matter of discretion vested in the board. A board has the legal right to refuse to employ a particular person to a teaching position and is not required to reemploy a person as a teacher after his current contract expires.

However, it is considered good practice for a superintendent of schools to seek teachers where necessary, review their qualifications, and recommend to the board such persons for appointment as he deems qualified and worthy of appointment. After employment, a superintendent may recommend retention of designated teachers, during each time that the question of reemployment comes before the board, or he may recommend other persons be appointed in their stead, subject to being overruled by a board of education. A superintendent of schools, however, has no legal authority to hire or employ teachers, and he cannot legally bind or obligate a board to employ any teacher on the strength of any statements or commitment that he may have made.

**Patrons of a School District Not to Dictate to a School
Board the Teachers That the Board Shall Employ**

The power to hire and discharge teachers has been zealously reserved to the school boards so as to guarantee to the public school system the benefits of having the school board function as a whole, rather than through designated persons with delegated authority, when dealing with the vital question of the personnel of the teaching staff.

On May 22, 1928, the county attorney of Cleveland County, Oklahoma, requested an opinion as to the legality of the inhabitants of a school district in dictating to the school board the amount of salary to be paid each teacher. On May 26, 1928, the Attorney General gave his opinion that the school law "authorizes the school board to contract and hire

the teachers for and in the name of the district."⁵⁴ The statute does not authorize the inhabitants of a school district at a school meeting to dictate to a school board the teachers that the board shall employ, and we know of no statute which gives that power to the patrons of the district.

Written Contract Required

The protection which a written contract affords is considered so important by the courts in Oklahoma that it is usually held that there can be no recovery of services rendered under an oral contract. In Oklahoma the statute concisely states that teachers' contracts must be in writing:

No person shall be permitted to teach in any school district of the State without a written contract, except as provided herein for substitute teachers and except teachers of classes in adult education. The board of education of each school district, wherein school is expected to be conducted for the ensuing year, shall employ and contract in writing with qualified teachers for and in the name of the district.⁵⁵

In Oklahoma, a teacher brought an action to recover damages for an alleged breach of contract.⁵⁶ The question involved concerned the legality of the contract. On June 27, 1955, the school board passed a resolution electing the plaintiff to serve as a teacher. She offered in evidence a copy of the resolution that had been delivered to her and further contended that she had been notified of the election in oral conversation with some or all of the members of the board concerning the

⁵⁴Opinion of the Attorney General of Oklahoma, May 26, 1928, addressed to Honorable J. D. Grigsby, Jr., County Attorney (in the files of the office of the Attorney General).

⁵⁵Oklahoma, Statutes (1949), 70:1A.

⁵⁶George v. Joint School District No. 5, 317 P. (2d) 251, (Okla.), (1957).

terms and conditions of her employment. She was ready to serve for the 1955-56 term but was prevented from doing so. She sued the board for damages and alleged breach of contract. The state statute requires that contracts with teachers must be written and that they must be approved by the county superintendent. The teacher in her petition did not allege that she had a written contract, and therefore the lower court dismissed her petition because no cause of action existed without such an allegation. The teacher appealed to the state supreme court. It upheld the lower court's decision, stating that since the law requires that contracts be in writing, the petition in an action for breach of contract must contain an allegation that such a contract was in existence in order to state a cause of action.

However, in Oklahoma there are a few exceptions to the rule that there may not be recovery on an oral contract, on the theory that by the acceptance of the services by the district the latter has ratified the contract.⁵⁷ An oral contract of employment of a teacher of a school district, even though invalid in that the board of education had no authority or power to make such a contract, may be ratified by such board by accepting the teacher's services, but, in the case of partial performance, the ratification extends only to the period of performance. Recovery is allowed on the theory that even though the contract is invalid the board should pay for the services rendered and such contract should be ratified to that extent.

⁵⁷Williamson v. Board of Education of City of Woodward, 189 Okla. 342, 117 P. (2d) 120 (1941).

Approval of County Superintendent for Teacher's
Contract in Dependent District

A teacher's contract with the board of education of a dependent school district must be approved by the county superintendent of schools. Under the superintendent's specific powers and duties, the Oklahoma statute states that his responsibility is:

to approve all contracts of teachers and other personnel under his supervision and to keep on file in his office a copy of each such contract for the entire term the contract is in force.⁵⁸

However, a county superintendent is not authorized to decline to approve a teacher's legal contract by fixing educational requirements greater than those required by law. On this point the Supreme Court held as follows:

The fact that a teacher's contract must be approved by the county superintendent serves to protect the school against teachers without proper qualifications. However, the actual employment of teachers is a matter left up to the discretion of the individual school board. The approval by the county superintendent simply insures that salary expenditures are kept within the approved estimate.⁵⁹

If a teacher has entered into a valid contract with a school board and the salary to be paid is within the approved estimate, and if the teacher possesses the educational requirements as provided by law, the county superintendent is without authority to refuse to approve the contract. Sometimes the question arises if the county superintendent may legally refuse to approve a teacher's contract for purely personal reasons, or whether he may be required to give some reason concerning the teacher's ability, character, or desirability. The supreme court of Oklahoma has held:

⁵⁸O.S. 1951, 70:3-4a.

⁵⁹Shofner v. Mercer, 164 Okla. 170, 23 P. (2d) 623, (1933).

The approval or rejection of contracts, between district school boards and teachers, by the county superintendent is a judicial, as distinguished from ministerial duty.⁶⁰

In another Oklahoma case the court upheld the right of a county superintendent to refuse approval of a teacher's contract due to the misconduct of the teacher.⁶¹

Although, ordinarily, it is held that mandamus will not lie to compel the performance of a duty by an officer not purely ministerial, but in which he exercises judgment and discretion, yet this is not entirely accurate; as mandamus, in the absence of other remedy, in an otherwise proper case, may be issued to correct an abuse of discretion, or to compel action where the officer is vested with judgment and discretion, but his action or refusal to act is arbitrary; and, in a case where there are no disclosures or controverted facts to call for the exercise of discretion and judgment, or in a case where he must exercise judgment and discretion, but he acts arbitrarily, or fraudulently, the writ may be issued to require a proper performance of his duties.⁶²

On April 29, 1933, the State Superintendent of Public Instruction requested the Attorney General's opinion on the following question:

The law provides that teachers' contracts in school districts under the supervision of the county superintendent must have the approval of said county superintendent before they are valid. Our Supreme Court has upheld this statute. In a number of cases which have come to our attention, the county superintendent is refusing to approve teachers' contracts for next year and giving as his sole reason that the teacher in question, or her parents, live in another county, or in another state. In other words, a teacher has taught in a given school several years, but the county superintendent elect has notified her that her contract will not be approved to teach next year in the same school because her parents reside in another county. Her work is satisfactory and she has been employed by the school board in that district.

We desire an opinion from your office relative to this matter. We should like to know if the county superintendent may legally refuse to approve contracts for purely personal reasons, or whether he may be required to give some reason concerning the teacher's ability, character, or desirability.

⁶⁰Means v. Vernon, 108 Okla. 123, 235 P. 163, (1925).

⁶¹Shoffner v. Smith, 155 Okla. 43, 7 P. (2d) 655, (1932).

⁶²Board of Education v. Short, 89 Okla. 2, 213 P. 857, (1923).

On May 17, 1933, the Attorney General gave an opinion that if a contract entered into between a school district board and a teacher was a legal contract, and the County Superintendent had abused his discretion or had acted arbitrarily in refusing to approve the contract, that a writ of mandamus would lie as held in the case last cited.⁶³ As to whether the writ of mandamus would be issued under the set of facts submitted would be a matter for the Court to decide in a proper action.

Oath of Allegiance to be Required for Each Teacher
and Reaffirmed Each Year

In the exercise of its power the State of Oklahoma may require as qualifications, factors other than scholastic, the requirement of a loyalty oath.⁶⁴ The statute requires the teacher to subscribe to an oath to support the Constitution of the United States and that of the State of Oklahoma. The Oath of Allegiance or the Anti-Communist Oath law, enacted by the Twenty-third Oklahoma Legislature states:

Every officer and every employee of the State, County, school district, municipality, public agency, public authority, or public district shall within the first thirty (30) days after taking office, or within the first thirty (30) days of employment, take and subscribe to the oath or affirmation required by this act....Any officer or employee of the State, County, school district, municipality, public agency, public authority, or public district who fails to take and subscribe the oath or affirmation required by this Act within the time specified in this section, shall forfeit his or her office or employment.⁶⁵

It will be noted that the oath must be taken within the first thirty days of employment. In the case of a school district, teachers are not

⁶³Opinion of the Attorney General of Oklahoma, May 17, 1933, addressed to Honorable John Vaughn, State Superintendent (in the files of the office of the Attorney General).

⁶⁴Board of Regents of Oklahoma Agricultural and Mechanical College v. Updegraff, 205 Okla. 301, 237 P. (2d) 131, (1951).

⁶⁵Oklahoma Session Laws 1953, 51:Section 1, Chapter 1.

employed for a continuous or indefinite period but are employed from year to year.⁶⁶ Since a teacher cannot be employed beyond the current fiscal year, there is a separate employment each year he performs teaching services for a school district. In other words, there is another employment after the beginning of each fiscal year. This being so, it follows that the oath must be taken each year.

The Oath of Allegiance must be taken by a teacher within thirty days after his employment begins in each fiscal year. This being true, he must take the oath each year he serves as a teacher, and cannot, by taking the oath at one particular time, thereby be absolved from the statutory necessity of taking it in succeeding years.

The Continuing Contract Law or Spring Notification

Under this provision the contract is assumed to continue in operation from year to year unless either party gives notice before a certain date that it is to be cancelled. The principal advantage of this plan is that the school board must take affirmative action to dismiss a teacher, rather than being required to take affirmative action to retain him. The teacher, therefore, is not under the necessity of making annual application for reemployment. The Oklahoma School Code provides:

A board of education shall have authority to enter into written contracts with teachers for the ensuing fiscal year prior to the beginning of such year. If prior to April 10th a board of education has not entered into a written contract with a regularly employed teacher or notified him in writing by registered mail that he will not be employed for the ensuing fiscal year, and if, by April 25th, such teacher has not notified the board of education in writing by registered mail that he does not desire to be reemployed in such school district for the ensuing year, such teacher shall be considered as employed on a continuing

⁶⁶School District No. 76, Creek County v. Bath, 120 Okla. 204, (1926).

contract basis and on the same salary schedule used for other teachers in the school district for the ensuing fiscal year, and such employment and continuing contract shall be binding on the teacher and on the school district.⁶⁷

Apparently a teacher is entitled to be reemployed for the next year unless the board of education acts affirmatively by giving the required notice; likewise, by not taking such affirmative action, the board of education is entitled to the services of the teacher for the next year unless he acts affirmatively by giving the required notice.

Evidently the Legislature has some reason for requiring a written notice and providing that it be given by registered mail, possibly to avoid misunderstandings and to afford a written record of the termination of the contract at the end of the year. Regardless of the reason, however, the Legislature has prescribed a written notice by registered mail in such instance.

On February 1, 1956, the State Superintendent of Public Instruction requested the Attorney General's opinion on the following questions involving this point in the Oklahoma School Code, which provides for the giving of notices in regard to continuing contracts:

1. If a board of education in regular meeting before April 10 calls a teacher before it and advises her verbally that she will not be employed for next year, will there be a termination of the teacher's continuing contract and employment for next year?

2. If, before April 25, a teacher advises the board of education in regular meeting verbally, or notifies the board of education in writing but not delivered by registered mail, that she desires to resign at the termination of her present contract, will there be a termination of the teacher's continuing contract and employment for next year?

3. If a registered letter containing a written notification that a teacher will not be employed for next year is mailed before April 10, but is not received by the teacher until after April 10, will there be a termination of the teacher's continuing contract and employment for next year?

⁶⁷O.S. 1951, 70:6-1e, as amended by Title 70, Chapter A, Section 19, Oklahoma Session Laws, 1955.

In answer to the first question, the Attorney General said that a verbal notice that a teacher will not be employed for the next year does not terminate a contract. Also, verbal notice or notice in writing (but not delivered by registered mail before April 25) given by a teacher that he intends to resign does not terminate his contract for the next year. Finally, on the third point, the mailing of a registered letter before April 10, containing a written notification that a teacher will not be employed the following year, will terminate a contract even if the letter is not received until after April 10.

The views expressed in the preceding shall not be construed, however, to mean that it is legally impossible to terminate a teacher's contract in another way. The Oklahoma School Code provides that a teacher may be 'discharged from his teaching position or released by the board of education from his contract.' And the Supreme Court of Oklahoma has held that, except insofar as controlled by statute, teachers' contracts are governed by the rules relating to contracts generally, and a contract may be rescinded by consent of all the parties. It is the opinion of the Attorney General that without the formal giving of notices by registered mail as provided in the School Code, the board of education and a teacher may terminate the teacher's contract, which might otherwise be continued for the next year, by mutual consent or agreement.⁶⁸

The author finds in other jurisdictions, provisions requiring written notice have been held to be mandatory. In a California case involving a statute requiring notice in writing to a probationary employee that his services would not be required for the ensuing year, it was held:

Written notice of dismissal of probationary school teacher is necessary irrespective of actual knowledge by teacher of action of board of school trustees in voting for his dismissal.⁶⁹

In a Missouri case it was held:

⁶⁸Opinion of the Attorney General of Oklahoma, February 15, 1956, addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

⁶⁹Darby v. Biggs School District of Butte County, 59 P. (2d), 167 (Calif.), (1936).

that even if a teacher made statements that he did not wish to continue as a teacher, such fact did not 'relieve the Board of Directors of its clear and positive duty under the statute to notify defendant in writing.'⁷⁰

It is believed that the requirements as to notification by registered mail will be complied with if the registered letter containing the written notification is deposited in the mail before April 10. In a North Carolina case, the court stated:

Under statute providing that it shall be the duty of the county superintendent to notify all teachers and principals employed, by registered letter, of his or her rejection prior to the close of the school term, notification of rejection was complete when letter containing notice of rejection was mailed to teacher and registered before close of school term notwithstanding the letter was not received until after close of term.⁷¹

Validity of Oral Contracts

The Oklahoma statute requiring that district contracts be written are designed to avoid the danger that frequently arises when the memory of individuals is relied on to establish contracts. The protection which a written contract affords is considered so important by the courts in Oklahoma that it is usually held that there can be no recovery for the reasonable value of services or goods supplied under an oral contract.

