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SOME LEGAL ASPECTS
OF TEACHER DISMISSAL IN MONTANA

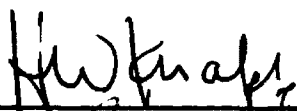
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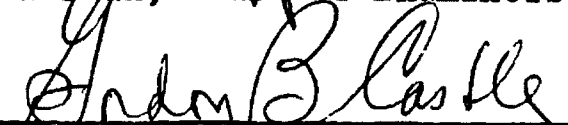
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of the requirements for the degree of
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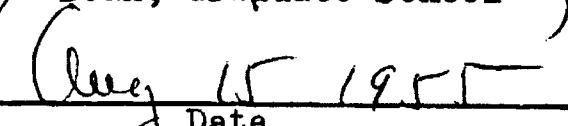
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CHAPTER I
INTRODUCTION

PURPOSE

The major purpose of this study was to determine the nature and characteristics of dismissal actions between Montana school boards and teachers; the effect of statutes as interpreted by the courts; the procedures involved in dismissal; the effect of the Montana Tenure Law on dismissal; and the effect of contract provisions concerning dismissal.

The practical purpose contemplated as an outcome of the above stated objectives was to make available such information for the guidance of administrators and school boards in dealing with teacher dismissals.

Since the courts are the only agencies permitted to interpret the law, an attempt by a layman to state the law in Montana on teacher dismissals will necessarily be only a reference, and must be considered as such. This paper is not an attempt to make any contribution to the legal profession; it is rather an attempt to present a general background of the problem of teacher dismissal in Montana, with the view that school boards will not be prompted to act as their own counsel, but that with some background, school boards will be better prepared to avoid situations

which may render them liable to suits for damages on breach of contract.

The problem of teacher dismissal is very real, as any administrator who has had occasion to dismiss a teacher will testify. Aside from the matter of damages, there usually is much public indignation and talk. Problems of teacher dismissal should be handled honestly and with as little confusion as possible, in order to minimize ill feeling. This can probably best be accomplished by following the procedure prescribed by Montana law, so that everyone, including the teacher, feels that justice has been done.

LEGAL BACKGROUND

Before undertaking a study in a particular legal field such as this, it may be well to review briefly the legal background of Montana law.

First, the Enabling Act under which Montana was granted statehood supersedes all other state laws. This act and its effect on Montana law is interpreted by the United States Supreme Court.

Second, the Montana State Constitution as formed under the Enabling Act, is the basis for all Montana law. The Supreme Court of the State of Montana interprets the State Constitution whenever the need arises in the form of test cases, and therefore the Supreme Court has a definite

influence in interpreting the meaning of the constitution.

The third source may be found in the statutes, or laws, passed by the State Legislature. These are also interpreted by the Supreme Court, but statutes may alter or change previous Supreme Court decisions as the laws are amended or changed.

The next level of authority may be found in what is commonly referred to as the common law. Common law may be considered as a body of legal doctrine composed of legal principles and precedents, developed through the years by various states. (The term common law may also be correctly applied to the English common law, as developed in England. English common law may have a great influence on American courts in the absence of American decisions pertinent to the question at hand.)

Montana courts may be expected to be influenced by other State court decisions, but they do not necessarily have to follow them even where the question is based on similar statutes. Also the Montana Supreme Court does not have to follow its own decisions as culture and customs are constantly in a state of flux, requiring the law to change along with them. Another point to be kept in mind is that the Montana Legislature is constantly changing and amending the law to conform to present day customs.

LIMITATIONS OF THE STUDY

The limitations of this study are important, and some of these limitations will be discussed here.

This study is not an attempt to analyze and classify the legislative acts and Supreme Court decisions of any state, other than Montana. Other state decisions are only resorted to when there are apparently no Montana cases pertinent. This study is not an attempt to analyze such things as: formal requisites of teacher contracts, duties of boards of education, certification requirements, tenure code, damages, and suability of school boards. The statutory standards and Supreme Court decisions on each of the above topics would, however, constitute an independent and fruitful field of investigation. These points of law are only discussed here as they pertain to teacher dismissal.

The wording of the title of this study was selected in an attempt to delimit clearly the scope of this study. The word "teacher" refers to "public school teacher," and comprises principally those persons actually engaged in instruction in grades one to twelve. Superintendents do not come within the same classification as teachers.¹

Chapter II will consider in much greater detail the meaning of the word "dismissal."

¹State ex Rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

CHAPTER II
DISMISSAL

WHAT CONSTITUTES A DISMISSAL

The term dismissal will be considered here as being the termination of a teacher's contract by the school board during the life of the contract or termination by the school board at any time after the teacher has attained tenure. Whether this dismissal of a teacher will give rise to a cause of action for breach of contract depends on the facts and circumstances of each individual case.

The failure to secure re-employment at the end of the term does not ordinarily constitute a dismissal, and consequently does not come within a statute prescribing the cause and manner of dismissal. In the absence of teacher tenure the right of a school board not to re-employ a teacher, no matter what the reasons, is absolute. The teacher has no vested right of contract. The Montana Supreme Court said in Eastman v. School District: "A school board may refuse to employ or re-employ a teacher with or without cause and need not give any reason for its action" ¹

Other occurrences not deemed to be dismissals are closing of a school because of destruction or because of an

¹Eastman v. School District No. 1 of Lewis and Clark County, 120 M 63, 180 P 2d 472, 479.

epidemic, especially where the teacher is on hand, and is ready and willing to teach.²

Other reasons deemed not a dismissal include closing school because of lack of funds, and releasing the teacher when that particular job is no longer needed. In the latter case, that job must in fact no longer exist. In a New Jersey case, an attempt was made to transfer a full time principal to a teaching job, while at the same time creating a "new" job of part time principal and teacher to be filled by someone else. The court considered this an attempt to transfer to a lower position, and consequently a dismissal, not an abolishment of the job of principal.³

Some situations however, the court considers as being dismissals, where there is no actual discharge or cessation of teaching. Such was the situation in a Montana case where the court held that transfer to a lower grade constituted a dismissal.

While a regularly employed teacher may be discharged for a good and sufficient cause yet the board has no power to transfer a teacher from a higher to a lower grade. Assigning a teacher to a lower grade is a "removal" and just as much so as a dismissal would be.⁴

²Phelps v. Wayne County School District No. 109, 134 N.E. 312, 302 Ill. 193.

³Viemeister v. Board of Education of Borough of Prospect Park, 5 N.J. Super. 215, 68 A 2d 768.

⁴Smith v. School District No. 18, Pondera County, 115 M 102, 109, 139 P 2d 518.

In the above case the school board attempted to transfer a teacher from a teaching job in grades six, seven, and eight in a town school, to a rural ungraded school consisting of seven children in grades one through seven.

There was a dissenting opinion in this case to the effect that an elementary teaching certificate covers grades one through eight, therefore an elementary teacher should be qualified to teach at any elementary level. The almost universal adoption of a single salary schedule also will probably have some effect on the transfer of teachers.

