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Legal Aspects of the Teacher Tenure Laws

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LEGAL ASPECTS OF THE TEACHER TENURE LAWS

BY
ARTHUR PAYNE CRABTREE

A Dissertation Submitted in Partial Fulfillment
of the Requirements for the Degree
Master of Science

COLLEGE OF EDUCATION

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PREFACE

The purpose of this study has been to discover those guiding principles which have been followed in the laws of those states having permanent teacher tenure legislation as such principles have manifested themselves in the work of the legislators who framed the laws and in the decisions of the courts which have given them judicial interpretation. Such a study finds its justification in the growing concern with which the problem of teacher tenure has been attended in recent years. In order to deal intelligently with the principal, superintendent, and board of education, the teacher should be familiar with the law which governs his action and the attitude of the courts toward that law. The results of such a study should be equally valuable to school executives and school boards.

The writer acknowledges a certain indebtedness to the departments of education in the states having permanent tenure laws, whose prompt assistance greatly facilitated the completion of this study. The kindly cooperation of the staff of the Supreme Court of Indiana law library is remembered with gratitude. The personal contributions of Mr. Charles Williams, Secretary of the Indiana State Teachers' Association, have been exceedingly helpful in the interpretation of the Indiana Tenure Law. The author is also indebted to Dr. Albert Mock and Dr. James Peeling of the Department of Education of Butler University and to Dr. W.L. Richardson in particular, whose sympathetic and kindly criticism has inspired whatever degree of quality the work may possess.

A.P.C.

Indianapolis,
Indiana,
1935

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LEGAL ASPECTS OF THE TEACHER TENURE LAWS

CHAPTER I

INTRODUCTION

✓ The problem of tenure has always been of much concern to the teaching profession. Within recent years, however, it has become increasingly important. This has been the result of certain factors which may be listed as follows: personal and political favoritism, an oversupply of teachers, the economic depression, and a lack of full appreciation of the educational needs of the children.¹ As a result of this insecurity of tenure there has developed a legislative movement aimed to secure more protection for the teacher in service against the various forces that cause unjust dismissal.

History of the Movement

✓ Perhaps the first step in this movement occurred in

¹ R.R. Foster, "Continuous Employment for the Teacher", The Journal of the National Education Association, XX, p.343.

Boston, in 1889. In that year was enacted the first municipal law attempting to guarantee permanent tenure to efficient teachers in service. It provided for a probationary period of one year followed by four annual elections. If the teacher survived these five years he or she then was placed on permanent tenure, subject to removal only for cause on a hearing before the board of education. This first law was similar in many features to the most recent laws which we have on the subject at the present time. The first statewide law on the subject of teacher tenure was enacted by the legislature of New Jersey in 1909.² This law provided for permanent tenure following a probationary period of three years. This New Jersey act marked the beginning of similar enactments by other state legislatures affecting the security of the teachers in their positions. The basic intent of all this legislation seems to be the insurance to teachers of a security of tenure during good behavior and efficient service.

The Problem

The purpose of this study has been to discover those

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R.W. Holmstedt, Effects of Teacher Tenure Law in New Jersey, p. 1. Bureau of Publications, Teachers College, Columbia University, 1932.

guiding principles which have been followed in those states having permanent teacher tenure laws as such principles have manifested themselves both in the work of the legislators who framed the laws and in the decisions of the courts which interpreted them. The study, therefore, naturally divides itself into two major activities: an examination of the tenure laws of the various states having such permanent tenure enactments to determine the basic features which are common to them all and, secondly, a study of the decisions of the Supreme and Appellate Courts in those states to determine the trends of interpretation which are being followed with regard to those basic features. Such analysis and resultant findings should serve as guiding principles for the teachers, school executives, and boards of education in their relations with one another over questions arising out of teacher tenure.