In Oklahoma, the Supreme Court held that because of "the statutory requirement that contracts be reduced to written form, an oral contract is invalid and unenforceable and no recovery can be had in an action for breach of contract."⁷²

⁷⁰Common School District No. 27 v. Brinkmann, 233 S.W. (2d) 768, (Mo.), (1950).

⁷¹Davis v. Moseley, 230 N.C. 645, 55 S.E. (2d) 329, (1949).

⁷²Williamson v. Board of Education of City of Woodward, 189 Okla. 342, 117 P. (2d) 120, (1941).

In the same case it was held that "no expenditure involving an amount greater than two hundred dollars shall be made except in accordance with the provisions of a written contract."⁷³ It was further held that the defendant was without authority to enter into an oral contract agreement with the plaintiff; that the oral contract here involved is invalid for that reason and cannot be enforced.⁷⁴

On March 7, 1958, the State Superintendent of Public Instruction requested the Attorney General's opinion on the following query:

On February 24, 1958, a board of education meeting in special session verbally contracted a teacher for the 1958-59 school year. May said board of education meeting in regular or special session at a later date but before April 10, 1958, legally rescind its action and set aside the verbal contract, or is the verbal contract binding?

On March 13, 1958, the Attorney General gave his opinion as follows:

The law on this point reads: 'A board of education shall have authority to enter into written contracts with teachers for the ensuing fiscal year prior to the beginning of such year...'

Apparently the teacher in question is not now regularly employed by the board of education; therefore, his or her contract is subject to the underscored provisions above quoted which require the employment of a teacher to be by written contract.

Paragraph (a) of the same statute provides that except as provided in Paragraph (e), supra, and with certain other exemptions not material here, 'no person shall be permitted to teach in any school district of the State without a written contract.' Paragraph (b) of the same statute refers to a written contract with a teacher.⁷⁵

Therefore, the Attorney General concluded that, in the situation referred to in this query, there being only a verbal contract, there was no binding contract between the board of education and the teacher for the next year; and this is so regardless of any action taken by the board of education to rescind the verbal contract.

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Opinion of the Attorney General of Oklahoma, March 13, 1958, addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

Thus it appears that, under the statutory provisions here quoted, a verbal contract with an individual for teaching services is not a valid contract and is not binding upon the board of education or school district involved, or the teacher.

Board Regulations as Part of A Teacher's Contract

It is a well accepted fact that boards of education have legal authority to adopt and enforce reasonable rules and regulations for the operation of the school system. In accepting employment as a teacher, a person agrees to perform his labors and duties under the control and direction of the board of education and in conformity to the proper rules and regulations of the board.

All rules and regulations of the local board of education, as well as all pertinent state level legal provisions, are considered part of the teacher's contract. He is bound by them regardless of whether he receives a copy or whether the contract expressly contains such stipulation. Of course, the rules of the local board must be reasonable. The presumption, however, generally favors the validity of a board rule, and the burden of proof of unreasonableness falls on the one wishing to void the regulation. In brief, a teacher is bound by reasonable rules and regulations enacted or adopted before or after the execution of his contract.

To some extent the items included in the contract cover the teacher's duties as well as the major working conditions. However, a detailed listing of functions cannot be placed in the contract. The nature of the teaching job is such that at best only a generalized statement of duties can be made.

An illustration of the authority of school boards to enforce reasonable rules and regulations is found in a California case.⁷⁶ In this case a high school teacher sought relief from a board regulation that required each male teacher to be present, in a supervisory capacity, at three football and three basketball games each year, for which there was no extra compensation. The plaintiff contended he was under no obligation to perform any duties in connection with athletic activities, as there was nothing to that effect in his contract or in the state laws. Likewise he argued that this duty was unprofessional in nature, foreign to his field of instruction, that it imposed unreasonable hours and was not in the school board's booklet of rules and regulations.

The court refused all of these contentions. It pointed out that, by law, the board could make any reasonable rule, not inconsistent with the state's laws, and the fact that this particular rule was not printed in the board's booklet was immaterial, as all teachers knew of it. Furthermore, a minute detailing of all supervisory rules was unnecessary. The court stated that a law makes principals responsible for the supervision and administration of their schools, and a published board rule "requires teachers to cooperate with their superiors."

In considering the nature of the teacher's job, his obligations, and his duties, the courts made an observation that should be read and studied by all teachers in Oklahoma. It said:

...appellant is not paid on a basis of so much per hour worked. Teachers are engaged in a professional employment. Their salaries and hours of employment are fixed with due regard to their professional status and are not fixed upon the same basis as those of day laborers. The worth of a teacher is not measured in terms of a specific sum of money per hour. A teacher expects to and does perform a service. If that service from time

⁷⁶McGrath v. Burkhard, 280 P. (2d) 864, (Calif.), (1955).

to time requires additional hours of work, a teacher expects to and does perform it...A teacher's duties and obligations to students and the community are not satisfied by closing the classroom door at the conclusion of a class...All of his duties are taken into consideration in his contract for employment at the annual salary. All of this is, of course, subject to the test of reasonableness.⁷⁷

In holding that the duties in question were reasonable, the court, in a final statement, said that such activities should "be helpful not only to the students but should be of benefit to the teachers themselves."

Another striking illustration of this principle was a case originating in New York City.⁷⁸ The board discussed the implied powers of teachers' contracts at considerable length, concluding as follows:

The board grant of authority to fix 'duties of teachers is not restricted to classroom instruction.' Any teaching duty within the scope of the license held by a teacher may properly be imposed. The day in which the concept was held that teaching duty was limited to classroom instruction has long since passed...Teachers in the fields of English and social studies and undoubtedly in other areas may be expected to coach plays; physical training teachers may be required to coach both intramural and interschool athletic teams; teachers may be assigned to supervise educational trips which are properly a part of the school curriculum. The band instructor may be required to accompany the band if it leaves the building. These are illustrations of some of the duties which boards of education have clear legal justification to require of their employees. A board is not required to pay additional compensation for such services. The duty assigned must be within the scope of teachers' duties.⁷⁹

Ratification of Teacher Contract

A question sometimes arises as to whether, if some defect exists in a contract, the contract may be ratified by a board of education. The issue is usually whether some action of the board has in fact ratified a defective contract with a teacher, since, in the absence of some

⁷⁷Ibid.

⁷⁸Parrish v. Moss, 106 N.Y.S. (2d) 577, (1951).

⁷⁹Ibid.

restriction such as the time for making a contract, a board might otherwise obtain the effect of ratification by executing a new contract document.

The general rule is that if a board has power to make a contract but there is some defect in its "execution," the contract may be ratified. If a contract is void because of a lack of power to make, it is void from its inception and it is incapable of ratification.

In an Oklahoma case a teacher was employed at a meeting of the board of which one of the members had received no notice. The teacher taught for one month. At a legally called meeting the board voted to pay the teacher his salary and to issue warrants to pay it. The treasurer of the district, who had received no notice of the meeting at which the teacher had been employed, voted "no." The court held that the acceptance of the teacher's services and the vote to pay him his first month's salary constituted a ratification of the contract.⁸⁰

The Court also rules that where an invalid contract with a teacher is ratified, it becomes valid from its inception and in its entirety. That is, a teacher whose contract has been ratified can recover not only for the time he has taught but for the full time stipulated in the contract. A board of education cannot accept in part and reject in part the services of a teacher. And it is not necessary, as a rule, that the board take formal action, such as ratifying the contract by resolution. The mere acceptance of the services of a teacher, after a knowledge of all the material facts, is sufficient.

In other words, there is a tendency on the part of the courts to

⁸⁰Ryan v. Humphries, 50 Okla. 343, 150 P. 1106, (1915).

refuse to allow one party of an invalid contract to profit at the expense of the other. In taking this view an Arizona court declared:

...trustees and the employees alike should observe it (the statute). It is only because of the unfairness of permitting the school district to accept the employee's labor and services and the benefits therefrom without compensation of such employee that the doctrine of ratification is allowed to be invoked.⁸¹

A teacher can demand recovery upon quantum meruit in the contract unless he began teaching without a certificate or in some other way entered upon a contract contrary to statute. In the ratification of a contract which is not contrary to the statutes or otherwise illegal there is established an implied contract which makes effective all the terms of the original contract.

The doctrine of ratification does not apply, however, to contracts which a board of education had no authority to make in the first instance. In this connection the Supreme Court of Oklahoma has held:

In so far as it authorizes the school board of an independent district to supply a superintendent for three years in violative of the state constitution, and a contract entered into in March, employing a superintendent for a term of three years beginning the following September, is invalid and creates illegal liability against the school district.

A contract employing a school superintendent cannot be ratified at a time when it cannot be legally entered into.⁸²

The Teacher's Use of Shop Equipment for Personal Use as Part of Compensation

On August 28, 1939, the State Superintendent of Public Instruction asked for an opinion on the following inquiry:

⁸¹School District No. 6, Apache County v. Whiting, 79 P. (2d) 958, (Ariz.), (1938).

⁸²Dungan v. Independent School District No. 39, 182 Okla. 385, 77 P. (2d) 1117, (1938).

May a Board of Education legally enter into a contract with a teacher of manual training, under which the teacher would be paid a fixed sum in cash for his services and, in addition, would be permitted to use shop equipment in his spare time for personal use or for private gain, it being understood and stated in the contract that such privilege would be a part of his compensation for his services to the school? Would it be legally possible for the board to rent this teacher the school shop equipment which he would use for private purposes and profit at times when its use would not interfere with the normal operation of the school?

On September 19, 1939, the Attorney General advised that the statute concerning payment to teachers specifies money payment--"wages" and "salary." Furthermore, he was of the opinion that school equipment, bought with public funds and for public purposes, should not be rented out for commercial use.⁸³

Penalty Clause in Contract Illegal

Because school boards have no practical redress at law when teachers abandon their contracts, they have included in some contracts of employment a penalty clause to the effect that if the teacher does not complete the contract he is required to pay to the school district a stated sum as damages. Some contracts provide for the withholding of a stated sum if the teacher quits before the end of the school term for which he is employed. *No reference School Laws by Remmler*

No cases have come before the courts in Oklahoma on this question, but by analogy with contract law in general the penalty is of doubtful legality. In Oklahoma, penalty clauses have been proscribed by statute. "Penalties imposed by contract for any non-performance thereof are void."⁸⁴

⁸³Opinion of the Attorney General of Oklahoma, September 19, 1936, addressed to Honorable A. L. Crable, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

⁸⁴O.S. 1951, 15:213.

The Supreme Court of Oklahoma in quoting the above statute said:

Our statutes are in substantial harmony with the general rule of law that the courts prefer, where practicable, to give an actual rather than an agreed compensation to the party injured by breach of contract; actual compensation being the favorite, as it is the fundamental principle of law governing redress for civil injuries. Recognizing the justness of the rule, no doubt the Legislature condemns as void to that extent all contracts which attempt to fix a compensation in anticipation of a breach thereof, unless it would be impracticable or extremely difficult to fix actual damage.⁸⁵

On August 25, 1954, the State Superintendent of Public Instruction requested the Attorney General's opinion as to the "legality" of including in a teacher's contract the following stipulation:

That 10% of yearly salary is to be withheld in reserve until end of contract year, and if teacher does not finish teaching of full contracted year, he or she would automatically lose the 10% of annual salary.

On September 1, 1954, the Attorney General gave his opinion that there appears to be no statute which specifically controls the items or stipulations that may be included in a school district's contract with a teacher, and so it is believed that resort may be had to the rules relating to contracts generally. "The statutes of Oklahoma expressly prohibit forfeitures except where it would be impracticable or extremely difficult to fix the actual damages."⁸⁶

The Attorney General goes on to say that the contractual stipulation in question appears to provide for a forfeiture, or a penalty for any failure (regardless of sense) of a teacher to "finish teaching" the entire contractual year. Even though the teacher fails or is unable to teach the last week, or the last day, of the contractual year, he will,

⁸⁵Dillen v. Ringleman, 55 Okla. 331, 155 P. 563, (1916).

⁸⁶Opinion of the Attorney General of Oklahoma, September 1, 1954, addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

by the terms of said stipulation, "automatically" lose 10% of his entire year's salary, which might be several hundred dollars, regardless of the extent of damage, or even the existence of any damage, sustained by the school district.

The Attorney General concludes, therefore, that said stipulation is invalid insofar as it provides that the teacher will "automatically" lose 10% of his entire annual salary if he "does not finish teaching of full contracted year," and is in violation of the Oklahoma statutes which provide that penalties imposed by contract for non-performance are void.⁸⁷

Right of Teacher to Salary When School is Annexed to Another District

An annexing district is liable for a valid contract with a teacher entered into by the annexed district before the annexation, subject to a reduction in the amount thereof to the extent that compensation might be earned by the teacher elsewhere, if the teacher does not perform services for the annexing district. If a contract was in all respects regularly executed and approved by the county superintendent it constitutes a valid contractual obligation of the annexing district for the ensuing year.

On this point the Supreme Court of Oklahoma held:

Where an entire school district is annexed to another district or districts, and the statutes in effect at the time of annexation provide that the said annexing district or districts shall assume the obligation of the said annexed district, the annexing districts are obligated to perform, and liable for failure to perform a teacher's contract which was a valid obligation of the annexed district at the time of such annexation.⁸⁸

⁸⁷Ibid.

⁸⁸School District No. 60, Ellis County v. Crabtree, 146 Okla. 197, 294 P. 171, (1930).

In this particular case, a school district entered into a contract with a school teacher for the then current school year. The contract provided that the district should not be liable for any amount of difference between the amount of the contract and the amount of the estimate made and approved. The contracting districts had no approved estimate at the time this district was annexed to another district after the making of said contract. The court notes its view that the laws then in effect provided that the annexing district became liable for all the liabilities of the annexed district except bonded indebtedness.

... Where the property is annexed to the consolidated school district after the beginning of a fiscal year and prior to the approval of an estimate of the attached school district, the approval of the estimate of the consolidated school district and the making of an appropriation for the consolidated school district operate to make effective a valid school teacher's contract made with the school district annexed.

Under the facts shown by the record in this case, the approval of the estimate for consolidated school district No. 3 and the making of the appropriation for that school district for teachers' salaries operated to make the plaintiff's contract effective and binding upon consolidated school district No. 3.⁸⁹

At the time of the decision in this case, a school district was not authorized to make a contract with a teacher for an ensuing fiscal year under Article 26, Sec. 10, Oklahoma Constitution as it then read; however, since the amendment of this section of the Constitution, and the enactment of legislation vitalizing the amendment, a school district has been authorized to make such a contract for the fiscal year immediately following the fiscal year during which the contract is made.