From the context of this case and the above two points, the transfer of school teachers within the same school district would seem to depend on a comparison of the prestige of the two jobs, taking into consideration the fact that a teacher may be better qualified in one grade than in another.

Other courts have held that transfer of a principal to a teaching job,⁵ and transfer of a high school principal to an elementary principalship⁶ was the equivalent of a dismissal, and the teacher was not required to take the transfer.

⁵Viemeister, loc. cit.

⁶State ex Rel. Piper v. East Baton Rouge Parish School Board, 213 La. 885, 35 S 2d 804.

Most courts have held, however, that school boards have the right to dismiss teachers when an action of law closed the school. For instance, the Montana Supreme Court agrees with this as evidenced by its holding in Moses v. School District, where lack of sufficient number of pupils was held reason enough to dismiss the teacher.

Where teacher not notified that her services would not be required for next succeeding year, brought action to recover the amount she would have received if re-employed, having taught for three consecutive years entitling her to automatic re-employment under this section, held, that because school was closed on the enrollment having fallen to two pupils, the board under Sec. 1044, R.C.M. 1935 (since repealed), had the power to close the school and void the contract, as well as under a clause of her contract providing that if school closed for lack of attendance the contract should be considered at an end.⁷

STATUTORY PROVISIONS

Dismissal of a teacher in Montana is controlled by statute and, as is normal in these cases, that statute must be examined in the light of Montana Supreme Court decisions. The meaning of statutes is determined by the court according to the wording of the statute,⁸ employing the best rules of

⁷Moses v. School District No. 53, Lincoln County, 107 M 300, 305, 86 P 2d 407.

⁸McBride v. School District No. 2 of Silver Bow County, 88 M 110, 112, 290 P 252.

grammar.⁹ If the grammar employed is not enough to ascertain the meaning of the statute, then the intent of the legislature in enacting that law is used to determine what is meant. If neither of these methods suffice, then the court resorts to common law and decisions rendered by courts of other states.

The first statute to be considered is the one concerning dismissal and appeal.

Dismissal--Appeal. In the case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal.¹⁰

The courts seem to be in complete agreement that where statutes specify a procedure for dismissal this procedure must be followed.¹¹

The Montana Supreme Court seems to be in complete accordance with this as evidenced by what it held in several

⁹Jay v. School District No. 1 of Cascade County
24 M 219.

¹⁰Revised Codes of the State of Montana, 1947
(annotated) (Allen Smith Company, 1949,) Section 75-2411.

¹¹In re Swink, 132 Pa. S. 107, 200 A 200; Gassen
v. St. Charles School District, 199 La. 954, 7 S 2d 217;
King v. Wells, 10 S.K. 2d 832.

cases,¹² and upon examination, the statute apparently says that when a teacher has been dismissed for any of the four specified reasons, the teacher may appeal to the county superintendent. This meaning as stated above is not what the Supreme Court has evidently held. By examining the statute word by word and looking to the court decisions on each part the meaning thereof should be clarified.

The word dismissal as used in the above statute has been discussed previously in this chapter.

The word "teacher" evidently means a teacher either part time or full time, and does not mean a University professor or a superintendent. The Montana Supreme Court held:

The number of hours a teacher taught in a day is not a factor in determining her right to tenure.¹³

This section, providing specifically for appeal to the county superintendent from an order dismissing a teacher has no application to an order of dismissal of a district school superintendent, the latter order being governed by section 75-1518 providing generally for appeal to the county superintendent from decisions of school officers and boards.¹⁴

¹²Home State Bank of Manhattan v. Swartz, 72 M 425, 234 P 281; Hovland v. School District No. 52 of Stillwater County, __ M __, 278 P 2d 211; McBride, loc. cit.

¹³State ex Rel. Saxtorph v. District Court, __ M __, 275 P 2d 209, 214.

¹⁴State ex Rel. Howard v. Ireland, 114 M 488, 500, 138 P 2d 569.

As stated above in Howard v. Ireland the superintendent does not come under the above statute, but evidently he would be entitled to the same consideration as a teacher under common law. This is clarified in the same case where the court further stated:

. . . while there is no statutory provision requiring a hearing before removal, there is a well-defined public policy declared by decisions of the supreme court that one in public office for a fixed term is entitled to such hearing to meet the demands of common justice and only a legislative act will warrant a deviation from it.¹⁵

The next part of the statute which the Montana Supreme Court has interpreted deals with the words "written contract."

In Day v. School District the court held:

Where a teacher had taught school in the same district for three consecutive years under an informal contract, although the statute provides that such contracts shall be in writing, the board of trustees, by accepting the benefits of the teacher's services and in issuing warrants to her in payment thereof, will be held to have ratified the contract; ratification thereof was equivalent to full compliance with the necessary formalities, and the contract thereupon must be considered as valid from its inception.¹⁶

So, apparently, while this statute specifically

¹⁵Ibid.

¹⁶Day v. School District No. 21 of Granite County, 98 M 207, 211, 38 P 2d 595.

states that the contract is written, and also that the statute outlining the duties of trustees (75-1632-2) requires a written contract, such is not required under certain conditions.

GROUNDS FOR DISMISSAL

As a general rule, a removal for a cause not authorized by statute or contract and outside the discretionary power of school authorities is invalid.¹⁷ Good cause sufficient for removal of a teacher may consist of any cause that renders him unfit to be a teacher in the public school, so that the best interests of the school require that he should be removed or dismissed.¹⁸

A very recent (1954) Montana case is very much in point concerning the part of the statute on dismissal for alleged immorality, unfitness, incompetence or violation of rules. The court's ruling is quoted:

Board of school trustees had the right and power under statute to discharge a teacher only for immorality, incompetence, unfitness or violation of rules adopted by board and made a part of teachers contract by reference, and discharge of teacher on any other ground would constitute a breach of such contract.¹⁹

¹⁷78, C.J.S. Schools, Section 202, 1079.

¹⁸Davis v. School Committee of Somerville, 30 N.E. 2d 401, 307 Mass. 354.

¹⁹Hovland, loc. cit.

This interpretation of the statute is very explicit and seems to limit teacher dismissal to the four reasons indicated. The court also says that the trial judge properly instructed the jury as follows:

You are instructed that our statutes give a school board the right and power to discharge a teacher for only the following causes: (1) immorality, (2) incompetence, (3) unfitness, (4) violation of rules. Therefore, if you find from a preponderance of the evidence, that the school board dismissed the plaintiff on any ground other than those listed above, then you must find that the school board breached its contract with the plaintiff.²⁰

This language as used by the Montana Supreme Court leaves little doubt as to what constitutes sufficient reason to dismiss a teacher. The next step logically would be to determine the meaning of the terms immorality, incompetence, unfitness, and violation of rules.

One of the two Montana cases in point, is Kellison v. School District²¹ where the school board dismissed Kellison for immoral conduct. The father of a female pupil accused Kellison of misconduct toward his daughter. Just what that conduct was is not stated, although there appears in the court record, the words, "indecent proposals."