Limitation of the Problem

It is common knowledge that the term "tenure" stands in need of clarification. It is used with widely different meanings in different states and by different authorities. By "tenure of teachers" as used in this dissertation is meant that arrangement which provides that, after holding a given position a certain length of time, the teacher shall have a

legal right to the position and shall not be discharged except for statutory causes. There should also be made a distinction between tenure in any given locality and tenure in the profession.³ Obviously, in this study we are primarily concerned with the tenure of service in the given locality. No attempt has been made to consider the various types of tenure afforded by local agencies. Only that tenure secured by state legislation and guaranteeing permanent tenure after a probationary period of service has been considered. It is to be observed that there can be legislation by state legislatures germane to this dissertation while not statewide in its application. The term "teacher" as used in this study shall refer principally to the ordinary classroom teacher. In legal conception, however, the term is wide enough to include superintendents of city schools, principals, supervisors and other directors of instruction.

The Issues Involved

The movement to secure protected tenure has experienced a slow and difficult advance. It has been opposed by boards of education, legislators, and the general public. It has

3

E.E. Lewis, Personnel Problems of the Teaching Staff.
p. 344. New York: The Century Co., 1924.

also encountered opposition within the profession itself on the part of educational leaders who are doubtful of its value. Some authorities see in permanent life tenure a device detrimental to the profession and advocate a form of indeterminate tenure, based upon the efficient service of the teacher. This last view is shared by Professor Cubberley. Relative to this point he says, "Life tenure for all efficient teachers there should be, but it should come as a deserved reward for faithful and efficient service, and not as a guaranteed legislative right to all."⁴ Views of other educational leaders indicate little agreement among them relative to the desirability of permanent tenure on a state-wide basis.

Tenure legislation has been advocated in the belief that it would benefit both the teacher and the pupil. Proponents of such legislation advance in its favor the following arguments:

1. The teacher is protected from political prejudice and personal favoritism.
2. The anxiety of the teacher over failure of reelection is avoided.
3. Stabilization of the teaching staff and a decrease of teacher turnover will result.

⁴

E.P. Cubberley, Public School Administration, p. 215, Chicago: Houghton, Mifflin Co., 1922.

4. A higher quality of teachers will be secured because the profession will be more attractive with protected tenure.

5. Higher standards of service and professional growth will be effected because of greater care in selection of the personnel of the staff.

Opponents of tenure offer the following arguments:

1. It will protect the inefficient teacher by making his or her dismissal difficult.

2. Teaching efficiency will be impaired because teachers protected by tenure become independent and unprogressive.

3. Dismissal is actually increased. Many boards dismiss even the good teachers because of an unwillingness to place anyone on permanent tenure.

4. Tenure laws give to teachers an unusual degree of security of position over workers in other fields.

Over these issues controversy is still arising. Various studies have been made in an attempt to arrive at some accepted conclusions with reference to the desirability of protected tenure. Perhaps the most complete study of the problem has been made by the Committee of One Hundred on Tenure Problems of the National Education Association. The report made in 1924 deals largely with the controversial issues involved in the question. A similar report of this committee in 1932 presents a detailed study of the structure of various

types of tenure laws in the several states. State and local tenure laws in the United States and legislation in foreign countries have been examined.⁵ The opinions of leading educators on the issues involved in tenure legislation have been collected.⁶ Comparative studies of the rate of teacher turnover in cities in states having tenure with similar data from cities in states not having tenure seem to indicate a lower rate of turnover in the former.⁷ The operation of the California teacher tenure law has been studied by Bessac⁸ in which the relative merits of the law in the cities and in the rural districts were compared. It is obvious that many more researches are necessary before any satisfactory conclusions can be reached with regard to many of the issues of the problem. It is not the purpose of this study, however, to enter into a partisan position with regard to the question of permanent tenure for teachers. Therefore, little consideration of the controversial aspects of the situation is deemed

⁵ National Education Association, Research Bulletin, Vol. II, No. 5, pp. 156-158. Washington: 1924.

⁶ National Education Association, op. cit., pp. 159-167.

⁷ Ibid., pp. 218-219.

⁸ Harry Bessac, "How the Tenure Law Is Working", The American School Board Journal, LXXVIII, p. 132.

relevant to this study.

Methods of Collecting Data

This study has been built upon an analysis of the laws of those states which have permanent tenure in any form. Copies of these laws were secured from the state departments of instruction of the respective states, and from the office of the Board of Education of the District of Columbia. The decisions of the Supreme and Appellate Courts of these states were examined and, in a few instances, the decisions of the Federal Courts in which litigation over teacher tenure arose. Opinions of both educational and legal authorities were consulted. It was the original intention to include in this work a detailed study of the decisions of the Indiana courts on the litigation that has arisen in this state but it was found upon further investigation that the paucity of such cases rendered that plan unreliable. Hence, the study became a general examination and analysis of permanent tenure laws in all states where such laws were found.