On November 21, 1956, the County Attorney of Jackson County requested the Attorney General's opinion as to whether the receiving (annexing) districts are liable under the terms of the said contract for

⁸⁹Ibid.

the monthly salary provided therein. On November 30, 1956, the Attorney General gave his opinion that the annexing districts would be obligated to perform and liable for their failure to perform the terms of the contract.⁹⁰

Right of Teacher to Salary When All Children are Transferred
to Other Schools

On June 26, 1956, the County Attorney of Canadian County asked the Attorney General's opinion on the following question:

On May 29, 1956, the School Board of Dependent School District No. 51 of Canadian County made a contract with its teacher for the ensuing year. A majority vote of the school district electors having children eligible to attend school in the grades offered, voted to transfer all of the children eligible to attend school in the grades offered in Dependent School District No. 51, to other schools in the County.

Under such facts is the School Board of Dependent District No. 51 liable to the teacher under its contract?

On June 28, 1956, the Attorney General gave an opinion that Dependent School District No. 51 is liable to the teacher mentioned by you under the contract of employment referred to in your letter.⁹¹

Right of Teacher to Salary When School Closed
Because all Children Moved

On September 7, 1937, the County Attorney at Taloga asked the Attorney General whether a teacher could hold the school district to a contract and collect salary when all children of school age had moved from the district.

⁹⁰Opinion of the Attorney General of Oklahoma, November 30, 1956, addressed to Honorable Ross Rutherford, County Attorney, Jackson County (in the files of the office of the Attorney General).

⁹¹Opinion of the Attorney General of Oklahoma, June 28, 1956, addressed to Honorable Roy M. Faubion, County Attorney, Canadian County (in the files of the office of the Attorney General).

On September 10, 1937, the Attorney General replied that it was important to know whether the teacher's contract had any provision relating to this circumstance. Since none was mentioned, he assumed that no such provision had been made in the contract. He went on to point out that payment of a salary for which no service was rendered would amount to a gratuity. He mentioned two choices that the school board would have in solving this problem. First, the salary could be paid. Second, payment could be refused, and the teacher could seek other employment. In conclusion, the Attorney General felt that it was contrary to the interests of the public to spend public funds when no value was received from such expenditure.⁹²

Right of Teachers to Salary When School is Closed

When schools have been closed because of an epidemic, destruction of building, fire, or other events which make it impossible to conduct schools, there naturally arises a question as to the rights of teachers who are thus given an enforced vacation and prevented from performing their contract. Should the closing of school be a direct result of an act of God or a public enemy, or the passage of a law which makes the performance of the contract illegal, the board is usually not liable for the period thus affected. It has been held, however, that fire is not a fortuitous event which excused the board from liability.⁹³ It is also the rule that the defense of a fortuitous event will not avail where the

⁹²Opinion of the Attorney General of Oklahoma, September 10, 1937, addressed to Honorable J. W. Wilcox, County Attorney, Taloga, Oklahoma (in the files of the office of the Attorney General).

⁹³Hughes v. Grant Parish School Board, 145 So. 794, (La.), (1933).

performance of the contract is not made impossible but merely inconvenient, difficult, or undesirable.

The Oklahoma statute states:

No school district nor any member of a board of education shall be liable for the payment of any teacher for the unexpired term of any contract if the school building is destroyed by accident, storm, fire, or otherwise and it becomes necessary to close the school because of inability to secure a suitable building or buildings for continuation of school. Teachers shall be entitled to pay for any time lost when school is closed on account of epidemics or otherwise when an order for such closing has been issued by a health officer authorized by law to issue the order.⁹⁴

The weight of authority in Oklahoma is to the effect that teachers' salaries must be paid during the time that school is closed due to the prevalence of a contagious disease. In southern Oklahoma a school was closed by the board of health acting under authority conferred by statute on account of an epidemic of smallpox, and a teacher sued for his salary for the time the school was closed.⁹⁵ The board of education set up as a defense that the school was closed by the board of health having legal authority to do so, that such order rendered the performance of the contract illegal for both parties, and that no recovery could be had for the time the school was closed. The court held that, in the absence of a stipulation in the contract that the plaintiff should have no compensation during the time the school was suspended by the board of health, the district was liable.

Right of Teachers to be Paid for Extra Days When School
Closed on Account of Flood

On February 7, 1941, the State Superintendent of Public Instruction requested the Attorney General's opinion on the following inquiry:

⁹⁴O.S. 1951, 70:6-2.

⁹⁵Board of Education v. Couch, 63 Okla. 65, 162 P. 485 (1917).

In one of the Independent Districts of Tulsa County, the school authorities have been forced to dismiss school for two days on account of the flood and for four days on account of an epidemic. Under the law the teachers have to be paid for these six days that school was not taught.

I would like to have an Attorney General's opinion as to whether this school board can enter into an additional contract for six days' teaching in order that this time may be taught and that a full term of school be taught.

In the Attorney General's reply of February 10, 1941, he expressed the opinion that the teachers in this case could be contracted to work for an additional six days to complete the school year, provided the district could provide the money for salaries.⁹⁶

Right of Teachers to Salary When School is Closed for Holidays

On February 13, 1932, the County Attorney of Bryan County asked the Attorney General for an opinion as to whether or not the teachers under contracts were entitled to pay for the Christmas Holidays during which time they did not teach. On February 25, 1932, the Attorney General gave his opinion that the teachers are entitled to pay for the Christmas Holidays in which the schools were closed. We assume that the vacation period was ordered or consented to by the school board in accordance with an established custom.⁹⁷

Also, The Cyclopedia of Law and Procedure states the following rule:

As a general rule a teacher's contract for a stated period is subject to the observance of recognized holidays and vacations and there should be no deduction for such occasions from the teacher's wages, and

⁹⁶Opinion of the Attorney General of Oklahoma, February 10, 1941, addressed to Honorable A. L. Crable, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

⁹⁷Opinion of the Attorney General of Oklahoma, February 25, 1932, addressed to Honorable Roy Paul, County Attorney (in the files of the office of the Attorney General).

the same rule applies in regard to special vacations ordered by the school board.⁹⁸

Likewise, the State Supreme Court of Michigan said:

In regard to deductions for holidays, we are of the opinion that school management should always conform to the decent usages which recognize the propriety of omitting to hold public exercises on recognized holidays, and that it is not lawful to impose forfeitures or deductions for such proper suspension of labor. Schools should conform to what may fairly be expected of all institutions in civilized communities. All contracts for teaching during the periods mentioned must be construed of necessity as subject to such days of vacation, and public policy, as well as usage, requires that there should be no penalty laid upon such observations.⁹⁹

The Supreme Court of Kansas held that unless it clearly appears that a board of education of a city abuses its discretion in giving a two day's vacation at Thanksgiving no deduction from the teacher's salary should be made therefor, and that an injunction will not lie to compel them to make such a deduction.¹⁰⁰

Summary

In Oklahoma a valid contract between the teacher and the school district which employs him is essential to the existence of any mutual obligations between them. It is the board of education, and not the superintendent, which has the authority to employ teachers, and the superintendent may legally only recommend teacher appointments. It should be noted that a teacher is not legally employed until he possesses a legal certificate. An invalid contract between the school

⁹⁸The Cyclopedia of Law and Procedure, William Mack, Editor (New York, 1910), V. XXXV, p. 1102.

⁹⁹School District No. 4 v. Gage, 39 Mich. 484, 33 Am. Rep. 421, (1878).

¹⁰⁰City of Emporia et al. v. State ex. rel. Simpson, 52 P. 466, (Kans.), (1898).

district and a teacher usually may be ratified and made valid by permitting the teacher to enter upon his duties. In such cases, the ratified contract is as legal as if it had been valid in the first place.

Reasonable rules and regulations of a board of education, including those passed after the contract is signed as well as those in effect when the signing occurred, are part of a teacher's contract. In addition a teacher is legally obligated to perform a reasonable number of outside duties under his contract even though the contract does not expressly state that he shall perform such duties. Usually in Oklahoma a teacher may recover his salary when school is closed if he is required to remain ready and able to perform his teaching duties.

CHAPTER IV

LIABILITY OF TEACHERS

If a teacher leaves his position during the period he has contracted to teach or fails to assume his duties under a contract into which he has entered, he is technically as liable for breach of contract as if he had failed to perform any of his other agreements.

Teachers are given the authority needed to discipline the pupils under their direction. They may enforce all rules made by the board and, in absence of board rules, they may make and enforce any other reasonable rules. A teacher stands in loco parentis to the pupils under his supervision. In enforcing rules it is generally held that a teacher is not liable, either in damages or criminally, for administering necessary and moderate corporal punishment. However, it should be noted that a teacher may be held liable if he acts in a situation where he has no authority, if he is motivated by malice or if he causes a permanent injury to the child. A teacher must use only that degree of punishment that is adapted to the nature of the offense and the age of the offender.

A teacher is frequently called upon to make official statements about pupils. These statements are qualifiedly privileged and those making them are generally held not liable in damages even though the statements they make are false, provided they are not made with malice and in bad faith.

Liability for Breach of Contract

When a valid contract has been entered into between a board of education and a teacher, the question often arises whether the board has any assurance that the teacher will perform his obligation to the contract. A few teachers in Oklahoma will sign a contract in one school district and accept a more desirable one in another district before and after the beginning of the school term. What then, may a board do in order to protect itself against the "contract jumper?"

No cases have come to the attention of the courts of last resort in Oklahoma in which a board of education has brought action against a teacher for damages because he has broken his contract. Possible reasons are (1) a teacher would probably not be a very effective teacher if he were forced to remain in a teaching position under threat of a lawsuit in event of his resignation; (2) it would be most difficult for the board to prove the amount of damages; (3) the time and expense of a lawsuit might prevent the board from instituting one; and (4) most teachers would not be able to pay the judgment.

However, teachers may be forced to observe their obligations under a valid contract or face the consequences. Although it is impossible to force a teacher to teach if he refuses, in Oklahoma, where a teacher's employment necessitates the possession of a certificate, a board of education may seek to have the State Board of Education revoke the certificate of a teacher who does not carry out the terms of his contract.

The Oklahoma Statute reads:

...If upon written complaint by the board of education in a district any teacher is reported to have failed to obey the terms of his contract previously made and to have entered into a contract with another board of education without having been released from his former contract, such teacher, upon being found guilty of said charge at a hearing held before

the State Board of Education, shall have his certificate suspended for the remainder of the term for which said contract was made.¹⁰¹

Personal Tort Liability of Teachers

The most common types of pupil injury are accidents involving transportation and injuries received in shop work, in cafeterias, on school grounds, and in gymnasium classes. Pertinent cases which involve the legal right of the pupil and his parent to redress in money damages for injuries incurred in connection with any school activity will follow in this section.

Negligent acts of the type described here are called torts. The Oklahoma Bar Association defines tort as a word from the French, meaning a "twist" or "torque," or in effect, a "wrong."¹⁰² In legal terminology it means a private, civil wrong committed by one person against another. Torts law, then, is that body of law which defines acts that constitute a "wrong" and for which the aggrieved person may recover damages. A tort may consist of an unintentional act such as negligent wrong doing.

Court action on account of pupil injuries may be brought by the parent for reimbursement of the cost of medical expenses, or in the case the accident is fatal, for the "wrongful death" of the pupil. The theory underlying the suit of the parent for the loss of services of his children who die or are permanently crippled because of accidents is that a parent is entitled to the earnings of his minor children, and if a child's earning capacity is destroyed or lessened by the accident, the

¹⁰¹O.S. 1951, 70:6-1d as amended by Title 70, Chapter A, Section 19, Oklahoma Session Laws 1955.

¹⁰²Durant (Okla.) Daily Democrat, August 24, 1958, p. 3.

parent suffers an economic loss. Other actions may be brought by the injured pupil for pain and suffering, but since minors are not permitted to sue in their own names, the actions are filed by the parents as "next friend" of the pupil. Some actions are brought against the teacher or bus driver involved, others against the school board or the district; some join the teacher and board as co-defendants.

The legal right of the pupil and his parent to sue depends on two principles. With respect to the liability of the school district there is the principle of governmental immunity; with respect to the liability of the teacher there is the principle of negligence.

The principle of governmental immunity from tort actions stems from the ancient pronouncement that "the king can do no wrong." In other words, a government cannot be sued in tort against its consent. Several states have enacted legislation which abrogated the common law principle of governmental immunity, and gives consent to action against the state and its political subdivisions, especially in certain kinds of cases. However, the Oklahoma legislature has not enacted legislation of this sort. In the absence of a statute to the contrary, however, the school district and its officers, the school board, are not legally liable for injuries caused even by their negligence. In such instance, injured pupils have no redress.

If a school teacher fails to exercise the duty of care expected of reasonably prudent persons in the same or similar situations, it may be said that he is negligent, and if such negligence is the direct and proximate cause of injuries sustained by pupils to whom such teacher owes a duty of care, he is personally responsible in damages. Under such a rule, a teacher having charge of children in a classroom, on the

playground, on a field trip, or in an athletic contest, or other school activity, may be personally responsible for injuries resulting from his negligence.

To a degree teachers are even more accountable for their actions than ordinary persons because pupils are in their care, and they have the duty of preventing injury as far as possible. The teacher is expected to exercise reasonable prudence in the prevention of injuries to the pupils in his charge and is further expected to exercise a degree of foresight in their prevention.

Defense in a suit for negligence may be "contributory negligence." That is to say, the conduct of the injured pupil may have been below the standard of care to which he should conform for his own protection, and it was, therefore, a contributing factor in causing his injury. However, minors are not held to the same degree of care for their own protection as is demanded of adults. The standard required of children is that degree which the great mass of children of the same age, intelligence, and experience would ordinarily exercise under similar circumstances. It is clear that a child's youth and inexperience may increase the precaution necessary on the part of the teacher to avoid an unreasonable risk to the child's safety.

A Michigan case points up the possibility of negligent action and personal liability which exist in the classroom.¹⁰³ In a class in nature study, a teacher required her pupils to care for certain plants, some suspended from the ceiling in boxes. An eight-year-old girl was directed to water some of the plants. Since she was not tall enough to reach them,

¹⁰³Gainscott v. Davis, 281 Mich. 515, 275 N.W. 229, (1937).

she procured a chair on which to stand, and she used a glass milk bottle to water the plants. She fell from the chair, the glass bottle broke on the concrete floor, and the child was cut severely. The teacher knew the child was using the milk bottle to perform her appointed duties. The jury held that the teacher was not negligent, hence not liable, and the court made the following observation.