Upon review of the evidence a couple of months later

²⁰Ibid., P 212.

²¹Kellison v. School District No. 1 of Cascade County
20 M 153, 50 P 421.

the board reversed its decision and expunged from its records all matter pertaining to the case.

The second Montana case is Hovland v. School District where the court states:

The "rules," a violation of which gives the school board the right and power to discharge, are the rules and regulations adopted by the board and made a part of the teacher's contract by reference.²²

This case holds that Hovland was not dismissed for failure to follow rules of the board, but that she was dismissed for failure to follow rules prescribed by the superintendent and that the statute refers to rules of the board not to rules of the superintendent.

Since there are not enough Montana cases to establish what would be deemed sufficient cause for dismissal of a teacher, an examination of various other states' cases should help. These cases are listed under the four reasons enumerated by the Montana statute justifying dismissal. If a case does not specifically fall under one of the Montana causes for dismissal that case appears under miscellaneous.

Immorality

School teacher held guilty of "misconduct" justifying dismissal by school board where he entered school building in evening with young ladies without turning on lights.²³

²²Hovland, loc. cit.

²³Grover v. Stovall 237 Ky. 172, 35 SW 2d 24, 26.

Plaintiff in this case was a teacher in the public schools, and was so circumstanced as that both patrons and pupils regarded him in the light of an exemplar whose conduct might be followed by his pupils, and the law by necessary intendment demands and requires that he should not engage in any conduct inevitably calculated to invite criticism and of a nature and character justly productive of suspicions of immorality.²⁴

Board of education of Memphis City Schools had right under statute to dismiss teacher who had made ungrounded charges that there was organized immorality in certain school.²⁵

Evidence that teacher failed to disclose to school district board that she was engaged in business of distribution and selling malt beverages, and that she procured liquor license in teacher's name for purpose of misleading Liquor Control Board which would not have issued the license to teacher's father who operated the business, justified teacher's dismissal on ground of "immorality."²⁶

Incompetence

A teacher, although employed for a definite length of time, who proves to be incompetent, and unable to teach the branches of instruction he is employed to teach, either from lack of learning or from want of capacity to impart learning to others, or in any other respect fails to perform the obligations resting upon him, may be dismissed from such employment by the proper authorities, for, when he accepts such employment, he agrees by implication that he has the learning necessary to enable him to teach the branches that are required, as well as that he has capacity in a reasonable degree of imparting that learning to others; he agrees also

²⁴Ibid. P 24.

²⁵Hayslip v. Bondurant, 250 S.W. 2d 63, 64, 194 Tenn. 175.

²⁶Appeal of Batrus, 26 A 2d 121, 148 Ap. Super 587.

that he will exercise reasonable care and diligence in the advancement of his pupils in their studies, and in preserving harmony, order and discipline.²⁷

Evidence that school teacher acted as waitress, and on occasion, as bartender, in husband's beer garden after school hours and during summer vacations, that in husband's beer garden and in presence of pupils, teacher took a drink of beer, served beer to customers, and shook dice with customers for drinks, played and showed customers how to play a pinball machine, justified dismissal of teacher on ground of "incompetency."²⁸

. . . appellant's rating was below that of a properly qualified teacher; that he used ungrammatical language; that he failed to comply with requirements as to the flying of the national flag; that he was unable to properly instruct his pupils; and that his "discipline" and "motivation" were poor.

Evidence and findings established petitioner's lack of ability or fitness to discharge required duties of a teacher, and supported finding of incompetency as a cause for termination of teacher's contract.²⁹

Evidence sustained action of board . . . in dismissing school teacher on ground that physical disability rendered teacher incompetent to perform her duties.³⁰

An isolated case of reasonable corporal punishment by a school teacher does not constitute

²⁷Crawfordsville v. Hays, 42 Ind. 200.

²⁸Horosko v. School District of Mount Pleasant, 6 A 2d 866, 335 Pa. 369.

²⁹In re Lane, 14 A 2d 573, 573-4, 141 Pa. Super. 259.

³⁰Loucks v. Board of Education of City of Amsterdam, 16 N.Y.S. 2d 733, 258 App. Div. 1003.

incompetency as cause for removal or disciplinary action.³¹

Pregnancy constitutes "incompetency" under Teacher Tenure Act, and justifies termination of contract on that ground since it renders teacher physically incapable to discharge her duties.³²

Evidence that school teacher who was of admittedly good morals and who intellectually and so far as teaching ability was concerned was competent, signed an election nomination paper for a candidate of Communist Party, and that several protests were received after newspaper published his name, was insufficient to warrant teachers dismissal under the statute on ground of "immorality," or "incompetency."³³

Where statute imposed on public school teacher the duty of teaching students by precept and example, honesty and patriotism, school board was justified in removing as incompetent a teacher who was a conscientious objector, opposed to participation in war and to service within combat or noncombat forces of the United States.³⁴

A teacher, in accepting employment, implicitly agrees that he has the learning necessary to enable him to teach the branches to be taught, and that he has the capacity in a reasonable degree of imparting that learning to others.³⁵

³¹Watts v. Winn Parish School Board, 66 S. 2d 350.

³²West Mahonoy TP. School District v. Kelly, 41 A 2d 344 156 Pa. Super. 601.

³³Board of School Directors of School District of Borough of Wilmerding, Allegheny County, v. Gillies, 23 A 2d 447, 343 Pa. 382.

³⁴State ex rel. Schweitzer v. Turner et al Members Board of Public Instruction, 19 S 2d 832, 155 Fla. 270.

³⁵Biggs v. School, City of Mt. Vernon, 90 N.E. 105, 45 Ind. App. 572.

Unfitness

Mental condition unfitting teacher to instruct or associate with children is sufficient cause.³⁶

Insubordination and failure to recognize constituted authority may render teacher unfit for service in school even though her qualifications are otherwise sufficient.³⁷

Violation of Rules

Rule adopted by board of education requiring all classroom teachers to take a mental ability test was reasonable, and the refusal to comply therewith would justify cancellation of contract of employment of tenure teacher for insubordination.³⁸

A regulation requiring teachers to be residents of school district would be a reasonable requirement, violation of which would constitute a ground for dismissal.³⁹

Where contract between teacher and consolidated school district required teacher to observe the rules of the district board, and although teacher was assigned to the fourth and fifth grades, she took charge of the seventh grade, and did not offer to teach in the position assigned to her, teacher's conduct amounted to a plain neglect of duty justifying her dismissal by the board. . . .⁴⁰

³⁶Board of Education of San Francisco Unified School District v. Mulcahy, 123 P 2d 114, 50 Cal. App. 2d 518.

³⁷Board of Education of City of L.A. v. Swan, 261 P 2d 261 41 C. 2d 546.

³⁸State ex rel Steele v. Board of Education of Fairfield, 40 So. 2d 689, 252 Ala. 254.

³⁹Jones v. School District of Borough of Kulpmont, 3 A 2d 914, 333 Pa. 581.

⁴⁰Consolidated School District No. 4, Bryan County, v. Millis, 139 P 2d 183, 192 Okl. 687.