CHAPTER II

SCOPE OF EXISTING STATE LAWS

In view of the previous limitation of the problem the perspective of this study is narrowed to a consideration of only those states which have some form of permanent tenure law by legislative enactment. Since 1909 twelve states and the District of Columbia have passed laws providing for permanent tenure of teachers. It is significant to note that none of these laws has been repealed although¹ efforts have been made in some states to secure repeal. In Indiana there has arisen opposition to the tenure law among the teachers themselves principally because of the fact that the law in this state has actually worked to prevent security of tenure rather than promote it. In most of the states the constitutionality of the law has been attacked. In spite of all opposition, however, tenure laws have survived in each state in which they have been enacted. Table I gives the list of the states that have enacted such

¹ Alfred E. Lentz, An Outline of Certain Historical and Legal Aspects of Teacher Tenure in California. p. 4. Sacramento: Department of Education, 1933.

legislation and the year in which it was enacted.

TABLE I. THE STATES WHICH HAVE TENURE LAWS AND THE YEARS IN WHICH THEY WERE ENACTED

State	Year of Enactment
New Jersey	1909
Oregon	1913
Massachusetts	1914
New York	1917
Illinois	1919
California	1921
Colorado	1921
Maryland	1921
Wisconsin	1921
Louisiana	1922
District of Columbia	1924
Minnesota	1927
Indiana	1927

From the data presented in Table I it is noteworthy that no laws providing permanent tenure have been enacted since 1927. Recent legislation on the subject is indicative of a departure from the guarantee of permanent life tenure following a period of probation to that type of tenure advocated by Professor Cubberley, namely: a continuing contract based upon indefinite tenure during efficient service. Montana in 1927, Nevada in 1929, and Pennsylvania in

1929 enacted tenure laws of this character. This new trend of tenure legislation is deemed worthy of brief description at this point. Under its provisions the teacher is given a continuing contract based on good behavior and efficient service. The employing board is required to give notice, usually early in the spring, if it does not wish to continue the contract. A similar obligation rests upon the teacher. If neither the school board nor the teacher notifies the other party of intention either to dismiss or resign, the teacher is assumed to be re-employed for the coming year. This plan is now state-wide in its application in Montana and Nevada and applies in Pennsylvania in all except first-class districts.

Application of Present Tenure Laws

The data presented in Table I show that the principle of permanent tenure has been introduced into twelve states and the District of Columbia. This does not mean, however, that tenure laws are state-wide in their applicability in each of these states. Only three states, New Jersey, California, and Indiana and the District of Columbia have laws of state-wide operation. In the other states are found divers laws of lesser and varying degrees of applicability. Table II shows the degree of applicability of the tenure law

in each state in which such tenure laws are now in operation.

TABLE II. THE DEGREE OF APPLICABILITY OF THE STATE TENURE LAWS

State	Degree of Applicability
California	State-wide
Colorado	Districts over 20,000-Colorado Springs, Denver, and Pueblo
District of Columbia	Entire district
Indiana	State-wide
Illinois	Cities over 500,000-Chicago
Louisiana	New Orleans
Maryland	State-wide except Baltimore ^a
Massachusetts	State-wide except Boston ^b
Minnesota	Cities of first class-Minneapolis, Duluth, and St. Paul
New Jersey	State-wide
New York	Incorporated cities
Oregon	Districts over 20,000-Portland
Wisconsin	Cities of first class-Milwaukee

a. Baltimore has local tenure regulation.

b. Boston has local tenure regulation.