Teachers are liable for accidents which are the direct result of some negligence on their part. Whether or not the teacher's act or failure to act constitutes negligence is a case for the jury. Even though the teacher may be guilty of negligence, however, she is not liable for an accident if there is some intervening action of a third party which prevents the teacher's negligence from being the "proximate" cause of injury. For a teacher to be liable for negligence is not essential that the teacher's negligence be so extreme as to be wanton or willful. In the discharge of her duties the teacher is bound to use reasonable care, tested in the light of existing relationship. If, through any negligence, the teacher is guilty of a breach of such duty and in consequence thereof a pupil suffers injury, liability results. Thus, the test of a teacher's liability for negligence is whether injurious results should be expected to flow from the particular act.¹⁰⁴

Teachers of science, shop work, and physical education have reason to be even more cautious in avoiding pupil injuries than teachers of other subjects. For instance, a New York physical education teacher was recently held liable for permitting two pupils to box, without training in self defense or warning them about the danger involved in such a sport.¹⁰⁵

In a recent case in California, action was brought against the high school district and the automobile mechanics teacher for the death of one pupil and the injury of another, charging negligence of the teacher.¹⁰⁶

¹⁰⁴Ibid.

¹⁰⁵LaValley v. Stanford, 70 N.Y.S. (2d) 460, (1947).

¹⁰⁶Dutcher v. Santa Rosa High School District; Rehe v. Same, 290 P. (2d) 316, (Calif.), (1955).

The pupils in an elementary class in automobile mechanics brought their own cars to the shop for repairs and other work as part of the course. They stood near a car being worked on by an advanced student who was using a lighted arc torch. The car had been stripped down and the gasoline tank set about six feet from the car. As the student worked, the sparks of the torch ignited the gasoline tank, and two boys, pausing for a moment to watch, were burned, one fatally.

The court held that the instructor was negligent. He knew that the boy was using the torch, and he should have realized that the position of the gasoline tank was hazardous. Therefore, the court denied the teacher's defenses of assumption of risk and contributory negligence. The boys did not do anything that contributed to their injuries except stand nearby, and they had a right to be in that position since it was their class period. There was no assumption of risk because such a defense presumed knowledge of the risk involved and an appreciation of its magnitude. There was no evidence that these boys knew that the gasoline tank was nearby, and with their inexperience they might not have realized the danger even if they had seen the tank.

An Ohio court has expressed the opinion that a teacher would be liable for damages should pupils become ill because he raised a window in such a manner as to cause a draft to play upon the pupils and refused to permit them to escape its effect.¹⁰⁷

The seriousness of the teacher's position in such cases as these may be gathered from a statement made by a Washington court. A pupil was injured while playing with a teeter board on the school grounds. The

¹⁰⁷Guyten v. Rhodes, 65 Ohio App. 29, N.E. (2d) 444, (1940).

Wash

board had been temporarily removed from its original position and dangerously used on a swing. In sustaining a charge of negligence, the Supreme Court said: "If the teacher knew it, it was negligence to permit it, and, if she did not know it, it was negligence not to have observed it."¹⁰⁸

Harper has listed a number of kinds of conduct which create actionable negligence. From his list, the following applications can be made to injuries sustained by pupils due to negligence of teachers and other school employees.

A school employee may be negligent because:

1. He did not take appropriate care.
2. Although he used due care, he acted in circumstances which created risks.
3. His acts created an unreasonable risk of direct and immediate injury to others.
4. He set in motion a force which was unreasonably hazardous to others.
5. He created a situation in which third persons, such as pupils, or inanimate forces, such as shop machinery, may reasonably have been expected to injure others.
6. He allowed pupils to use dangerous devices although they were incompetent to use them.
7. He did not control a third person, such as an abnormal pupil, whom he knew to be likely to inflict intended injury on others because of some incapacity or abnormality.
8. He did not give adequate warning.
9. He did not look out for persons, such as pupils, who were in danger.
10. He acted without sufficient skill.

¹⁰⁸Bruenn v. North Yokima School District No. 7, 101 Wash. 374, 172 P. 569, (1918).

11. He did not make sufficient preparation to avoid an injury to pupils before beginning an activity where such preparation is reasonably necessary.
12. He failed to inspect and repair mechanical devices to be used by pupils.
13. He prevented someone, such as another teacher, from assisting a pupil who was endangered, although the pupil's peril was not caused by his negligence.¹⁰⁹

Corporal Punishment

One of the most important aspects of law affecting teachers is that having to do with pupil-teacher relationships. Two of the more common phases of relationship that are dealt with by law are the matter of control of pupil's conduct and the teacher's liability for pupil injury. In commenting upon the control of pupils, Remmlein states:

Pupils have the responsibility of obeying the school laws and the rules and regulations of the state and local governing officials; they have the duty of submitting to the orders of their teachers and other school authorities. Failure to do so may result in corporal punishment, suspension, or expulsion. Corporal punishment usually falls within the scope of the teacher's authority; suspension and expulsion are usually within the discretionary powers of the school board. In the power to regulate pupils' conduct, the teacher stands in loco parentis: that is, the teacher is conditionally privileged to take disciplinary steps under certain circumstances and for certain purposes.¹¹⁰

Such general authority on the part of the teacher is, of course, subject to Oklahoma state laws and regulations and the rules of local boards of education. Certain common law principles in regard to the reasonableness of punishment, maliciousness of punishment, and consideration of the age and sex of pupils, are factors that must be observed in the exercise of the authority of the teacher.

¹⁰⁹Fowler V. Harper, The Law of Torts (Indianapolis, Ind., 1933), pp. 171-176.

¹¹⁰Madaline K. Remmlein, School Law (New York, 1950), p. 232.

The Oklahoma statute reads:

The teacher of a child attending a public school shall have the same right as a parent to control and discipline such child during the time the child is in attendance or in transit to the school or classroom presided over by the teacher.¹¹¹

One legal encyclopedia states the following rule in respect to disciplinary action:

As a general rule, a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education, subject to such limitations and prohibitions as may be defined by legislative enactment...If nothing unreasonable is demanded, he has the right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which a pupil shall demean himself.¹¹²

Therefore, it may be observed that while a child is at school, the teacher stands in the place of the parents, or to use the legal term, in loco parentis. In loco parentis, under common law, means that the teacher has the legal status of a conditionally privileged person "in place of the parent." Of course, the parent has wider privilege than the teacher since the teacher is limited to situations within his jurisdiction and responsibility as a teacher. The parent and the teacher in loco parentis are privileged to certain conduct in certain circumstances and for certain purposes. This privilege includes physical chastisement or other forms of punishment for the purpose of enforcing reasonable discipline. However, if a teacher exceeds his limited privilege, he may be liable not only criminally but also civilly in tort action for assault.

If pupil punishment is excessive or administered in a spirit of malice, the teacher is guilty of assault and battery and is liable as

¹¹¹O.S. 1951, 70:6-15.

¹¹²Corpus Juris, LVI (New York, 1932), p. 1088.

any other person would be. As to instruments used in the punishment, the fists and a piece of flooring have been held to be improper instruments.¹¹³ It has also been pointed out that the right to punish moderately does not, necessarily, imply the right to punish until subdued. The court appears to be divided upon the liability of the teacher for reasonable punishment in the enforcement of an unreasonable rule. It would seem that the kind of rule and the other attending circumstances largely determine this matter. The weight of authority is to the effect that the teacher is not liable for reasonable punishment in the enforcement of a rule the wisdom of which is questioned.

The Supreme Court of Indiana, in commenting on the right of the teacher to exact obedience to lawful and reasonable demands stated:

Under our cases a school teacher has the right to exact from pupils obedience to his lawful and reasonable demands and rules, and to punish for disobedience, 'with kindness, prudence and propriety.' And where, in such case, the punishment is not administered with unreasonable severity, a proceeding for an assault and battery cannot be maintained against the teacher...The rule or rules to which the teacher may thus enforce obedience must, however, be reasonable, and whether or not such rules are unreasonable is ultimately a question for the courts.¹¹⁴

In Ohio, a teaching principal was sued for assault and battery for paddling an eleven-year-old pupil who had thrown a stone at a little girl on the way to school and then lied about it.¹¹⁵ The boy had been an epileptic since infancy and had three attacks after the paddling, which was rather severe. The day after the paddling the boy's parents took him to the superintendent to show him the bruises, and the superintendent

¹¹³Berry v. Arnold School District, 199 Ark. 1118, 137 S.W. (2d) 256, (1940).

¹¹⁴State v. Vanderbilt, 116 Ind. 11, 18 N.E. 266, (1888).

¹¹⁵State v. Lutz, 113 N.E. (2d) 757, (Ohio), (1953).

noted the parents' complaint but took no action. The parents then went to the juvenile court, which took no action. They then filed a complaint at the police court.

The court held that the teacher is not criminally liable for severe punishment of a pupil unless it threatens lasting or permanent injury or is administered with malice. In this case, there was no evidence of malice, and the bruises healed in a few days.

A Louisiana case concerned a teaching principal who was dismissed because he administered corporal punishment with a piece of sash cord about eighteen inches long after a pupil was absent from school without permission. The child was twelve years old and showed the marks of the punishment. The parents took him before the school board and showed the marks, and then they filed criminal charges against the principal. They also sent a letter to the principal stating that they wished their son to remain in school, but that if, in the future, he deserved punishment, he should be sent home. It was alleged that the reason the parents wrote this note was that the principal threatened to go to the juvenile court and have the child declared a delinquent and sent to the reform school if the parents insisted on pressing charges against him.

The Supreme Court of Louisiana held that it was not necessary for the court to decide whether teachers could inflict corporal punishment on their pupils, but it was certain that such punishment, if used, must be reasonable and modest; it must not be cruel and excessive as was administered to this particular pupil.¹¹⁶

On January 20, 1958, the Superintendent of the State Training School

¹¹⁶Houeye v. St. Helena Parish School Board, 223 La. 966, 67 So. (2d) 553, (1953).

for Boys at Helena, Oklahoma, asked the Attorney General's opinion as to whether the following statute is applicable while an inmate of the State Training School for Boys is a pupil in a public school operated by the school district in which such Training School is located. The statute reads:

It shall be unlawful for any person to administer any corporal punishment of any kind to any inmate of any penal or corrective institution of the State of Oklahoma.

On February 24, 1958, the Attorney General gave his opinion that the statute provides:

The teacher of a child attending a public school shall have the same right as a parent to control and discipline such child during the time the child is in attendance or in transit to the school or classroom presided over by the teacher.

Also it appears that the above section was and is obviously for the maintenance of decorum and discipline in the public schools of Oklahoma and was and is intended to apply to children in their capacity as pupils in all public schools.

A child who is an inmate of the Helena Institution is there in the capacity of an inmate, and is subject generally to all rules and regulations of the institutions; whereas, when he enters upon his scholastic duties at a public school (whether on institutional grounds or elsewhere), he is thereby and by due process of law responsible for a time to the school teacher for his control, discipline and deportment, during the hours of instruction, recital and attendance upon school schedules, subjected for the time being to this form of discipline as by law provided for all pupils in attendance on Oklahoma public schools.

A child who is an inmate of the Helena institution and who attends the school maintained by the Helena school district is, when attending the school, there as a pupil rather than in his capacity as an inmate of the institution, and is therefore subject to the provisions of Section 6-15, supra, while thus engaged as a pupil; and Section 31, supra, which is only applicable to inmates as such, does not operate to prevent the teacher from exercising his right and responsibility to control and discipline the child while he is a pupil of the teacher, including the administration of corporal punishment to the child.

The conclusion of the Attorney General was that it is the public policy of the state to put the responsibility for the maintenance of

discipline upon each individual teacher. Therefore, it would be illogical and impractical to deprive the teachers at the Helena institution of their authority to maintain discipline in the classrooms and halls of the school.¹¹⁷

Assault and Battery

In some school districts in Oklahoma local rules and regulations forbid corporal punishment, but generally teachers are permitted to chastise pupils provided the punishment is reasonable, not excessive in view of the age and sex of the pupil, nor excessive in view of the gravity of the offense. Corporal punishment cannot legally be administered maliciously. If a teacher chastises a pupil unreasonably, excessively, or maliciously, he may be subject to a criminal action by the state or a civil action by the parent of the pupil. In both types of cases the charge would be assault and battery.

In one assault and battery action brought in civil court for damages on account of corporal punishment, a jury trial resulted in favor of the teacher. Evidence was conflicting as to the instrument used and the severity of the punishment, but there was no conflict on such matters as the reason for the punishment, the lack of malice or anger on the part of the teacher, the good health of the child, and the absence of a permanent injury.

The court held that:

A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care.

¹¹⁷Opinion of the Attorney General of Oklahoma, February 24, 1958, addressed to Ernest J. Stocks, Superintendent (in the files of the office of the Attorney General).

To be guilty of an assault and battery, the teacher must not only inflict on the child immoderate chastisement, but he must do so with legal malice or wicked motives or he must inflict some permanent injury. In determining the reasonableness of the punishment or the extent of malice, proper matters for consideration are the instrument used and the nature of the offense committed by the child, the age and physical condition of the child, and other attendant circumstances....There was evidence which, if believed by the jury, justified the verdict.¹¹⁸

A Tennessee court¹¹⁹ upheld the position of the school authorities in the punishment of a boy who violated a school rule by entering a classroom during recess. The punishment was mild, with a ruler, but the boy sued in a civil action for assault and battery. The court held that reasonably necessary corporal punishment is within the school authorities' powers of control and correction.

Of course teachers and courts agree that corporal punishment, when administered, should be administered reasonably. The following examples show that the courts will quickly condemn unreasonable and cruel punishment. In an Arkansas case, a teacher whipped a fifteen year old boy twice the same day with a paddle made of flooring. The school board had specifically forbidden the use of a paddle for punishment.¹²⁰ The boy's first offense was repeating a riddle from a newspaper, the second offense was throwing a paperwad at the teacher. The boy was bruised, and the court held that the punishment was excessive.

The facts in a Connecticut case are somewhat more complicated.¹²¹ A teacher who could not control a pupil called the principal who happened

¹¹⁸Suits v. Glover, 71 So. (2d) 49, (Ala.), (1954).

¹¹⁹Marlar v. Bill, 178 S.W. (2d) 634, (Tenn.), (1944).

¹²⁰Berry v. Arnold School District, 199 Ark. 1118, 137 S.W. (2d) 256, (1940).

¹²¹Calway v. Williamson, 130 Conn. 575, 36 A (2d) 377, (1944).

to be passing her classroom door. The principal ordered the boy to go to his office, and when he refused, the principal dragged him to the top of the stairs. Since the boy, who was ten years old and underweight, struggled, the principal threw him to the floor and sat on him to hold him still. He was alleged to have injured the boy internally. The court held that the principal had used unreasonable force, and that the boy had a right to resist in self protection.