Willful refusal of teacher to obey reasonable rules and regulations of employing board of education constitutes insubordination as ground for dismissal.⁴¹

In view of rule of Board of Education requiring a teacher or other employees of any school district governed by such board to answer questions of any legislative committee relating to present or past membership in any organization advocating forceful overthrow of government, and provision of Education Code prohibiting the advocacy and teaching of Communism, refusal of a teacher to answer questions of State Senate Committee concerning her activities in Communism constituted unprofessional conduct, authorizing her discharge.⁴²

School boards may adopt and enforce such reasonable rules governing the management of their affairs and the conduct of teachers and other employees as may be proper.

Teachers violation of school board rule forbidding female teacher to marry, would not be ground for termination of teacher's contract under Teacher Tenure Act, since board was not empowered to make such rule.⁴³

Two absences from school by permanent teacher without leave do not constitute persistent course of conduct authorizing his removal for violation of or refusal to obey school board's rules and regulations.⁴⁴

⁴¹Board of Education of City of L. A. v. Swan, 261 P 2d 261, 41C 2d 546.

⁴²Board of Education of City of L.A. v. Wilkinson, 270 P 2d 82, 115 C.A. 2d 100.

⁴³Goff v. School District of Borough of Shenandoah et al, 35 A 2d 902, 154, Pa. Super. 239.

⁴⁴Fresno City High School District v. DeCaristo, 92 P 2d 668, 33 Cal. App. 2d 666.

Miscellaneous

Complaint . . . which charged school teacher with inefficiency in teaching and in management of classes, resulting from inability to maintain discipline, refusal to accept correction from supervisors, and use of language to children which was unfitting and unladylike in a teacher, was sufficient to give the commissioner jurisdiction to hear and determine the charges made against the teacher.⁴⁵

Evidence that principal failed to conform to accepted and recognized standard as to supervision of instruction, failed to give proper direction to teachers, and failed properly to coordinate courses of study from year to year, sustained charge of willful and persistent negligence, so as to authorize his dismissal.

Evidence supported finding that principal wilfully, and persistently violated school laws and his contract in failing to conduct monthly fire drills as required by law, so as to justify his dismissal.⁴⁶

Refusal to accept teaching assignment may constitute willful and persistent negligence, justifying dismissal.⁴⁷

Evidence warranted teacher's dismissal for persistent negligence in time of arrival at school in morning, and in not furnishing county school superintendent with copy of daily program for his approval.⁴⁸

⁴⁵State ex rel. Cochrane v. Peterson, 294 NW 203, 208 Minn. 361.

⁴⁶Swick v. School District of Borough of Tarentum, 25 A 2d 314, 344 Pa. 197.

⁴⁷Appeal of Ganaposki, 2 A 2d 742, 332 Pa. 550.

⁴⁸Spruce Hill TP School District v. Bryner, 25 A 2d 745, 148 Pa. Super. 587.

A teacher has the right to inflict reasonable corporal punishment upon a pupil for insubordination, disobedience, or other misconduct, but he had no right to inflict punishment to enforce an unreasonable rule, and the punishment must not be inflicted with such force or in such manner as to cause it to be cruel or excessive.

The conduct of teacher in whipping pupil with a paddle made of flooring was sufficient to justify school board in discharging teacher, where pupil was punished twice on the same day, the first time for suggesting a riddle and the next time because he threw a paper wad at the teacher.⁴⁹

Failure to control pupils is ground for dismissal, even though the teacher is not unfaithful in the discharge of his other duties.⁵⁰

Evidence as to severe beating inflicted by teacher and principal upon 12 year old school boy as corporal punishment was sufficient to justify removal of principal and teacher.⁵¹

A teacher's refusal to accept an assignment which school board has power to make constitutes a violation of school laws for which he may be dismissed.⁵²

The violation of teacher's oath of patriotism and allegiance prescribed by school code, justifies revocation of his credentials and constitutes "unprofessional conduct," within meaning of provisions of code governing dismissal.⁵³

⁴⁹Berry v. Arnold School District 137 SW 2d 256, 199 Ark. 1118.

⁵⁰Eastman v. Rapids District Tp., 21 Iowa 590.

⁵¹Houeye v. St. Helena Parish School Board, 67 S 2d 553, 223 La. 966.

⁵²Commonwealth ex rel Wesenberg v. School District of City of Bethlehem, 24 A 2d 673, 148, Pa. Super. 250.

⁵³Board of Education of City of Eureka v. Jewett, 68 P 2d 40421 Cal. App. 2d 64.

Teacher's advocacy before public school pupils of election of particular candidate for public office held "unprofessional conduct" warranting suspension of teacher.⁵⁴

Evidence sustained finding of board of education that teacher was guilty of misrepresentation and fraud in making of application for loan, and that thereby teacher was guilty of conduct unbecoming a teacher, justifying teacher's dismissal.⁵⁵

City superintendent of schools, who participated in bringing charges against members of board of education before state board of education because of board's interference with superintendent in his lawful rights and duties, was held not guilty of "insubordination" so as to authorize his removal, since charges were brought in his individual rather than his official capacity.⁵⁶

Where public school teacher wrote to former student who failed to register under Selective Service Act, congratulating student on his "courageous and idealistic stand" and stating that "you and others who take the same stand are the hope of America," the board of education was warranted in removing teacher for "cause."⁵⁷

Findings that permanent teacher and school principal made derogatory statements and used undignified language with reference to school administrative officers, continuously disregarded rules, attendance at meetings called to assist principals in their work, patently suggested to teacher's violation of rule requiring that classroom keys be

⁵⁴Goldsmith v. Board of Education of Sacramento City High School, 225 P 783, 66 Cal. App. 157.

⁵⁵Smith v. Carty et al, 199 A 12, 120 N.J. Law 335.

⁵⁶Smith v. Board of Education of Ludlow 94 SW 2d 321, 264 Ky. 150.

⁵⁷Joyce v. Board of Education of City of Chicago, 60 N.E. 2d 431, 325 Ill. App. 543.

left in the principal's office, and refused to accept two teaching assignments warranted her dismissal.⁵⁸

Teacher refusing request of county health officer and schools authorities to remain away from school until he recovered from smallpox held subject to discharge.⁵⁹

Evidence that school teacher was often late, that he left building during school hours for extended periods of time, that he did not regularly assign lessons, that long periods of time elapsed between assignments of lessons and recitation thereof, that he brought snake to school, experimented with explosives, cracked coconuts and played checkers with students during school hours, warranted his dismissal by board . . .⁶⁰

A fist fight in the office of the superintendent of schools in a public school building by the superintendent and a high school teacher in a subordinate position held sufficient to justify the school district board in dismissing the former for cause, after notice and hearing.⁶¹

Where teachers in New York City schools refused to answer questions asked of them by Senate Investigating Committee, whether they were Communists, on ground that their answer might tend to incriminate them, they were properly discharged. . . .⁶²

⁵⁸Board of Education of City of L.A. v. Swan, 261 P 2d 261, 41 C. 2d 546.