While it is apparent from the data presented in Table II that proponents of permanent tenure have fallen short of their goal of tenure protection on a state-wide basis in many states, their efforts have unquestionably brought about

a steady extension of its principles. The Committee of One Hundred on the Problem of Tenure of the National Education Association makes the following statement relative to the extension of tenure legislation:

No one will question the facts presented thus far that there is a tendency on the part of the organized portion of the teaching body of the United States to push tenure farther . . . It is idle to contend, as some elements among us do, that there is no need for further laws and regulations than now exist . . . There is certain to be further tenure legislation, in the opinion of the committee.²

Application to Classes of Employees

The tenure movement has been primarily concerned with securing protection for the classroom teacher. Many states, however, have extended the application of their laws to provide permanent tenure for other educational employees of the school corporation including superintendents, supervisors, and principals. In the states of Indiana, Maryland, Massachusetts, and New Jersey this tenure becomes mandatory after a probation period has been served by the teacher. This phase

²

R.W. Holmstedt, Effects of the Teacher Tenure Law in New Jersey. Bureau of Publications, Teachers College, Columbia University, 1932. p. 1. as quoted from National Education Association, Report of the Committee of One Hundred on Problems of Tenure, p. 29. Washington, D.C., 1924.

of the law requires the teacher to become a permanent employee when the requirements for permanent service have been met whether the teacher desires it or not. Table III presents data showing the extent of the laws of the various states in their application to the total teaching personnel.

TABLE III. APPLICATION OF TENURE LAWS TO CLASSES OF EDUCATIONAL EMPLOYEES

State	Classes of Employees
California	All certified educational employees
Colorado	Teachers
Dist. of Columbia	Teachers
Indiana	Educational employees except county superintendent
Illinois	Educational employees except superintendents and assistant superintendents
Louisiana	Teachers
Maryland	Teachers, principals, supervisors, and assistant superintendents
Massachusetts	Educational employees except district superintendents
Minnesota	Educational employees
New Jersey	Teachers, principals, and supervising principals
New York	Educational employees except superintendents
Oregon	Supervisors, principals, vice-principals and teachers
Wisconsin	Educational employees except superintendents, assistant superintendents and special supervisors

It will be noted from Table III that only two states, Minnesota and California, provide protective tenure for all educational employees. Two states, Colorado and Louisiana, and the District of Columbia, limit the provisions of their laws to teachers only. There seems to be a definite tendency to exclude the superintendents from the protection of permanent tenure. In only two states, Minnesota and California, is permanent security of position provided for superintendents by law. It seems rather obvious that the welfare of the teacher in the classroom has been the paramount consideration of those who have supported the tenure movement.

Summary

Data presented in this chapter show that twelve states and the District of Columbia have laws of various types providing for permanent tenure of teachers. All of these laws were passed in the period from 1909 to 1927 and none of them has been repealed. More recent tenure legislation seems to indicate a trend toward indefinite tenure based upon efficient service rather than life tenure with legal right to the position after a period of probation.

Three states and the District of Columbia have tenure laws of state-wide application. The principle of permanent tenure

seems to be slowly progressing.

Evidence presented shows that only two states provide permanent tenure for all educational employees. This permanent status becomes mandatory in four states after the period of probation has been served. Additional evidence indicates a definite effort of most state legislation to exclude the school superintendents from the protection of the permanent tenure laws. Security of tenure for the classroom teacher seems to have been the primary objective of all tenure legislation.

CHAPTER III

PRINCIPAL PROVISIONS OF TENURE LAWS

We have considered facts in Chapter II dealing with the scope of present tenure laws in the states included in this study. Their extent of application was considered both from the standpoint of geographical units and classes of educational employees affected. We now turn in this chapter to an analysis of the principal features which seem to be most common to the tenure laws of these states. In order to escape the charge of arbitrary selection of these common features it has been deemed advisable to consult the list of principal provisions of tenure laws compiled by the Committee of One Hundred on the Problem of Tenure.¹ It is to be borne in mind that these features listed below were not untried proposals or recommendations; they were the cardinal provisions of tenure laws actually in operation at the time the report was made. It is also worthwhile to mention that, while this report was made in 1924, there has been little

¹ National Education Association, Report of the Committee of One Hundred on Problems of Tenure, p. 151. Washington, D.C. 1924.

change in the trend of subsequent tenure legislation so far as its basic features are concerned and the few changes occurring have been noted.