It may be concluded from these cases that any teacher who uses corporal punishment runs the risk of an allegation that it was unreasonable. The test of reasonableness applies both to the punishment in the first instance and to the question of degree. Permanent injury or disfigurement is not always the criterion of the unlawfulness of corporal punishment, although some of the older cases held that without resulting marks on the body there could be no question of the excessiveness of the punishment.

If there are laws or local school board rules which prohibit corporal punishment or prescribe its administration, the teacher is expected to obey them. If there are no such laws or regulations, it would seem that a practical standard for determining matters of discipline is needed. There are certain criteria which courts have laid down in determining whether corporal punishment is reasonable or not. On the basis of these standards, the courts determine whether the case is to be decided for or against the teacher. The characteristics of reasonable corporal punishment have been listed by Sumption:

- It is in conformance with statutory enactments.
- It is for the purpose of correction without malice.
- The pupil knows wherein he has erred and is thus aware of the reason for the punishment.

- It is not cruel or excessive and leaves no permanent mark or injury.
- It is suited to the age and sex of the pupil.
- It is administered in the pupil-teacher relationship.¹²²

The teacher or principal who, in the rare circumstances when it seems appropriate, administers corporal punishment should keep these criteria in mind.

Liability for Libel and Slander

The twin torts of defamation, libel and slander, are a not infrequent source of litigation between students and school personnel. Defamation has been defined as the offense of injuring a person's character, fame, or reputation by false and malicious statement.¹²³ If the words are spoken, slander results; if written, libel has been communicated. Every teacher has occasion to make unfavorable statements relating to students, in reports of conduct, reasons for discipline or dismissal, and in reply to requests for information or recommendations. Even if the derogatory statements are false, it is quite probable that the teacher making them is not liable, since in most of these situations, the law again accords a privilege, when the speaker or writer is seeking to protect the interests of the school and the pupils.

The following cases illustrate the extent of and limits to this privilege. The head of a school was permitted to state falsely but in good faith, that a student was deranged, as he was attempting to protect

¹²²The N.E.A. Research Bulletin, Research Division of the N.E.A., (Washington, D. C., October, 1958), XXXVI, 3, pp. 88-89.

¹²³Henry Campbell Black, Black's Law Dictionary (St. Paul, 1951), p. 505.

other students from contact with him.¹²⁴ Still another duty, to report to higher authorities was held to give rise to a privilege allowed a high school principal to communicate to the school board that there were rumors around the school that a certain student was pregnant.¹²⁵

These privileges are not absolute, however, and liability may result if the speaker exceeds their bounds or speaks with malice. Malice includes spite and ill will and also includes any motive for the publication that does not further the interest that gives rise to the privilege. Thus where a teacher in Oklahoma was required to report grades and attendance of students to the school board, the privilege was exceeded when he added "Ruined by tobacco and whisky" on the school register opposite the student's name. Billingsley was the principal of a district in which Wallace Dawkins was a pupil. He kept a register of the daily attendance and grades of pupils attending the school, and at the close of the term he delivered it to the clerk of the school board. Afterwards it was seen by various persons. In the register there had been written by the principal, as a report of the attendance and grade of Wallace Dawkins, these words: "Drag all the time. Ruined by tobacco and whisky." This was, needless to say, defamatory and was not "a privileged communication."

It is interesting to note that libel or slander may be true and still be the basis of legal action for defamation of character. The Oklahoma Supreme Court stated:

A written or printed publication imputing roguery, rascality, or general depravity, which carries with it a charge of moral turpitude and degradation of character, the natural tendency of which is to hold the party up

¹²⁴Everest v. McKenney, 195 Mich. 649, 162 N.W. 277, (1917).

¹²⁵Forsythe v. Durham, 270 N.Y. 141, 200 N.E. 674, (1936).

to contempt and expose him to the reprobation of the virtuous and honorable, is libelous per se.¹²⁶

The School Patrol

School patrols have been in operation in the public schools of the United States for more than a quarter of a century. During this time no case involving the liability of a teacher supervising such a program appears to have reached a court of last resort. However, the question is frequently asked: Is it "reasonably prudent" to entrust the physical safety of a group of school children to an immature classmate?

Whether or not the teacher in charge of patrols is liable for pupil injuries hinges largely on the question of negligence. Negligence may be defined as any conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. The first test for determining the liability of a person for an injury to others is the test of foreseeability. If the classroom teacher or principal, aware of the possible risks to patrol members makes reasonable effort through training programs, instructions, and supervision to avoid the hazards, then his liability in case of pupil injury might not be large. It is possible under these conditions that the pupil injured would have contributed to the negligence by failing to follow instructions or simply acting irresponsibly. Therefore, under a planned and supervised program of school patrols it does not appear that those in charge assume any larger legal responsibility than would be present in most school activities. However, whether a teacher or other person concerned with

¹²⁶Dawkins v. Billingsley, 69 Okla. 259, 172 P. 69, (1918).

patrol operation is guilty of actionable negligence, would have to be determined by a jury or a judge.¹²⁷

Field Trips

Teachers, like all citizens, are responsible for any action of theirs which causes injury to another. This is true even when teachers are following directions given by the school board and are acting within the scope of their employment. Just as the most careful driver occasionally will violate a traffic regulation, so will the most careful and efficient teacher at some time be unable to keep all his individual charges under full supervision. The legal obligation of a teacher to exercise reasonable supervision of pupils that they may not be injured by accidents on field trips, is the same as in other supervisory situations.

Although there have been no cases in courts of record in Oklahoma involving injuries sustained by pupils while away from school on educational excursions sponsored by the teacher or the school, some cases in other states have established certain principles. All of the cases involve attempts by injured pupils or their parents to recover from the host plant or organization. No case has been found in which it was sought to hold the teacher liable for an injury.

The host organization is not usually liable for injuries to pupils on its premises if they are there solely for their own purposes. It has been held that school groups visiting industrial plants and places of that kind are mere "licensees" and must therefore accept the premises as they find them.¹²⁸ There is no duty upon the owner to provide safeguards

¹²⁷The N.E.A. Research Bulletin, Research Division of the N.E.A. (Washington, D. C., February, 1950), XXVIII, 1, pp. 27-28.

¹²⁸Benson v. Baltimore Traction Company, 77 Md. 535, 26 (A) 973, (1893).

for licensees, nor does he owe duty to licensees for the careful performance of the ordinary work carried on in the usual manner.

In Louisiana, a senior high school class was permitted to visit an ice manufacturing plant. The class was led across a collection of tanks filled with water. When the tanks of water were frozen, the blocks of ice were lifted by a mechanical device and conveyed to another part of the building. This device was operated along an electrically charged copper wire, about six feet and three inches above the walk along which the class was being conducted. While walking across the tanks, a member of the class slipped, and in an effort to save himself from falling, reached up and caught hold of the wire and was electrocuted.

The parents of the boy sued the company for damages. The court held that the company was not liable. The decision was based on the rule that the boy was a licensee to whom the company did not owe reasonable care. But in holding that the company was not liable, the court intimated that the responsibility was the teacher's for taking a group of pupils to a dangerous place.¹²⁹

On the other hand if the host organization invites the pupils to visit the plant, the organization owes reasonable care for their safety because the pupils are said to be invitees. In a Missouri case, a home economics class visited a bakery and creamery where a sign was displayed in the window which stated "Inspection Invited." The class was being conducted through the plant by one of the employees. An ice crushing machine was in operation, and some of the girls ate pieces of ice which they picked up at the outlet of the machine. Later one of the girls

¹²⁹Myers v. Gulf Public Service Corporation, 15 La. App. 589, 132 (So) 416, (1931).

returned for another piece of ice, and her hand was caught in the crusher. Her hand and arm had to be amputated.

The court held that the company was liable because the girl had no warning of the danger of the machine and was negligent in not providing proper supervision. The court held that the jury could find that the girl was an invitee, not a licensee.¹³⁰

(The courts have also observed that permission for a visit or excursion given by the parent to school authorities does not relieve the teacher in charge from liability. Many teachers have thought that obtaining parental consent to take a child on a field trip was a kind of release and that the signing of a permission slip by a parent prior to the excursion waived the right of any claim to damages if some mishap befell a pupil.

The reason that parental consent does not free a teacher from liability is that the injured child himself can sue. He did not sign the paper, and he was injured through the teacher's lack of "reasonable prudence--in loco parentis.") However, it is good practice to have the parent sign the slip because it is good public relations.

Sending Pupils on Errands

Errands for the teacher are not the pupil's business in school. If a teacher sends a pupil on an errand for some school purpose or for the teacher's own personal business, and the pupil suffers injury while on the errand, the teacher may be liable on the ground that the teacher did not act reasonably in sending the pupil. Another serious aspect of the practice is that according to the law the pupil becomes the teacher's

¹³⁰ Gilliland v. Bondurant, 332 Mo. 881, 59(S.W.) (2d) 679, (1933).

agent while on the errand, and, under respondeat superior, the teacher is responsible for any negligent act of the pupil that may cause injury to a third party.

In Oklahoma the common accidental bodily injury insurance which many pupils buy under school auspices, indemnifies the pupil, but it does not protect the teacher. In other words, a teacher may still be sued by a child thus covered, and, if found negligent, faces the possibility of paying damages.

Use of Private Automobiles by Teachers for School Purposes

The use of the automobile in transporting pupils to interscholastic contests of various kinds has resulted in increased responsibility to teachers. According to an Idaho decision, a teacher is not only responsible for pupils under his immediate supervision, but he is also held liable under the "principal and agent" rule for accidents happening to other pupils who may be traveling in the teacher's car.

In the Idaho case a teacher in a high school asked the coach if he had enough cars to transport the football team to a nearby town. The coach said he needed one more, and she replied that he might use hers if he drove it himself. Enroute to the site of the game, the coach missed a curve, the car turned over, and one of the boys was severely injured. The jury found the coach was negligent, and also found that he was the agent of the owner of the car and that she was therefore as responsible for the damages as he was. In this case as in other liability situations the teacher does not enjoy the liability exemption allowed the school board as an agent of the state.¹³¹

¹³¹Gordon v. Doty, 69 P (2d) 136, (Idaho), (1937).

In a California case, a tennis teacher arranged with one of the boys on the team to take five others home each night from practice. Permission was given by the board of education, and gasoline was furnished for the boy's car. The teacher knew the boy was somewhat undependable with a tendency toward recklessness. One night the car collided with another, and one of the passengers was killed. Under the California law the district was held liable for the negligence of the teacher in not providing safe transportation for his pupils. The teacher himself was not sued in this particular case. There is a possibility that he might have been held equally liable with the district or in most states individually liable for the amount of the verdict.¹³²

Summary

Both teachers and school districts are liable for breach of their contractual obligations. Most teacher liability cases arise in laboratories, manual art shops, and in athletic and physical education classes. However, a liability has been imposed upon teachers for failure to exercise adequate supervision over the pupils in their classrooms.

Legally an Oklahoma teacher may inflict reasonable corporal punishment upon his pupils. When pupils are sent on a personal errand for the teacher, the teacher may be held individually liable for injury or damage caused by a pupil while he is on the errand.

Teachers can be held liable when conducting children on field trips if their failure to exercise reasonable supervision over the pupils should result in their injury.

¹³²Hanson v. Reedley Joint Union High School District, 111 P (2d) 415, (Calif.), (1941).

Legal danger for teachers is substantial for teachers in using their personal automobiles for school purposes. The same rules of liability of teachers in their conduct generally applies to their work in connection with school patrols.

CHAPTER V

DISCHARGE OF TEACHERS

In Oklahoma the contract of a teacher may not be terminated by a board of education except for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional System of Government, or moral turpitude. A board of education does not have the right to terminate a contract of a woman teacher who marries during its existence.

The law provides for a formal procedure in reference to the termination of the contract and provides not only for notice to the teacher as to the alleged charges, but also for a hearing before the board of education. A teacher employed for a school year, if wrongfully discharged before expiration of the term of employment, may recover salary in full for the remainder of such term, upon demonstrating the failure to obtain other employment after reasonable effort to do so. If employment is obtained, whatever amount is earned during such period, must be offset against the salary claimed. A teacher who does not challenge the sufficiency of the reasons of the board in dispensing with his services, cannot recover salary for the remainder of the year as fixed in his contract of employment.

Authority of Local Board to Dismiss Teachers

It is well settled that school teachers are not public officers. They are employees, and such rights as they have to compensation grow

out of the contractual relationship.¹³³ The welfare of the schools requires that the rights and responsibilities both of the teacher and the board of education be clearly defined and established on principles that recognize a professional status for the teachers. Both school officials and teachers should realize the need for carrying out the full letter of the law governing contracts and terms of employment.

In Oklahoma a continuing contract of the spring notification type governs the term of employment of the public school teacher. This plan requires that the teacher be notified by a specified date if his services are not desired for the following year; otherwise his contract continues automatically for another year. The responsibility for notification lies with the board of education. This type of continuing contract is distinguished from protective continuing contracts and permanent tenure arrangements chiefly by the fact that it permits dismissal of the teacher at the end of any year, with no statement of reason, provided the notification has been made in accordance with the provision of the law. The discharged teacher legally is in the same position as one who never taught in the school system.

Under the common law and under the statutes of Oklahoma, generally teachers can be dismissed only for cause during their contract period, and as a rule they can be dismissed for no other reason. The assumption is that the enumeration of causes in the statute was intended to be exhaustive. If a board of education wishes to dismiss a teacher prior to the end of his contract, it must be able to prove in a hearing at least one or more of the following stipulated conditions for dismissal:

¹³³Brown v. Bowling, 56 N.M. 96, 240 P. (2d) 846, (1952).

immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional System of Government, or moral turpitude.¹³⁴

However, a contract between a school district and a teacher might provide grounds for dismissal of the teacher in addition to statutory grounds.¹³⁵ Also a school board may by contract reserve the right to dismiss a teacher for other than statutory causes.¹³⁶

Discharge for Refusal to Obey Rules and Regulations of the Board

It is an accepted fact that boards of education have legal authority to adopt and enforce reasonable rules and regulations for the operation of the school system. A public school teacher is bound to obey all reasonable rules and regulations of the board which employs him, and it makes no difference whether the rules were in force at the date of his employment or were promulgated at a later date. Moreover, a teacher by implication consents to obey all reasonable rules and regulations which a board may find it necessary to adopt from time to time in the administration of the school system.