⁵⁹Overstreet v. Lord et al 134 So. 169, 160 Miss. 44.

⁶⁰Cadman v. School Directors of School District No. 14 Winnebago County, 6 N.E. 246, 288 Ill. App. 627.

⁶¹Arehart v. School District No. 8 of Hitchcock County, 289 N.W. 540, 137 Neb. 369.

⁶²Daniman v. Board of Education of City of New York, 118 N.Y.S. 2d 487, 488.

Evidence was sufficient to justify conclusion that teacher in public high school, who was a member of the Communist party, was fully acquainted with policies and purposes of Communist party and justified discharge of such teacher on ground that she advocated and participated in un-American or subversive doctrines.⁶³

This is not an attempt to list every reason deemed justifiable or not, as the case may be, for the dismissal of teachers. It is rather a sampling of cases to present a general picture of what may or may not be sufficient reason to dismiss a teacher. Other reasons will appear, or have already appeared in this paper.

It must be remembered also, that many teachers are dismissed arbitrarily without any legal action being taken. The above list includes only those cases that have reached the supreme courts of the various states.

While the power and duties of the board of trustees, and the procedures involved in teacher dismissal will be covered in detail in later chapters, a synopsis of them as they pertain to causes for dismissal follow here.

The board of trustees has the power and duty to hire and dismiss teachers, but this function must be carried out in a judicial manner. The board should act only after due consideration of the evidence, and without passion, prejudice, or caprice. Statutory procedure on teacher

⁶³Appeal of Albert, 92 A 2d 663, 372, Pa. 13.

dismissal must be followed with proper notice and hearing, so that teachers are dismissed in a fair and proper manner. Since the Montana Supreme Court has stated that teachers may be dismissed only for alleged immorality, unfitness, incompetence, or violation of rules, school boards should justify dismissal under one of these four reasons.

CHAPTER III

EFFECTS OF TEACHER TENURE

MONTANA TENURE LAW

In Montana the teacher tenure act was first enacted in 1913, re-enacted in 1921, and amended in 1939 and 1949. As it now (1955) stands it reads as follows:

Re-election of teachers -- when automatic -- acceptance. After the election of any teacher or principal for the third consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of such notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall

be regarded as conclusive evidence of his nonacceptance of the position.¹

PURPOSE

In general the purpose of a tenure law is to give teachers security in their positions and to protect them against removal for unfounded or political reasons, and to benefit the public generally by assuring a competent and efficient teaching force. This general purpose has been stated by the Montana Supreme Court in the following language:

. . . the teacher tenure act is based upon the public policy of protecting the educational interests of the state . . . it should be construed liberally to effect the general purpose of the act.²

The purpose of enabling the Teacher Tenure Act is not merely to insure teachers teaching employment, but to insure to teachers, who have held teaching positions for three or more consecutive years, security in the position, grade, or status which they have thus attained.³

The New Jersey court states it thus:

The tenure provisions of the school laws were designed to aid in the establishment of a competent

¹Revised Codes of the State of Montana, 1947
(annotated) (Allen Smith Company, 1949,) Section 75-2401.

²State ex Rel. Saxtorph v. District Court, __ M __, 275 P 2d 215.

³Smith v. School District No. 18, Pondera County, 115 M 102, 109, 139 P 2d 518.

and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service and should be given liberal support consistent with legitimate demands for government economy.⁴

The Missouri court says:

The general purpose of teacher tenure statutes is not to grant special privileges to teachers as a class but to protect and improve state education by retaining in their positions teachers who are qualified and capable and who have demonstrated their fitness and to prevent dismissal of such teachers without just cause.⁵

EFFECT OF TENURE LAW ON DISMISSAL

There are four general situations that could exist where teachers might be dismissed. The failure of a school board to re-employ a non-tenure teacher (sometimes referred to as probationary teachers) at the end of the contract is the first situation. Situation number two is dismissal of a probationary teacher during life of the contract. Situation number three is the dismissal of a tenure teacher during the life of the contract. While the fourth and last situation concerns dismissal of a tenure teacher at the end of the school year.

The first situation above, as previously discussed

⁴Viemeister v. Board of Education of Borough of Prospect Park, 5 N.J. Super. 215, 68 A 2d 768.

⁵State ex Rel. Wood v. Board of Education of the City of St. Louis, 206 S.W. 2d 566.

in Chapter II, is not really a dismissal and re-employment rests with the pleasure of the board without danger of legal complications.

The Montana Code section on teacher dismissal previously discussed in Chapter II makes no distinction between tenure and non-tenure teachers. It specifically states "dismissal before the expiration of any written contract," which seems to include both kinds of teachers. It appears, therefore, that cases of dismissal before the expiration of the contract for both tenure and non-tenure teachers will be treated under that section of the code. Since there is no distinction between tenure and probationary teachers either under Montana Statutes or Supreme Court decisions, these two situations will be considered together, as being a dismissal during the life of the contract.

The last general situation whereby a teacher might be dismissed occurs under the teacher tenure code which specifies conditions precedent to dismissal of tenure teachers at the end of the contract. From reading the tenure law and cases in point, the legislative intent seems to be to bring dismissal of tenure teachers at the end of the contract in line with dismissals during the year. If such is the case, an examination of each kind of case as to specifications for dismissal should clarify the

situation. An examination of the tenure law follows with a comparison of dismissal during the life of the contract.

NOTICE

The tenure law requires written notice to the teacher, before April 1, that his services will no longer be required for the ensuing year. The Montana Supreme Court has clarified the word "notice" somewhat, by the following:

. . . Held, in a teacher's action for breach of contract, that the statutory provision became a part of the contract of employment, binding upon both the teacher and the board of trustees; that the notice of dismissal must be clear and explicit, and that, no such notice having been given, plaintiff was automatically re-elected for the ensuing school year and entitled to recover the salary due her for the first month of that year as prayed for in the complaint.⁶

The requirements of this section with regard to notice of termination of employment are not mandatory and need not be strictly construed against school district in favor of teacher, but the act should be liberally construed to effect general purpose.⁷

A notice given to a teacher by school board that it "decided not to renew your contract" substantially complied with this section and was sufficient to terminate teacher's contract of employment.⁸

A conversation between teacher and chairman of

⁶McBride v. School District No. 2 of Silver Bow County, 88 M 110, 112, 290 P 252.

⁷Eastman v. School District No. 1 of Lewis and Clark County, 120 M 63, 180 P 2d 472, 479.

⁸Ibid.

board of trustees of school district in which chairman orally informed teacher that board had decided not to re-employ teacher did not comply with statute requiring "written notice" to teacher on first day of May [since changed to April] that his services would not be required for ensuing year.⁹

Teacher's alleged statements that he did not wish to continue as teacher did not relieve school district of statutory duty to notify him in writing of intention not to re-employ him.¹⁰

An employment contract with a teacher in continuing service status may be cancelled by mutual agreement between the teacher and the board of education without notice and an opportunity for hearing as provided by the statute.¹¹

Notice then does not have to follow wording of the statute as long as it is clear and explicit, but it must be given by April 1, and for tenure teacher at end of the year it must be written.