The principal features in present tenure laws, therefore, may be summarized as follows:

1. A period of probation
2. Specific causes for dismissal (in writing).
 - a. Immoral or unprofessional conduct.
 - b. Incompetence (inefficiency-incapacity).
 - c. Evident unfitness for teaching.
 - d. Persistent violation of or refusal to obey state laws.
 - e. Violation of or refusal to obey reasonable rules and regulations prescribed by government of schools (insubordination).
 - f. Wilful neglect of duty.
 - g. Malfeasance or non-feasance when found guilty.
3. Reasonable notice of hearing or intention to prefer charges.
4. A hearing before the employing board.
5. Right of counsel for teacher.

While permanency of tenure was not included in the above list it necessarily follows that it must be included as a basic feature of the tenure laws considered in this

dissertation inasmuch as the previous limitation of the subject dictates consideration of only those laws which do provide for permanent tenure.

The Period of Probation

One feature which is common to all the state laws considered in this work is that of a probationary period prior to the placing of the teacher upon permanent tenure. These periods vary in length of time from one to five years. Table IV gives the length of the period of probation in each state.

TABLE IV. LENGTH OF THE PERIOD OF PROBATION REQUIRED BY THE TENURE LAW OF EACH STATE

State	Years of Probation
California	3
Colorado	3
District of Columbia	1
Indiana	5
Illinois	3
Louisiana	3
Maryland	2
	a
Massachusetts	3
Minnesota	3
New Jersey	3
New York	1 to 3
Oregon	2
Wisconsin	3

a. Local boards may reduce to two years in some cases.

It will be noted from Table IV that three years seems to be the modal length of probation periods in present tenure laws. Indiana, with a five year period, and the District of Columbia, with a one year period, represent the two extremes. The purpose of this period of probation is to furnish a period in which the efficiency of the teacher may be observed before he or she is placed on permanent tenure. Critics familiar with the operation of the law recommend this period be long enough to give sufficient time for observation of the teacher's development in order to reduce to a minimum the risk of placing on tenure an incompetent teacher. Inasmuch as the actual operation of tenure laws in some states has resulted in increased dismissal by employing agencies who were unwilling to place any teacher on permanent tenure it follows that the stability of tenure will vary in proportion to the length of the probation period. Recent educational authorities, seeking greater stability for teachers in the ranks, have advocated an extension of the period of probation. It is significant to note that Indiana requires a longer period than any other state.

²
Report of the California Commission for the Study of Educational Problems. Vol. I, p. 92. 1930.

Procedure of Removal

In general it may be said that all the states possessing tenure law enactments prescribe the procedure for dismissal. In such jurisdictions, the procedure as to accusation, notice of hearing evidence, and an opportunity for the teacher to be heard by the employing board in its official capacity, are essential steps and must be complied with. A dismissal by any other method than that prescribed is illegal.³ The various tenure laws exhibit a wide diversity with reference to the procedure before and during the trial or hearing before the board.

The laws of all the states which have permanent tenure require the charges for removal after the probationary period to be written and filed with the proper authority before any trial or hearing can be held. There is little agreement, however, with regard to the agency empowered to bring the charges. The laws of New York do not specify the procedure to be followed. Table V presents data showing the character of the agency in each state which is empowered by the law to bring the written charges against the teacher when dismissal is sought.

³

Barthel vs. Board of Education, 153 Cal. 376.

TABLE V. THE AGENCY EMPOWERED TO BRING THE CHARGES
AGAINST THE TEACHER UNDER PRESENT TENURE LAWS

State	Accusing Agency
California	Governing board
Colorado	Governing board
District of Columbia	Any person through the Superintendent of Schools
Indiana	Governing board
Illinois	Superintendent of Schools
Louisiana	Governing board
Maryland	County Board of Education
Massachusetts	School Committee
Minnesota	Any person
New Jersey	Any person
New York	Procedure not specified
Oregon	Superintendent, Board of Directors or any person through Superintendent or Board of Directors
Wisconsin	Any person

It will be noted from the facts disclosed in Table V that the charges upon which the teacher is to be tried must be brought, in nine states, either by some official of the school organization directly or by some person acting through such official. This prevents the danger of groundless accusations being brought against the teacher by outside persons for petty or personal reasons.