An illustration of the authority of school boards to enforce reasonable rules and regulations is found in an Oklahoma case. At the opening of the school term the superintendent of schools assigned, as he was authorized to do, a teacher to teach the fourth and fifth grades. The teacher agreed to the assignment and entered upon the discharge of

¹³⁴Consolidated School District No. 4, Bryan County v. Millis, 192 Okla. 687, 139 P. (2d) 182, (1943).

¹³⁵School District No. 13 v. Ward, 40 Okla. 97, 136 Pac. 588, (1913).

¹³⁶School District No. 94 v. Gautier, 13 Okla. 194, 73 Pac. 954, (1903).

her duties for about four days; then without authority or consent, she peremptorily took charge of the seventh grade and advised the superintendent that she would teach only that grade. After consultation with the county superintendent, the superintendent endeavored to persuade the teacher to perform her duties as teacher of the fourth and fifth grades, which she refused to do. Therefore, because she had failed to observe the rules and regulations of the district board, her dismissal was entered.

The contract involved in this case at bar specifically provided that the teacher "...agrees in all things to observe the rules and regulations of the district board..."¹³⁷ It was upon this provision of the contract that the superintendent contended that the teacher breached the contract in that, by failure to teach as directed, she failed and refused to observe the rules and regulations of the district board.¹³⁸

The law defines unprofessional conduct, in part, as persistent violation of school laws or reasonable board regulations. In California a teacher was dismissed on the ground that she persistently violated and refused to obey reasonable regulations of the school district. The board stated that she absented herself from school during school hours without permission and in violation of the rules. The board also stated that she engaged in unprofessional conduct in that she breached her contract by not reporting for the school term after being directed to do so.

The first day of one of her absences the teacher secured a substitute but she remained away for two weeks. She stated she did not report for the beginning of the term nor did she teach during the term because of an

¹³⁷Consolidated School District No. 4, Bryan County v. Millis, 192 Okla. 687, 139 P. (2d) 183, (1943).

¹³⁸Ibid.

injury to her leg. However, evidence was introduced to the effect that during this period, from September to February, she attended to personal business. It was also shown that though she alleged that the injury occurred in July, she did not consult a doctor until September. The doctor testified that she could have taught with a knee bandage or with a cane or crutches. She did not request a leave of absence for health reasons. The court held that these actions constituted a breach of contract and unprofessional conduct.¹³⁹

On the other hand if a board makes an unreasonable rule or a rule in excess of its authority, the teacher is not bound thereby. Whether a rule is or is not reasonable is a matter to be determined by the courts. It was stated thus by the Supreme Court of Oklahoma:

In the absence of a stipulation to the contrary in the contract of employment, a school teacher is not required to perform the substantial janitor work, such as carrying the fuel, making the fires and preparing the school building for occupancy during school hours; it is the duty of the school board, under such circumstances to not only furnish the building and equipment, but also to have the building made sufficiently comfortable and habitable that the teacher can discharge the duties she has contracted to perform.¹⁴⁰

Dismissal of Teacher Because of Lack of Funds to Pay Salary

A school board may not dismiss a teacher for lack of funds if it is legally possible to provide the necessary funds out of the revenue for the current year. Even the state legislature cannot by legislative act impair the obligations of a contract, and certainly a school district cannot.

¹³⁹Board of Education of Richmond District v. Mathews, 308 P. (2d) 449, (Pa.), (1957).

¹⁴⁰School District No. 25 v. Bear, 106 Okla. 172, 233 P. 427, (1925).

The Oklahoma constitution provides that a school district must confine its expenditures to the revenue of the current year; contracts creating an indebtedness in excess of that revenue cannot be enforced.¹⁴¹ A school board cannot, therefore, dismiss a teacher merely because it does not have on hand the funds with which to pay him. To do so the board must show that it had no legal authority to make the contract under law existing at the time the contract was made.

An Oklahoma case will serve to illustrate the principle.¹⁴² In the case, the statute prohibited school district boards from incurring an indebtedness in excess of the revenue appropriated for school purposes during any fiscal year. In making contracts with teachers, the board of education kept within the current revenue but limited itself to \$749 for all other current expenses. Nevertheless, it spent for other purposes a good portion of the funds which should have been set aside for salaries. When the school year was about half expired, all funds were exhausted. The courts held that the teachers could recover the amounts unpaid on their contracts.

Certain conditions may arise, however, under which teachers may be dismissed because of lack of funds. In Oklahoma, contracts creating an indebtedness in excess of the amount which the district may spend are ultra vires and void. Therefore, a teacher who is employed under such a contract may be dismissed when the funds which the district may legally spend are exhausted.

¹⁴¹Oklahoma Constitution, Art. X, Sec. XXVI.

¹⁴²Myers v. Independent School District Consolidated No. 1, 104 Okla. 51, 230 P. 498, (1924).

Discharge of Female Teachers Because of Marriage

The Supreme Court of Oklahoma has not passed on the legality of dismissing women teachers at the time of their marriage. A careful search of the statutes reveals that there is no prohibition against the employment of married persons as teachers. It is well known that married women have been employed as teachers in our public schools for so many years that their employment in this capacity must be deemed to have the approval of the Legislature.

One legal encyclopedia states the following rule:

In the absence of statutory provision to the contrary, marriage of a woman teacher is not in itself ground for discharge; and under a statute giving the board power to discharge for reasonable grounds only, marriage in itself is held not to be a reasonable ground for discharge...¹⁴³

Keezer, writing on Marriage and Divorce, states:

It is generally held that statutes giving school boards the right to discharge a school teacher for reasonable cause confers no right to discharge a woman teacher because of marriage. The state may make this a ground for discharge but not the school boards of cities or school districts. To hold otherwise would be to give sanction to a restraint to marriage.¹⁴⁴

On January 26, 1940, the Secretary of the Board of Regents requested the Attorney General's opinion as to whether or not the Board of Regents of the University Preparatory School and Junior College at Tonkawa, Oklahoma, may legally terminate its contract of employment with a certain instructor, by reason of her marriage.

¹⁴³Corpus Juris, LVI, (New York, 1932), p. 403.

¹⁴⁴Frank H. Keezer, A Treatise on the Law of Marriage and Divorce (Indianapolis, 1923), p. 114.

On February 1, 1940, the Attorney General gave an opinion that agreements with public school teachers in restraint of marriage are unenforceable and void, because the same are contrary to public policy, which policy is stated in Section 9495, Oklahoma Statutes of 1931, which reads as follows:

Every contract in restraint of the marriage of any person, other than a minor is void. Section 1995, supra, is a statement of public policy as to restraint upon marriage, and we do not believe any public body may properly adopt a policy contrary to that established by the Legislature. In our opinion, any agreement, either express or implied, of an instructor in a State institution not to marry during the term of any such instructor is a proper cause for his or her dismissal.

We do not believe the policy of the Board of Regents of the Tonkawa institution against the continued employment of instructors who marry can legally operate to terminate a lawful contract of employment.

You are advised, therefore, that the Attorney General is of the opinion that the marriage of the instructor referred to in your letter did not operate to terminate her said employment, and that the same is not a proper ground for discharging her from said employment.¹⁴⁵

On June 4, 1937, the County Attorney of Tulsa County asked the Attorney General's opinion whether or not a teacher teaching in Tulsa County can legally be dismissed by reason of the fact that she is married.

On June 12, 1937, the Attorney gave his opinion that marriage does not constitute a "just cause for a teacher's dismissal."¹⁴⁶

On November 22, 1937, the State Superintendent of Public Instruction requested an opinion from the Attorney General regarding the validity of a clause in a teacher's contract which read: "It is expressly agreed and understood that if the party hereby employed marries during the life of this contract, the contract becomes null and void."

¹⁴⁵Opinion of the Attorney General of Oklahoma, February 1, 1940, addressed to Honorable Feliz C. Duvall, Secretary Board of Regents, University Preparatory School and Junior College (in the files of the office of the Attorney General).

¹⁴⁶Opinion of the Attorney General of Oklahoma, June 12, 1937, addressed to Honorable Dixie Gilmer, County Attorney, Tulsa (in the files of the office of the Attorney General).

On November 24, 1937, the Attorney General gave his opinion that the said clause relating to the marriage of the teacher is unenforceable and void, and that if the said contract is otherwise valid, the teacher is entitled to be paid for the time that she rendered services under said contract, regardless of the fact that she was married when such services were rendered.¹⁴⁷

It thus appears that the weight of authority supports the view that a provision in a teacher's contract, or a rule forbidding the marriage of a woman teacher is not a reasonable rule and is unenforceable.

Dismissal of Female Teacher Because of the Birth of a Child

The absence of a female teacher during confinement is not such neglect of duty as would authorize her dismissal. Since it is settled by the weight of authority in this state that a teacher may not be removed because of marriage, she certainly should not be dismissed because of the fact that she has given birth to a child. However, if a teacher is absent for a long period of time so that her work suffers unduly, she may be dismissed whether the absence is due to her confinement or any other cause. Dismissal for this reason is not by way of punishment for some dereliction on the teacher's part, but rather to protect the school in its right to the services of competent teachers.

In a North Dakota case a teacher contracted with a board of education to teach for a school term of nine months, and after teaching approximately four months of the term was forced to quit for a period of two months for

¹⁴⁷Opinion of the Attorney General of Oklahoma, November 24, 1937, addressed to Honorable A. L. Crable, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

the purpose of giving birth to a child.¹⁴⁸ She was dismissed because she had failed substantially to perform her contract with the school district. The court said:

A teacher under contract for personal service to teach a school cannot employ a substitute, nor require the school board to accept a substitute in the performance of services which she herself contracted to perform.

A contract for personal services is discharged by such sickness on the part of the person by whom such services are to be rendered as to incapacitate him from performing them and performance is excused..... The contract in the case of her is the same kind of a contract an entire contract binding the plaintiff to teach the school in said school district for the school year of nine months. It is conceded that it was necessary for plaintiff to quit, that she could not carry on and perform her entire contract, and so far as the defendant was concerned it was no longer bound by the contract. The plaintiff's condition was such as to incapacitate her from performing her contract obligation, and under the authorities cited the contract was discharged, and performance excused.

...The plaintiff was not dismissed; she quit because of her physical condition and approaching illness prevented her from performing her contract. All her rights under her contract ceased and determined when she quit her employment. She no longer had a contract, and as a matter of course she is not entitled to recover for that portion of the school term taught by the substitute teacher.¹⁴⁹

Similarly in a Minnesota case the court held:

A teacher's contract, in ordinary form, entered into with a school district, is a contract for personal services by the teacher, and is an entire contract for the period covered.

The physical inability of a teacher to commence her services at the beginning of the school year, and for over five weeks thereafter, is such failure of performance of a substantial and material part of the contract as to release the school district therefrom, in the situation shown here.¹⁵⁰

On October 17, 1936, the State Superintendent of Public Instruction requested the Attorney General's opinion as to whether a teacher could be

¹⁴⁸Auren v. Mentor School District No. 1, 58 N.D. 934, 233 N.W. 644, (1930).

¹⁴⁹Ibid.

¹⁵⁰Hong v. Independent School District No. 245, 181 Minn. 309, 232 N.W. 329, (1930).

discharged because of the birth of a child. He also enclosed with his request an opinion written by the late Honorable R. E. Wood, Assistant Attorney General. This opinion, of February 24, 1919, stated:

Since it is a general principle of contract law that 'if a party to a contract, either before the time for performance or in the course of performance, makes performance, or further performance, by him impossible, the other party is discharged' we are wondering if your office still adheres to the opinion referred to.

The State Superintendent went on to ask for an interpretation of Mr. Wood's opinion. The facts of the opinion were as follows:

Mrs. Sims, a graduate of Southeastern Normal, was employed at the town of Blue to fill the unexpired term of a teacher who resigned last year. Later she contracted to teach for the present school year. After she gave birth to a child, it was the feeling of the board that she should resign her position, or that her contract should be legally terminated. During her confinement, she furnished an adequate substitute.

The Attorney General held that these facts "would not justify cancellation by the school board of its contract with Mrs. Sims and that in the absence of any specific charges covered by statute, she should be permitted unmolestedly to execute her contract with the school board."

On October 23, 1936, the Attorney General gave his opinion as follows:

It will be noted that in said opinion the question was whether a teacher could be dismissed merely because the school board felt that she would be unable to give proper attention to her duties in the future. We believe that the conclusion reached therein is correct, insofar as the dismissal of a teacher for the reason stated is concerned, and in this connection call your attention to the case of Gardner v. North Little Rock Special School District, 161 Ark. 466, 278 S.W. 73, in which it was held: 'The directors of a school district have no right to discharge a teacher or superintendent without just grounds existent at the time of the discharge, a bare fear that they may arise in the future being insufficient.'

However, we believe that a school district can be released from liability under a contract of employment between the school district and a teacher, where the teacher becomes ill by reason of her pregnant condition, and is unable to continue teaching under said contract.

Therefore we adhere to the aforementioned opinion, in so far as it holds that said teacher could not legally be dismissed merely because the school board believed that she would be unable to give proper attention to her duties in the future. However, if a teacher has failed to

substantially perform her contract with a school district, we are of the opinion that the school district is thereby released from further liability under said contract, and that it is not required to thereafter permit said teacher to resume teaching thereunder. Whether or not there has been such non-performance as will operate to discharge a contract depends upon the circumstances of each particular case.¹⁵¹

Dismissal for Incompetency

Incompetency is a valid ground for dismissal at common law and under the statutes of Oklahoma. When a teacher accepts a position to teach there is an implied agreement that he is prepared to perform the duties required of the position, both as to academic knowledge required and as to the ability to control the classroom.