For notice required to a tenure or a probationary teacher upon dismissal during the year the various state courts do not seem to be in agreement. But in general this notice does not have to be in writing unless required by statute.¹²

⁹Smith, loc. cit.

¹⁰Common School District No. 27 of Gasconade County v. Brinkmann 233 S.W. 2d 768.

¹¹Enzor v. Faircloth, 43 So. 2d 811.

¹²Arehart v. School District No. 8 of Hitchcock County, 289 N.W. 540, 137 Neb. 369.

This notice must, however, be given to the teacher in some form or other.¹³

HEARING

Statutory provisions become a part of a contract¹⁴ so a request for a hearing and the time limits involved being very explicitly stated in statute would have to be followed. However, the manner and methods involved are not stated in the statute. Montana defines a hearing as:

A hearing as to the fitness of a district school superintendent to act as such presupposes that charges were preferred, that notice had been given the incumbent to enable him to prepare for and refute the charges, that evidence was taken at the hearing with opportunity for cross-examination of the witnesses -- all for the purpose of determining in a judicial manner the truth or falsity of the charges.¹⁵

A district school superintendent appointed under this section by the board of school trustees, occupies a different position from that of a teacher employed under section 75-1632; he is the executive officer of the board and as such a public officer, and while there is no statutory provision requiring a hearing before removal, there is a well-defined public policy declared by decisions of the supreme court that one in public office for a fixed term is entitled to such hearing to meet the demands of common justice and only a legislative act will warrant a deviation from it.¹⁶

¹³Ibid.

¹⁴Home State Bank of Manhattan v. Howard, 72 M 425, 234 P 281.

¹⁵State ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

¹⁶Ibid.

It has been generally stated by courts that a hearing should consist of: (1) The common law ideal of fair procedure should be followed, including the requirement of sworn testimony, cross examination, rebuttal, formal introduction of evidence, right of subpoena, etc. (2) The admission of only trustworthy evidence, such as is generally understood under our system of government and jurisprudence. (3) Privileged communications had in confidential relationships should be shielded for social reasons. (4) The witness should be protected from self-incrimination or involuntary confession.

The school board in these hearings is acting in a quasi-judicial capacity and a verdict based on the evidence presented, in the absence of prejudice, is final and will not be set aside by the courts. Failure to grant the hearing or the manner in which it is conducted will, however, be subject to review by the court. The Montana Court held:

In this, [this refers to teacher employment] and all like questions properly coming before them, the members of the board act in a quasi-judicial capacity, and with the proper exercise of their discretion and judgment, the courts will not interfere. The record here does not show an abuse of discretion on part of any of the school authorities.¹⁷

¹⁷Kelsey v. School District No. 25 of Custer and Rosebud Counties, 84 M 453, 276 P 26, 27.

That the courts will not interfere with the discretion of school officials in matters which the law has conferred to their judgment, unless there is a clear abuse of that discretion, or arbitrary or unlawful action, seems to be the unanimous holding of the authorities.¹⁸

It is unquestionably the policy of this state, as declared by the Legislative Assembly, that ordinary school controversies shall be adjusted by those who are specially intrusted with that duty. It is not the policy to encourage resort to the courts in such matters. So long as the school officers act legally and within the power expressly conferred upon them the courts will not interfere.¹⁹

This agrees with the general rule throughout the United States as evidenced by what the Louisiana Court held:

The reasons for dismissal of a teacher are largely in the discretion of the school board, . . . and unless it is clearly shown that the board has abused that discretion, the courts will not interfere.²⁰

While the Howard case above applies to a district superintendent, the court's language implies that any public official is entitled to a hearing. Whether a teacher would be entitled to one or not, seems to be clarified in Kelsey v. School District:

We think it is the general rule that a teacher who has a contract for a definite term cannot be

¹⁸State ex rel. Ingersoll v. Clapp, 81 M 200, 263 P 433.

¹⁹State ex rel. School District No. 86 of Richland County v. Trumper, 69 M 468, 222 P 1064.

²⁰State ex rel. Piper v. East Baton Rouge Parish School Board, 213 La. 885, 35 S 2d 804.

discharged before the expiration, without cause or without hearing.²¹

In the Kelsey case above, the court does not mention tenure (Kelsey was a non-tenure teacher), they only state the general rule for a teacher. It would seem therefore, that although a notice might not be required by law in any case except when the board does not intend to re-employ a tenure teacher, a hearing is required in all cases. A hearing was held in all Montana Supreme Court cases of dismissal. In the Kellison case, the court held that Kellison could not complain that he had no hearing upon dismissal, as a hearing was subsequently held at a later date.²²

PROCEDURE

The procedure under the Montana tenure statute has been outlined by the Montana Supreme Court as follows:

In taking the right of tenure from a teacher, the law provides that certain steps shall be taken:

- (1) The school board shall, on or before the first day of April, give notice in writing to the teacher that his (or her) services will not be required for the ensuing year;
- (2) The school board, if requested by the teacher, shall declare clearly and

²¹Kelsey, op. cit., P 454.

²²Kellison v. School District No. 1 of Cascade County, 20 M 153, 50 P 421.

explicitly the specific reason or reasons for the failure to re-employ such teacher;

- (3) The School board, if requested by the teacher shall grant a hearing and reconsideration of such dismissal to such teacher;
- (4) The school board must hold such hearing and reconsider its action within ten days after receipt of such request.²³

Procedure under common law would follow much the same form with the possible exception as to time limits, with a reasonable time substituted for specific time under the statute.

When does the teacher become a tenure teacher? According to the statute, the teacher acquired tenure after election for the third consecutive year. This wording has been repeated time after time by the Montana Supreme Court, so evidently the wording is clear and explicit and needs no further explanation. Election would mean signing of the contract for the third year or an automatic acceptance after April first if the school board did not give notice of intent not to re-employ. The word consecutive has not been clarified by our court, so what is meant by third consecutive year will be left to a future decision.

The statute also means that this automatic re-election will be at the same salary and under terms of the same

²³Saxtorph, op. cit. P 214.

contract. The Montana court has held:

This section providing that when a teacher has served three consecutive years in any district in the state she shall be deemed re-elected from year to year unless given notice on or before the first day of May [amended, now April] that her services will not be required for the ensuing year, means re-employment under the same terms and conditions as the preceding year's employment.²⁴

The purpose of the teacher tenure act being not merely to insure teaching employment, but also security to teachers in the position, rank, grade or status they have attained.²⁵

APPEAL

The right to appeal to higher authority upon dismissal is generally statutory and Montana agrees with this general rule.

The provision in the school law that in case of dismissal of a teacher, before the expiration of her written contract, she may appeal to the school authorities becomes as much a condition of the contract as if expressly written therein.²⁶

From the action of the board in discharging the plaintiff she had a plain, speedy, and adequate remedy -- by appeal first to the County Superintendent, and, having

²⁴Moses v. School District No. 53 of Lincoln County, 107 M 300, 305, 86 P 2d 407.