Before a trial or hearing can be held on the charges preferred all the states except Louisiana provide for notice to

be given the teacher accused informing him or her of the nature of the charges. In some states the law merely provides for this notice to be given a reasonable time before the hearing is to be held; in others it stipulates the exact number of days. In Table VI we see the length of notice required under the laws of each state.

TABLE VI. THE REQUIRED LENGTH OF NOTICE OF HEARING ON CHARGES OF PROPOSED DISMISSAL

State	Number of Days
California	10
Colorado	30
District of Columbia	5
Indiana	30
Illinois	30
Louisiana	No notice of hearing required
Maryland	10
Massachusetts	30
Minnesota	10
New Jersey	Reasonable length of time
New York	Reasonable length of time
Oregon	10
Wisconsin	10

Table VI shows the prevailing length of notice required under the various tenure laws is from ten to thirty days. It is generally conceded that the advantage of this feature of the law from the standpoint of the teacher increases with the length of the period inasmuch as it provides an opportunity

for the teacher to prepare to meet the charges brought against him. Analysis discloses that the laws of Massachusetts, Illinois, Colorado, and Indiana afford the teacher the maximum amount of protection in this respect while those of the District of Columbia and Louisiana provide the least.

The data previously examined show that the laws of all states with permanent tenure legislation guarantee the teacher the right of a hearing on the charges brought against such teacher with an accompanying right of preliminary notice of such hearing in all states but one. This does not necessarily mean, however, that the board of education conducting the hearing shall adopt the formal procedure of a court of law. The requirements of the law are met if the teacher is notified of the charges against him and is given an opportunity to explain or justify his action.

Many variant types of procedure are set up by the state laws within our consideration. Seven states, California, Illinois, New York, New Jersey, Oregon, Minnesota, and Indiana give the teacher the right to be represented by legal counsel at the hearing. This right usually implies the privilege of cross-examination of witnesses and of making arguments to the board. This provision of the tenure law has been criticized by Professor Cubberley. Referring to

the practice of attorneys in the cross-examination of school officials during these hearings he says, "Nominally, it is a trial of the teacher against whom the charges have been filed but in reality it is always the superintendent and the principal who are put on trial."⁴ The Illinois law provides that the hearing may be made public at the request of either party while in Oregon and Minnesota it may be either public or private at the option of the teacher. Six of the states, California, New Jersey, Massachusetts, Oregon, Minnesota, and Indiana and the District of Columbia authorize the summoning of witnesses in behalf of either party. The Oregon statute limits the number of such witnesses to ten. The laws of Wisconsin, New York, and Maryland are silent in regard to the procedure for the hearing.

The power to remove the teacher lies with the employing board in all states having permanent tenure laws. This is pursuant to a rather well established rule of law that the power to employ implies the power to dismiss. In Indiana it lies either with the board of education or the township trustee. The county board of education is authorized to exercise the power of dismissal in Maryland. In all other states included in this study and the District of Columbia this

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E.P. Cubberley, Public School Administration, p. 213
Chicago: Houghton, Mifflin Co., 1922.

power rests with the local board of education or board of directors. In the states of California, Illinois, New York, and Oregon, the law specifies that a majority of the employing board must vote of dismissal before it becomes effective. The Colorado statute provides that the teacher may be dismissed without a hearing on a two-thirds vote of the board if such dismissal is recommended by the superintendent or principal. California has endeavored to protect the teacher against unjust dismissal by providing that every member of the board voting for dismissal must be present throughout the entire hearing. The results of the hearing are not subject to review by any other commission under the Oregon code if five of the seven board members vote for dismissal. Many other features exist peculiar to these various laws relative to the procedure of dismissal of the teacher but they cannot be considered of sufficient importance to warrant further detailed discussion at this point. The intent of the proponents of these laws seems to have been the setting up of machinery whereby the teacher can be discharged only on professional grounds. Results of their operation so far seem to justify the conclusion that this purpose has been generally achieved.

Appeal

When the dismissal of a teacher for one of the statutory causes occurs under a permanent tenure law there may arise the question of the finality of the board's decision. In other words, does the teacher have the right of appeal? And, if so, through what channels does the appeal proceed?