An Indiana case contains the following statement on this point:

...When he, (the teacher), accepts such employment, (i.e. employment as a teacher), he agrees by implication that he has the learning necessary to enable him to teach the branches required, as well as that he has the capacity in a reasonable degree of imparting that learning to others; he agrees also that he will exercise reasonable care and diligence in the advancement of his pupils in their studies, and in preserving harmony, order, and discipline.¹⁵²

If, therefore, the teacher fails in any of these particulars, he may be dismissed. However, an average teacher or one who does not fail too often or too seriously and who puts forth a reasonable effort is considered competent in the sight of the law. The term "incompetency" is not a clearly defined one. It was said by the Supreme Court of Pennsylvania: "A relative term without technical meaning. It may be employed as

¹⁵¹Opinion of the Attorney General of Oklahoma, October 23, 1936, addressed to Honorable A. L. Grable, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

¹⁵²Crawfordsville v. Hays, 42 Ind. 200, (1873).

meaning disqualification; inability; incapacity; lack of ability; legal qualification, or fitness to discharge the required duty."¹⁵³

The Oklahoma statute expressly states that incompetency is a valid cause for the discharge of a teacher, but the statute does not define the term.¹⁵⁴

Decisions on conduct outside the school which obviously renders the teacher unfit for continuance in his position have been rendered in many states. It was held in Pennsylvania that a teacher who served as a waitress in her husband's beer garden after school hours and during vacations, took an occasional drink of beer, served beer to customers and occasionally shook dice for drinks, might be dismissed for "incompetence." The court found that such conduct caused her to lose the respect which was necessary for carrying on her work as a teacher.¹⁵⁵

The Supreme Court of Arkansas reviewed the action of the board in discharging a teacher who had been employed for a definite period. The grounds of her discharge, were the following: (1) She had a quick temper and sharp tongue; (2) she was unable to maintain discipline; (3) she refused to obey orders of her principal, insulted him, and otherwise showed disrespect in the presence of pupils; (4) she failed to keep order in her classroom; and (5) humiliated her pupils. The court held that if these charges were proved, they were sufficient to establish incompetency as a ground for discharge.¹⁵⁶

¹⁵³Horosko v. School District of Mount Pleasant Twp., 335 Pa. 369, 6A (2d) 866, (1939).

¹⁵⁴O.S. 1951, 70:6-2.

¹⁵⁵Horosko v. School District of Mount Pleasant Twp., 335 Pa. 369, 6A (2d) 866, (1939).

¹⁵⁶Crownover v. Alread School District No. 7, 211 Ark., 449, 200 S.W. (2d) 809, (1947).

By accepting a teaching position, the teacher thereby represents that he possesses a reasonable degree of skill and learning, that he will be diligent in the execution of his work and has reasonable ability to discipline and control his class. Whether the teacher meets these standards is a question of fact to be determined by the legal trier of the facts, and the burden of proof is upon those who assert that the teacher has fallen short of his obligations.¹⁵⁷

Inclusion of physical disability under incompetence has been held. The Supreme Court of Pennsylvania went so far as to sustain a dismissal on the ground of incompetence in the case of a pregnant teacher. The court's opinion included the following:

Pregnancy constitutes 'incompetency' under the Teacher's Tenure Act and justifies termination of contract on that ground, since it renders teachers physically incapable to discharge her duties.

Incompetency as ground for dismissal of teacher under the Teacher's Tenure Act is not limited in meaning to lack of substantive knowledge of the subjects to be taught, but embraces also a disqualification, an incapacity, or want of physical ability.¹⁵⁸

On December 9, 1952, the State Superintendent of Public Instruction requested the Attorney General's opinion on the following inquiry:

A married teacher in one of the schools in southern Oklahoma is expecting a child. She has been advised by the attending physician that she should not undertake teaching duties past December 10, 1952. If such teacher should refuse to resign upon request, does the Board of Education possess the power to dismiss her on the ground that her physical condition is such that she should not be permitted to teach?

On December 13, 1952, the Attorney General gave an opinion that the Board of Education of said Independent School District may in the manner

¹⁵⁷School District No. 30 v. Roth, 115 Ark. 606, 170 S.W. 561, (1914).

¹⁵⁸West Mahoney Township School Dist. v. Kelley, 156 Pa. 601, 41 A (2d) 344, (1945).

prescribed by law, legally dismiss said teacher because of her pregnant condition.¹⁵⁹

This statute provides that

upon hearing as hereinafter provided any teacher may be dismissed at any time for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude.¹⁶⁰

Dismissal for Neglect of Duty

Under the common law and under statutes providing for dismissal of teachers for neglect of duty, what constitutes neglect of duty is not always clearly set down. The courts have not attempted to define it. If there is no specific statutory provision, "neglect of duty" constitutes "other good and just cause" for dismissal. In determining what constitutes neglect sufficient for dismissal, the court has decided that among other possible kinds of neglect, frequent tardiness has been held a justifiable ground for dismissal.¹⁶¹ Also temporary absence without sufficient cause, failure to make required reports, and in one instance, failure to catalogue the library as directed, constitute such neglect of duty.

Although the teacher has a right to employ a substitute in an emergency, she does not have the right to employ such a substitute in order to lengthen her vacation period. In an Illinois case a teacher employed a substitute to teach for her three days before the school was to be dismissed for a vacation of several days.¹⁶² The teacher had no

¹⁵⁹Opinion of the Attorney General of Oklahoma, December 13, 1952, addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

¹⁶⁰O.S. 1951, 70:6-2.

¹⁶¹School Directors of District No. 1 v. Birch, 93 Ill. App. 499, (1900).

¹⁶²School Directors v. Hudson, 88 Ill. 563, (1878).

excuse for her action. She relied solely upon her right to employ a substitute teacher to do her work. In holding that the teacher had broken her contract, the court pointed out that the contract was for personal services and could not be fulfilled by employing a substitute.

The court said, however, that:

A temporary absence of a short time, with the temporary substitution of another competent teacher, might not, under certain circumstances, constitute such a breach of contract as would authorize the employers to consider the contract at an end. The circumstances might be such that a teacher would be warranted in assuming the approval thereof, or the consent thereto by the employers, without any express consent.¹⁶³

The test is not whether the absence is avoidable but rather whether it is of such duration that goes to the essence of the contract. That is, does the absence deprive the district of a substantial part of the services to which it was entitled under the contract? Not every neglect of duty, however small, will justify dismissal. For example, a delay in reporting for the opening of school which is due to illness or to traffic delays is not sufficient cause for dismissal.

Dismissal for Immorality

Among the express or implied legal bases for discharging a teacher in Oklahoma before the end of his contract period is immorality. The peculiar relationship between the teacher and his pupils is such that it is highly important that the character of the teacher be above reproach. Black defines immorality as "...that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community."¹⁶⁴

¹⁶³Ibid.

¹⁶⁴Henry Campbell Black, Black's Law Dictionary (St. Paul, 1951), p. 885.

Few cases of sex immorality among teachers have come before the courts. However, this does not mean that teachers have not been dismissed on charges of immorality. In one dismissal the court held that "immorality is not essentially confined to a deviation from sex morality," that "it may be such a course of conduct as to offend the morals of the community," and be "a bad example for the youths whose ideals a teacher is supposed to foster and elevate."¹⁶⁵ In this same case it was held that conduct which is contrary to the mores of the community may be considered immoral.

In further commenting on the conduct required of teachers, the Court said:

...It has always been the recognized duty of the teacher to conduct himself in such a way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. Educators have always regarded the example set by the teacher as of great importance, particularly in the education of the children in the lower grades..."

The Court of Appeals of Kentucky has said that both parents and pupils regard the teacher as an exemplar whose conduct might be followed by his pupils, and the law by necessary intent demands that he should not engage in conduct which would invite criticism and suspicions of immorality. Even charges of or reputation for immorality, although not supported by full proof, might in some cases be sufficient ground for removal. Not merely good character but good reputation is essential to the greatest usefulness of the teacher in the schools.¹⁶⁶ For example, the indictment of a superintendent of schools for adultery, followed by conviction, is sufficient grounds for his dismissal even though the conviction is

¹⁶⁵Horosko v. School District of Mount Pleasant Twp., 335 Pa. 369, 6A (2d) 866, (1939).

¹⁶⁶Gover v. Stovall, 237 Ky. 172, 35 S.W. (2d) 24, (1931).

subsequently set aside.¹⁶⁷ Thus we find that a teacher need not necessarily be guilty of immorality to furnish a basis of discharge for that reason. It is enough that he has a reputation for it.

Discharge for Moral Turpitude

One of the grounds of dismissal authorized by statute in Oklahoma is moral turpitude on the part of the teacher. There is not any reported case in this state in which a public school teacher has been dismissed on this ground. In an Oklahoma case having to do with the disbarment of an attorney upon conviction of a misdemeanor, the court defined moral turpitude as anything done contrary to justice, honesty, modesty, or good morals.¹⁶⁸

In another case involving the failure of a book store to perform its obligation under a contract the court said:

Moral turpitude is defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.¹⁶⁹

One legal encyclopedia states the following in respect to moral turpitude:

Embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude; and as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude. Thus, concealing assets in bankruptcy, obtaining goods on false representations, and other crimes involving fraud are usually regarded as showing moral turpitude.¹⁷⁰

¹⁶⁷Freeman v. Town of Bourne, 170 Mass. 289, 49 N.E. 435, (1898).

¹⁶⁸Williams et al., 64 Okla. 316, 167 P. 1149, (1917).

¹⁶⁹National Casualty Co. v. Sipes, 180 Okla. 548, 71 Pac. (2d) 459, (1937).

¹⁷⁰Corpus Juris Secundum, LVIII, American Law Book Co., Brooklyn, N. Y. (1952).

The courts, in interpreting the meaning of moral turpitude, are inclined to hold school officials to a stricter definition than is apparently true for most public officers. In Georgia, for example, a county superintendent was found guilty of moral turpitude on the grounds that he had been convicted on a plea of guilty of presenting false claims against the United States government, even though he was never sentenced for the offense.¹⁷¹ The court considered that the maximum amount of the fine possible for this offense (\$10,000) and the maximum penal term (five years) were important considerations in determining whether or not the superintendent's actions were "immoral."

Dismissal of Teachers for Acts Committed During Previous Years

On August 24, 1954, the State Superintendent of Public Instruction requested the Attorney General's opinion as to whether or not the board of education of an independent school district can dismiss a teacher during the current contractual year for acts done by such teacher during the previous contractual year. The teacher in question had been employed for ten years by this school district.

On September 1, 1954, the Attorney General gave his opinion:

It appears from your letter that the suggested dismissal would be under the provisions of 70 O.S. 1951, 6-2 which provides:

'Upon hearing as hereinafter provided, any teacher may be dismissed at any time for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude.

It has been held that a public officer cannot be removed from office for acts committed during a previous term. State v. Blake, 138 Okla. 241, 280 P. 833; Board of Com'rs. of Kingfisher County v. Shutler, 139 Okla. 52, 281 P. 222.'

¹⁷¹Huff v. Anderson, 90 S.E. (2d) 329, (Ga.), (1955).

It is believed that the above quoted provisions are prospective, and not retroactive, in their application. We think that a fair analysis of said provisions results in the conclusion that the statutory grounds for dismissal must occur after the teacher has been employed. We think that the authorization for dismissal for immorality, etc., has reference to acts of immorality, etc., that might occur after the individual involved has entered into a contract as a teacher for the then current fiscal year. In other words, these provisions refer to a 'teacher,' and a person does not become a teacher of the district for the current year until he has entered into a contract for such year; and so we think that said provisions for dismissal have reference to conditions that become existent after the individual concerned signs a contract as a teacher of the district.

Therefore, the Attorney General concludes that your inquiry must be answered in the negative, that is, the board of education of an independent school district cannot dismiss a teacher during the current contractual year for acts done by such teacher during the previous contractual year, unless the district's contract with the teacher expressly provides for such dismissal.¹⁷²

Teacher May Withdraw His Resignation Before Acted Upon

A resignation that has only been tendered does not act to terminate a contract. It has been held that where a school board votes to remove a teacher, it cannot delegate to the superintendent the authority to accept the teachers resignation. Thus, where a teacher, under such circumstances, presented her resignation to the superintendent who purportedly accepted it, the court held that he could later withdraw it, in the absence of evidence that the board had taken official action to accept it.¹⁷³

If a teacher resigns and the resignation is accepted, the teacher cannot thereafter change his mind and claim the position. If another teacher is employed to take his place, the teacher making the replacement

¹⁷²Opinion of the Attorney General of Oklahoma, September 1, 1954, addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

¹⁷³Hueman v. Independent School District No. 77, 67 N.W. (2d) 38, (Minn.), (1954).

is entitled to the position. On the other hand, a teacher may rescind his resignation if he does so before the board has acted upon it.

If a school board accepts a resignation and the teacher is released by mutual consent, there is no breach of contract on the part of the teacher. Any contract may be terminated by mutual consent, precluding any claims on either side thereafter.

A teacher may also withdraw his resignation before it is acted upon by the school board. In an Iowa case the court held:

The tender of a 'resignation' by a teacher under a contract to teach in a certain district, being a mere offer, is not binding on either party to the contract until accepted, and may be withdrawn at any time before it is acted on by the district board.

The fact that a tender of a resignation by a teacher under contract to teach in a district was handed to the president of the district board, and retained by him, did not constitute an acceptance thereof, where it remained for the board to act on the tender.¹⁷⁴

A West Virginia court said:

The tender of a so-called 'resignation' by a teacher under contract to teach in a district school, being a mere offer to effect a mutual rescission of a contract employment, is not binding to either party to the contract until its acceptance by her employer, assembled as a board, and may be withdrawn at any time before such acceptance takes place.¹⁷⁵

On August 20, 1937, the County Attorney of Marshall County requested an opinion as to whether a certain teacher's contract has been terminated under the following statement of facts:

One of the School Districts in Marshall County, Oklahoma, the School Board had employed Mrs. Smith to teach in school for the year of 1937-38, or, rather, for the current school year and the contract was approved by the director, the Member and the Clerk, also, by the County Superintendent of Public Instruction. The school will open about September 6th. Approximately two or three weeks prior to the writing of this letter, Mrs. Smith

¹⁷⁴Curtwright v. Independent School District of Center Junction, 111 Iowa 20, 82 N.W. 444, (1900).

¹⁷⁵LeMasters v. Board of Education of Grant District, 105 W. Va. 81, 141 S.E. 515, (1928).

decided that she might move to Western Oklahoma, however, she was not certain and she went to the director at his home and told him that she wanted to resign, that she thought she was going to move to Western Oklahoma and the director agreed that it was perfectly all right. There was not a written resignation. Then, the next day, Mrs. Smith went back to the director and asked him, 'If the school board had approved or accepted another contract for her place,' and the director stated that they had not, but had several applications on file. Mrs. Smith, then, asked the director for permission to withdraw her resignation and the director consented to this and told her that it was perfectly agreeable. Then, Mrs. Smith went to the home of another member of the school board and left word with his wife that she had withdrawn her resignation. A few days later the school board approved the contract of another teacher and I advised the County Superintendent not to approve this contract, until I could hear from you.

On August 25, 1937, the Attorney General gave his opinion:

You express the opinion that Mrs. Smith still has a valid and legal contract to teach in said school district. Section 6814, Oklahoma Statutes 1931, contains the following provision:

'Whenever any person shall make and enter into a valid contract with such district board to teach school in such district, such contract shall be binding upon such teacher until he has been legally discharged therefrom according to law or released therefrom by such district board in regular session.'