²⁵Smith, loc. cit.

²⁶Kelsey, loc. cit.

been unsuccessful in that, to the State Superintendent of Public Instruction.²⁷

Montana Statutes provide for appeal on dismissal, first to the County Superintendent (Section, 75-2411),²⁸ and then to the State Superintendent (Section, 75-1418).²⁹

The time limit within which this appeal must be taken is not covered by statute, but there is a court decision on time for appeal:

No time having been fixed by statute within which an appeal may be taken from the decision of a county superintendent of schools, and in the absence of regulations by the state superintendent with relation thereto, the appeal may be taken within a reasonable time after the making of the decision, a limitation of six months being deemed reasonable.³⁰

WHAT IS TEACHING

Another point under tenure to be considered concerns the amount of time a teacher must spend teaching to enable her to become a tenure teacher. In Saxtorph v. District Court, where Saxtorph taught only in the mornings, the court held:

"The number of hours a teacher may teach in a day

²⁷Saxtorph, op. cit., P 217.

²⁸Montana Code, op. cit., P 956.

²⁹Ibid., P 875.

³⁰Trumper, loc. cit.

is not a factor in determining her right to tenure."³¹

The kind of teaching and character of services rendered by the teacher determine whether the teacher acquires tenure rather than oral or written agreements with the board of trustees.³²

SUMMARY

The Montana Teacher Tenure Act will be liberally construed to effect the purpose of the act, which apparently is in improving education in Montana by giving teachers some security in their jobs.

After a teacher has been elected for the third consecutive year the school board must give notice not to re-employ, and this notice must be in writing, stating clearly and explicitly that teacher's services will not be required for the ensuing year. If the teacher so requests, the school board must state causes for not employing and conduct a hearing on these causes or reasons. This hearing by the school board must be conducted with the board acting as a judicial body. The board should hear evidence, swear witnesses, cross-examine and weigh the evidence without prejudice.

³¹Saxtorph, op. cit., P 215.

³²Holbrook v. Board of Education of Palo Alto, 221 P 2d 205.

The tenure act has no material effect on teacher dismissal during the life of a contract where common law and statutes prescribe that dismissal should be for cause and not arbitrary. A written notice is not required, but a proper hearing is required.

Upon dismissal a teacher may appeal to the County Superintendent and then to the State Superintendent of Public Instruction, and if it is shown that these school officials (including the board of trustees) acted within their discretionary power, the courts will not interfere.

The Montana Attorney General had this to say on the Montana Tenure Law:

Helena - Local school boards cannot fire teachers with tenure rights without legal grounds, and teachers about to be dismissed are entitled to written notice specifying the reasons.

Attorney General Arnold H. Olson said this in an opinion for Ravalli County Attorney E. Gardner Brownlee.

"A teacher or principal who has acquired tenure right by virtue of employment for three consecutive years may be deprived of this right only for legal cause," Olsen said.

He added, "If requested, the school board of trustees must furnish a written statement of charges against the teacher" whose contract is not renewed and "charges made must be substantiated by evidence with the right of the teacher to refute the charges with evidence offered in defense."³³

³³Associated Press dispatch, The Daily Missoulian [Montana], July 13, 1955.

CHAPTER IV
OTHER FACTORS EFFECTING DISMISSAL

DAMAGES

The first case in Montana that seems in point concerning damages for breach of contract is LeClair v. School District, and that case only stated that plaintiff (LeClair) must tender her services to school authorities before damages could be proved.¹

The second Montana case concerns Smith v. School District, where Smith sued to recover his yearly salary less what he might earn during the year. The Montana Supreme Court upheld Smith and he recovered.²

Ordinarily, the damages recoverable by a teacher for his wrongful discharge or removal from his position are the actual damages suffered by him as a result thereof. Damages for injury to his business reputation or for mental suffering have been held not recoverable in such an action. The amount of the damages consists of the full yearly salary unless the contract was broken during the year, and then damages would be only for the remainder of the contract.

¹LeClair v. School District No. 28 of Lake County, 74 M 385, 240 P 391.

²Smith v. School District No. 18 of Pondera County, 115 M 102, 139 P 2d 518.

School teacher could not recover damages for injury to business reputation and for mental suffering by reason of wrongful discharge by school board.³

A principal wrongfully discharged could recover his salary, including not merely the amount due at the time of the action, but full damages for breach of a three-year contract.⁴

A teacher or other similar employee of a school organization generally has a duty to mitigate the damages resulting from his wrongful discharge or removal from his position by using all reasonable diligence to secure other similar employment of the same kind and grade, provided such employment is obtainable by him at a place reasonably convenient to him. Courts of various states have stated the following on mitigation of damages:

Where principal and school teacher was wrongfully discharged, he was not required to accept employment as fourth grade teacher in the same school, . . .⁵

An employee, demanding damages for alleged breach of his contract of employment, may rest his case upon proof of a valid contract and its breach, the measure of damages being the contract price of his services. Mitigation of damages is an affirmative

³Durst v. School District No. 2 of Niobrara County, 273 P 675.

⁴Horvat v. Jenkins Tp. School District, 10 A 2d 390, 337 Pa. 193.

⁵State ex rel. Freeman v. Sierra County Board of Education, 49 N.M. 54, 234 P 2d 234.

defense, and its burden is entirely on the contract breaker. This burden is not sustained by showing that the injured party was offered employment, though similar to that contracted, unless at a place reasonably convenient to him. And earnings he actually received in dissimilar employment should not be credited on his contractual damages, unless the employment is shown to have been incompatible with his contractual service.⁶

In the above case, the plaintiff was a grade school principal, and the work done, in mitigation of damages that were not allowed, consisted of supervising adult education at night.

In action for breach of teaching contract, plaintiff was not required, in order to mitigate his damages, to seek employment in any line of service other than that in which he was employed by defendant.⁷

In determining employee's damages for employer's breach of contract, remuneration subsequently received by employee is subject to deduction for reasonable cost in obtaining such subsequent employment.⁸

In the above case, a school superintendent obtained a similar position at another school which necessitated reasonable expense of \$100 in moving. Such amount was a reasonable deduction to be allowed from the total sum

⁶Martin v. Board of Education of Lincoln County, 120 W. Va. 621, 199 S.E. 887, 888.

⁷Edgecomb v. Traverse City School District 341, Mich. 106, 67 N.W. 2d 87, 88.

⁸Ray v. Board of Education of Pond Creek, 194 Okla. 472, 153 P 2d 233.

received at new position, in mitigation of damages.

DUTIES AND POWERS OF THE BOARD

In general, powers and duties of school boards are purely statutory and are limited to those powers expressly conferred by statute or necessarily implied from those conferred.

Since the Montana Supreme Court held that one of the reasons for dismissal of a teacher would be violation of school board rules, an examination of those rules should be relevant. Under Montana Code, the board of trustees has the power to prescribe and enforce rules not inconsistent with law for their own government of schools under their supervision.⁹

In a Montana case, the court decided that a school board rule to require retirement at a certain age was in violation of the teacher retirement act, and was therefore of no effect.¹⁰

The Alabama Court held that a rule requiring teachers to take a mental abilities test was reasonable.¹¹

⁹Revised Codes of the State of Montana, 1947
(annotated) (Allen Smith Company, 1949), Sec. 75-1832 (1).

¹⁰Abshire v. School District No. 1 of Silverbow County, 124 M 224, 220 P 2d 1058.

¹¹State ex rel. Steele v. Board of Education of Fairfield, 40 So. 2d 689, 252 Ala. 254.

A rule requiring school teachers to be residents of the school district was held reasonable in Pennsylvania,¹² while a board rule against marriage was held unreasonable.¹³

The school board should furnish a copy of rules or regulations to the teacher, or see to it that the teacher is notified of them, or the court will not consider them as being part of the contract.¹⁴

Under the power to hire and dismiss teachers the law specifies method and factors involved in contracts.

To employ or discharge teachers, mechanics or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; nor unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.¹⁵

In Jay v. School District the court held a contract as being void where no legal teacher's certificate was held

¹²Jones v. School District of Borough of Kulpmont, 3 A 2d 914, 333 Pa. 581.

¹³Goff v. School District of Borough of Shenandoah et al, 35 A 2d 902 154, Pa. Super. 239.

¹⁴Blodgett v. Consol. School District No. 36 of Scott County, M App., 86 S.W. 2d 374.

¹⁵Montana Code, op. cit., Section 75-1632 (2).

by teacher.¹⁶ Evidently, the court would hold other contracts as being void if any part of the above statute was violated. A void contract is of no legal significance, and the school board could dismiss the teacher arbitrarily.

STATUTORY DUTIES OF THE TEACHER

The fact that statutes become a part of teacher contracts by reference has been established in many Montana cases, some of which have appeared above. In view of that situation, the Montana Supreme Court would evidently hold that violation of those statutory duties would justify dismissal of a teacher by the board of trustees.

Violation of a statutory duty by a school teacher does not seem inconsistent with the court's holding in Hovland v. School District, whereby a teacher could be dismissed for only four enumerated reasons, because the Montana Court would necessarily add violation of a statutory duty.

These statutory duties would probably be considered as general contract provisions, violation of which would justify dismissal as being a breach of contract.

No attempt was made here to enumerate these statutory

¹⁶Jay v. School District No. 1 of Cascade County, 24 M 219.

duties as they may be found in any book of Montana school laws.¹⁷

CONTRACT PROVISIONS

The usual common law rule is that persons may contract to do anything not contrary to law or public policy. So in general, contract provisions concerning teacher dismissal are valid unless they are in violation of law. The Oklahoma Court has stated: "A contract between a . . . school district and a teacher may provide grounds for dismissal of the teacher in addition to the statutory grounds."¹⁸

In the Montana case of Hovland v. School District the court apparently held that if there had been a contract provision specifying dismissal for failing to obey rules and regulations of the superintendent, then dismissal would have been justified. The court's holding is quote:

Where the contract of employment of high school teacher did not provide for her discharge for failure to cooperate with high school superintendent, act of board of school trustees in discharging teacher solely for alleged lack of cooperation with superintendent in failing to obey rules laid down by him was arbitrary and constituted a violation of teacher's contract, . . .¹⁹

¹⁷School Laws of the State of Montana, 1953, (Great Falls: Tribune Printing and Supply Co., 1953), p 250.

¹⁸Consolidated School District No. 4, Bryan County v. Millis, 192 Okl. 187, 139 P 2d 183.

¹⁹Hovland v. School District No. 52 of Stillwater County, __ M __, 278 P 2d 211.

Again in Moses v. School District, the Montana Court said in effect that, since the teacher's employment contract contained a provision making it void upon closing of the school, the board was justified in dismissing the teacher when the board did in fact close the school.²⁰

A general assumption, then, is that, if the school board desires the right to dismiss teachers for reasons other than statutory, contract provisions to that effect would be upheld by the courts providing these contract provisions were not against public policy (marriage, smoking, etc.) or against the law (politics, religion, race, etc.).

²⁰Moses v. School District No. 53 of Lincoln County, 107 M 300, 305, 86 P 2d 407.

CHAPTER V

SUMMARY

Dismissal is the termination of a teacher's contract by the school board during the life of the contract or at any time after the teacher has attained tenure, and this termination will give the teacher the right to sue for breach of contract.

Failure of a school board to re-employ a probationary teacher at the end of the term is not a dismissal, and the school board may re-employ or not as the board sees fit. Transfer of a teacher within a school district to an equivalent job is not considered a dismissal, therefore boards of trustees may do so. The closing of a school by an action of law gives the board the right to let a teacher go, but generally closing of the school for other reasons will constitute a dismissal, if the board discharges the teacher.

Dismissal in Montana is controlled by statute and the Montana Supreme Court has interpreted the statute to permit school boards to dismiss teachers only for alleged immorality, unfitness, incompetence or violation of rules. Therefore when a school board desires to dismiss a teacher the board should enumerate its reasons so as to fall within one of these four categories.

The Teacher Tenure Act was passed to give teachers security in their positions and to protect them against

removal for unfounded or political reasons, and to benefit the public generally by assuring a competent and efficient teaching force. After a teacher has been elected for three consecutive years the teacher will be deemed re-employed from year to year unless the board takes affirmative action to dismiss. The law specifies a written notice by April first and if the teacher requests a hearing, that request must be granted. This law applies only to the teacher after the third election, and then only at the end of each year.

For dismissal of either a tenure or a probationary (one who has not attained tenure) teacher during the life of the contract there must be a notice and a hearing. The notice would not necessarily have to be written. The hearing must be carried out in a fair and impartial manner with due notice to such things as: sworn witnesses, proper introduction of evidence, cross-examination, rebuttal, and protection of the witnesses on self-incrimination and privileged communications.

Upon dismissal of a teacher by a school board the teacher may appeal to the County Superintendent, and then to the State Superintendent of Public Instruction. This appeal must be within a reasonable time, and if the teacher is still not satisfied, court action may be taken. If it is shown that these school officials acted within their discretionary power, and that legal procedures were followed

as to notice and hearing the courts will not interfere.

One of the powers and duties of the board of trustees is to employ and dismiss teachers, and this must be carried out according to statutory provisions, as the board has no more legal power than has been granted to it by statute.

There are three general methods for board control of teachers and their dismissal. Violation of statutory duties on the part of the teacher constitutes grounds for dismissal, as statutory provisions become a part of the contract. Boards may also control teacher dismissal by rules and regulations adopted by the board for the governing of the school, but the teacher must in fact have knowledge of these rules and regulations. The last general method of control of the teacher by the board is by provisions in the contract of employment.

In case of dismissal of a teacher by a school board without cause the teacher has an action in court for breach of contract. Recovery in court of the amount of damages will be for the face value of the contract minus any salary already paid and any earnings by the teacher in another job of similar duties and in the same locality.

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