In view of the foregoing, we are of the opinion that tender of the purported 'resignation' to the director of the School Board, and acceptance thereof by said director without any official action of the School Board, did not operate to terminate the contract of Mrs. Smith and release her therefrom. We believe that said 'resignation,' having been withdrawn before its acceptance in the manner prescribed by Section 6814, supra, cannot be the basis for a rescission of said teacher's contract. Therefore, assuming that said contract of Mrs. Smith was regularly made, we concur in your opinion that same has not been rescinded and is still binding on both her and the school district.¹⁷⁶

Right of Discharged Teacher to Hearing

It is basic in philosophy of the American law that an individual shall not be condemned, or other legal action taken against him, without his being afforded the opportunity of being heard in his own behalf.

¹⁷⁶Opinion of the Attorney General of Oklahoma, August 25, 1937, addressed to Honorable Sam Y. Colby, County Attorney, Marshall County (in the files of the office of the Attorney General).

This right to a hearing is a very important one which the courts zealously protect.

The Oklahoma Statute expressly provides that a hearing shall be required and that legal action can be taken only after a hearing. The procedure also requires that written charges be filed, that notice of the charges and the hearing must be presented to the person charged, and that legal counsel must be permitted if the person charged desires it.

The procedure for hearing complaints against a teacher is defined as follows:

....Said notice shall contain a statement of the charges upon which a hearing is sought and by whom brought. The teacher complained of shall be notified of the date of the hearing which shall not be less than ten (10) days from the date of said notice. The teacher shall be entitled to be present and to be represented by counsel....In independent school districts it shall be before the board of education of such district. In all cases a majority vote of those constituting the board, before which said hearing is held, shall be required in order to convict the teacher charged....Provided in cases involving incompetency or neglect of duty, the decision arrived at at said hearing shall be final and those involving moral turpitude an appeal may be taken to the district court of the county.¹⁷⁷

Boards of education occasionally act in a very arbitrary fashion in discharging teachers, and such acts are seldom sustained by the courts. Such was a case in Minnesota involving an attempt by the board to discharge a teacher during the term of her contract. The following letter was written to the teacher, and signed by all members of the board:

Miss Kuehn:

We, the school board, hereby give you notice that you have by all means, not lived up to your contract as you have agreed to....

You have been told...that your teaching was not satisfactory.

You have not followed your rules and school regulations according to laws.

You have not put in your school classes, you have left out classes days and days.

¹⁷⁷O.S. 1951, 70:6-2.

You have not put in full hours at school which is required by law for teachers to do.

Therefore we expel you as a teacher of district 70.

(Signed by the board)

No hearing was granted the teacher on these charges against her, and she sued for the balance of her salary. The Minnesota law did not require a hearing. The jury in the lower court gave judgment in the teacher's favor apparently deciding that the board's action was arbitrary and capricious or in bad faith. The Supreme Court of Minnesota sustained the judgment for the teacher on the ground that she was not granted a hearing. The Court said:

The statutes do not provide a procedure for the removal of a non-tenure teacher 'for cause.' However, even though no method of procedure is set out in the statute...a teacher is, nevertheless, entitled to notice of charges against him and a fair hearing before an impartial board...¹⁷⁸

The Duty of a Wrongfully Discharged Teacher to Seek
or Accept Another Position

When one party to a contract breaks it, the other party has an immediate claim for damages or other relief. In damage actions, to state the rule very broadly, the party who did not break the contract is entitled to recover the amount of damages the breach caused him. However, the innocent party may not, under the law, enhance his damages. On the contrary he is obliged to take reasonable action to mitigate them. Under this rule, an illegally discharged teacher is not entitled to sit idly by and recover his salary but is required to make reasonable efforts to procure another position. However, he is not obliged to accept a position of less dignity and standing than the one from which he is

¹⁷⁸ Kuehn v. School District No. 70, 221 Minn. 443, 22 N.W. (2d) 220, (1946).

illegally discharged. The question as to what types of work will, by the courts, be held to be not inferior to teaching may be a difficult one in some cases. The law also recognizes that some teaching positions are inferior to others. Furthermore, a teacher is not obliged to accept a position in a distant community in order to mitigate the damages.

A teacher who does not challenge the reasons of the school board in dispensing with his services cannot recover salary for the remainder of the year as fixed in his contract of employment, although he had not been notified of a hearing and no charges were filed with him.

The Supreme Court of Oklahoma has stated this rule:

The measure of plaintiff's recovery in an action for breach of a contract for employment is prima facie the sum stipulated to be paid by the employer for the services, but it is subject to reduction in such sums as the plaintiff has earned or might with reasonable diligence have earned during the period by securing other employment of a similar character but the plaintiff is neither required to allege nor prove that he has been unable to secure other employment. The burden is upon the defendant to plead and prove in mitigation of damages that the plaintiff has, or might with reasonable diligence have, obtained profitable employment during the remainder of the term.¹⁷⁹

It is important to note that in mitigation of damages, the burden is upon the board to prove that the teacher in question did not use reasonable efforts to mitigate his damages, rather than the burden being upon the teacher to prove that he did use such reasonable efforts.

A single case will illustrate the operation of the mitigation of damages rule. A teacher in an Oklahoma district was held to have been illegally discharged.

The court stated:

It is agreed that the defendant board paid to the plaintiff the sum of \$733.34 prior to his wrongful discharge. Thus, the utmost recovery

¹⁷⁹School District No. 60 of Ellis County v. Crabtree, 146 Okla. 197, 294 Pac. 171, (1930).

under the breached contract was \$1,625. In mitigation of damages, it appears that plaintiff was employed during the remainder of the school year at Yale, Okla., in a similar capacity and received the gross sum of \$875. However, the plaintiff proved a reasonable expense in the amount of \$100 in moving from Pond Creek to Yale. Likewise, he showed the expense of the employment of a substitute teacher for one week in the amount of \$25. It is our view that these are reasonable deductions to be allowed from the total sum, in mitigation of damages, thus leaving the balance to be adjudged in favor of plaintiff in the sum of \$875.¹⁸⁰

An interesting case arose in a Pennsylvania district where a teacher was illegally discharged. It was agreed at the trial in the lower court that the teacher had been employed as a teacher elsewhere during the period in question at a salary higher than that provided in the contract with the district which had illegally discharged him. The Supreme Court of Pennsylvania held that the teacher was entitled only to nominal damages and awarded him \$1.00. In its opinion that court quoted the following reasoning to the lower court:

To set off or credit, against the salary owing to an improperly dismissed teacher, compensation earned by the teacher from other employers during the period of such improper dismissal does not in any way abate the salary or compensation to which he is entitled under his contract for he receives that salary or compensation, either wholly from the school district or wholly or partly from others. He is in exactly the same position, so far as compensation is concerned, as if he had not been improperly dismissed. Improper dismissal is a breach of contract for which the employee may recover damages. Damages are the loss suffered by one person by reason of a breach of contract on the part of another and if the school teacher received the same compensation for his work during the period of improper dismissal as he would have received if he had continued in the position from which he was improperly dismissed, he has suffered no damages except such as may arise from matters following other elements than loss of salary.¹⁸¹

¹⁸⁰Ray v. Board of Education of Pond Creek, 194 Okla. 472, 153 P. (2d) 233, (1944).

¹⁸¹Coble v. School District of Twp. of Metal, 178 Pa. 301, 116 A. (2d) 113, (1955).

Laches

Laches, in a legal sense, is delay that works a disadvantage to another and causes change of condition or relation during the period of delay.¹⁸² Although a dismissed teacher has a remedy available if he acts promptly, this remedy may be lost if the teacher fails to act in a reasonable time. It is frequently held, in fact, that a teacher who does not act promptly is guilty of laches and not entitled to recovery. There is no set rule for determining when one is guilty of laches. A Kentucky court has held that delay, although unreasonable, will not sustain the defense of "estoppel by laches" unless such delay has worked a disadvantage to another.¹⁸³ A teacher who is barred from recovery of salary because of laches is also barred from any rights of reinstatement to position.

A New York Court has ruled:

No sufficient excuse appears in the record for the long delay in the institution of this proceeding after the decision of the court and, were there no other ground for denying the petitioner's application, the denial would be justified by her laches. In view of the many cases of resignations and the time which has elapsed, it would greatly embarrass the authorities of a city who have charge of public education if all who have resigned could be reinstated upon the mere suggestion that in resigning as teachers they did so upon the assurance of their supervisors that they could be forced out of their places by virtue of the by-laws, and that such assurance constituted legal duress.¹⁸⁴

The Supreme Court of Pennsylvania has ruled that a school nurse who had been wrongfully dismissed almost seven years before and sued to obtain an order requiring her reinstatement and recovery of damages had waited too long to bring the suit and was guilty of laches.¹⁸⁵ On appeal,

¹⁸²Jones v. McNabb, 184 Okla. 9, 84 P. (2d) 429, (1938).

¹⁸³Culton v. Asher, 149 Ky. 659, 149 S.W. 946, (1912).

¹⁸⁴Grendon v. Board of Education, 114 App. Div. 759, 100 N. Y. Supp. 253, (1906).

¹⁸⁵Haas v. Llewellyn, 135 A. (2d) 754, (Pa.), (1957).

the Supreme Court of Pennsylvania upheld the decision of the lower court, stating that even if her employment had been illegally terminated, her failure to complain or assert her rights for almost seven years barred her claims.

Summary

The authority to employ teachers in Oklahoma is vested in the board of education of a local school district. Implied in that right of power is the authority to dismiss those employed. In Oklahoma the legislature has enacted statutory provision covering the dismissal of a teacher and the board's right to dismiss is dependent upon the statutory prescription. The Oklahoma statute lists the causes for dismissal, and generally speaking the board cannot dismiss for other causes not enumerated. The statute also sets up the mode or method of dismissal, and the mode becomes the measure of the board's power. In Oklahoma the weight of authority is that teachers' contracts in restraint of marriage are void as against public policy. The Oklahoma statute provides that a teacher has the right to an impartial hearing if wrongfully dismissed.

A discharged teacher should seek other employment, and a board of education will be permitted to deduct whatever it can be shown the teacher earned or could have earned at other employment of the same kind. In this connection the burden of showing what the teacher earned or might have earned is on the board of education. A teacher must seek other employment in order to mitigate the damages. However, he need not accept work of a nature fundamentally different from that which he had agreed to perform under the contract.

CHAPTER VI

SUMMARY AND RECOMMENDATIONS

Summary

The study was concerned with the legal status of the public school teacher in Oklahoma insofar as that status is governed by basic law, Oklahoma Statutes, judicial interpretations, opinions of the Attorney General of the State of Oklahoma, and the rules and regulations of the Oklahoma State Department of Education.

The purpose of this study was to analyze the laws, court decisions, and administrative regulations of bodies governing schools and to present an orderly summary of such laws, regulations, and interpretations as they affect the legal rights and responsibilities of teachers.

The methodology used was a method similar to that used by members of the law profession in studying questions of law. Pertinent information obtained from statutory law, judicial decisions, Attorney General's opinions, State Department of Education rules and regulations, and provisions of Constitutions pertaining to each particular area of study was assembled and grouped accordingly.

The legal status of public-school teachers is not only outlined and established by state laws, but it is also circumscribed by judicial interpretation of these laws. Thus the profession is limited to those legally qualified, who hold evidence of that legal qualification in the form of a certificate, license, or credential. The method of appointing

teachers and the contracts of employment to be given them establish for teachers a legal status. Many other types of statutes concern the teacher during his career. Retirement laws assure him at least a modest income for life when he is relieved from service.

Although the duties of a school teacher are said to be purely secular, a teacher in a public school is under an implied duty to guard the morals of the children entrusted in his care. Teachers stand somewhat in place of the parents in training the minds and shaping the moral character of their pupils. They must endeavor to maintain good discipline over all pupils under their charge, and to guard their physical and mental welfare in the classrooms, on field trips, or on the playgrounds, during the period in which the pupils are in their charge. A teacher may be personally liable in damages for injuries directly and proximately sustained by pupils under their care.

In accepting employment as a teacher, a person agrees to perform his labors and duties under the control and direction of the board of education, and in conformity to the proper rules and regulations of the board. He is required to perform all duties that are included within the scope of his employment as a teacher, subject to the control and direction of the board, and may be required to perform additional duties, in the manner provided by law. A teacher is not required to do the janitor work in any classroom, or render any services beyond the scope of employment as a teacher, except as may be mutually agreed on, and for compensation in addition to that received by him for his normal duties as teacher.

Teachers are required to keep records showing the names of all pupils enrolled in the course or grade under their supervision, the studies

pursued, the character and reports of the work done, the standing of each pupil, and such other information as may be required by the board of education, the superintendent of schools, or the State Superintendent of Public Instruction.

In Oklahoma there are statutory provisions enumerating the specific ground upon which a board of education may discharge teachers. A teacher is entitled to a hearing before he may be dismissed from his position. A wrongfully discharged teacher is obliged to seek another position in order to mitigate, that is, lessen, the damages which the district may be required to pay him as a result of his wrongful discharge.

Recommendations

The following recommendations are offered:

1. With the enactment of a greatly increased amount of legislation relating to the public schools in Oklahoma, the School Code has become exceedingly complex and cumbersome. Many compilations of our school laws are of little value to those who must, or should be, primarily concerned with them. New laws, as enacted, are frequently inserted in the School Code without much thought given to the logical organization of the code. As a result, it becomes almost impossible for one not well acquainted with the statutes of Oklahoma to find these pertinent to a particular subject. These compilations should be reorganized so that the layman and professional educator may, with some degree of assurance, know where and how to find the statutes dealing with a particular subject. This would result in bringing about a high degree of uniformity which would be of particular value to one doing research that involved consulting the School Code of Oklahoma.

2. The business of education has become so large that it is unfair to impose on public school teachers the risks involved in their respective positions. At least four states---Connecticut, New Jersey, New York, and Wyoming---have enacted so-called "save harmless" statutes for the protection of teachers. These laws require or permit districts to pay judgments recovered against teachers. They also require or permit districts to defend teachers in suits against them for damages caused by their negligent acts while in the course of their teaching duties.

Frequently school employees have no money or property upon which a judgment can be executed. Furthermore, the members of the teaching profession should not be harassed by the possibility of judgments arising out of the conduct of their work. It is true that cases in which damages are collected from teachers are extremely rare. Modern jury awards run high, and even the successful defense of lawsuits is expensive. Teachers in Oklahoma should be given this protection if they are to carry on their duties effectively and not over-cautiously. The Oklahoma Education Association should encourage the state legislature to enact such laws.

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