It is to be borne in mind that there are two types of appeal to be considered in this connection: appeal to some higher educational authority and appeal to a court of law. Three states, Illinois, Wisconsin, and Indiana provide that the decision of the local board shall be final and deny to the teacher the right of any appeal. The states of Minnesota and Massachusetts and the District of Columbia make no provision for an appeal. Only one state, California, provides for a direct appeal from the decision of the local board to a court of law. In the other jurisdictions within our study where the statutes provide for an appeal it is to some superior educational authority. Ordinarily, when a teacher is given the right to appeal from the decision of the school board or, as in Indiana, from the township trustee, to a higher officer or board, the determination of that officer or board with respect to the existence or nonexistence of facts warranting dismissal is final and conclusive

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and not subject to review by the courts. This is equally true in those states where no appeal is granted from the decision of the local board.

To say that there is no right of appeal available, however, even in these states which provide by statute that there shall be none, is a misnomer. Where it is provided by law that the decision of the judicial agency, whether it be the local board or some higher educational authority acting on appeal of the teacher, shall be final, the provision refers to an appeal on a question of the facts. The finding of such local board or appellate educational authority is never final with respect to questions of law. In other words, appeals may always be had from these educational agencies to courts of law to determine such questions as whether the officer who determined the case had jurisdiction, or whether there has been a mistaken interpretation of the law,⁶ or whether the officer deciding the case has abused his discretion. A Minnesota case is illustrative of this point. A teacher who had been removed on charges of inefficiency appealed to the supreme court. The court refused to consider the question of the teacher's efficiency, saying:

⁵

State vs. Wunderlich, 144 Minn. 368, 175 N.W. 677.

⁶

Thompson vs. Board of Education, 57 N.J. Law 628, 31 Atl. 168.

The manner of making such removals is wholly within the control of the legislature, and when the law which gives the power to remove provides by whom and in what manner that power shall be exercised, the only question open to examination by the courts is whether the statutory requirements have been complied with. Here the commissioner had the power to remove; the charges were sufficient in law to justify exercising the power, and the procedure followed was that prescribed...

The court can determine whether the reasons for removal found by him (the commissioner of education) to exist are sufficient in law to justify removal, and whether in reaching his decision he has pursued the course marked out by the charter, but it cannot substitute its own judgment for that of the commissioner as to matters of fact which the commissioner was authorized to determine.⁷

The court in this case expressed the principle that has been accorded general acceptance by both legal and educational authorities: that questions of educational character should be decided by educational tribunals and legal questions reserved to courts of law.

The California law is the only one which has violated this accepted principle. It carries a provision which says that, "Nothing in this part shall be construed in such manner as to deprive any person of his rights and remedies in a court of competent jurisdiction on a question of law and fact." In other words, the court of law is granted the power to decide questions of fact on a direct appeal from the local board. This provision has evoked much criticism in that state because of the fact that several instances

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State vs. Wunderlich, 144 Minn. 368, 175 N.W. 677.

have occurred where teachers were discharged, appealed to courts of law, secured a reversal of the school board's decision, and forced the board to reemploy them. The logical result of such occurrences is a lowering of the morale and discipline of the entire school organization. In most cases it is fair to assume that the local board's decision to discharge the teacher is based upon a desire to promote the welfare of the pupils while a court's decision may often be based upon legal technicalities which entirely ignore the interests of the children and the school.

It has been held that a teacher who holds his position under a permanent-tenure act, subject to dismissal for cause shown, may, when illegally dismissed, be restored to his position by mandamus.⁹ The reason for this rule is that the teacher has no adequate remedy at law under such circumstances because, the term of his employment being an indefinite time, it is impossible to determine the measure of his damages.

Summary

In this chapter we have considered the principal features

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State vs. Board of School Directors of the City of Milwaukee, 179 Wis. 284, 191 N.W. 746.

which seem to be most common to the tenure laws of the states dealt with in this dissertation. These features may be summarized as follows:

1. A period of probation.
2. Specific causes for dismissal in writing.
3. Reasonable notice of hearing on the charges.
4. Hearing on charges before employing board with right to summon witnesses and have legal counsel.
5. The right of appeal from decision of the local board.

All the states in this study provide for a period of probation before tenure becomes permanent. This period varies in length from one to five years. Indiana requires five years probation, the longest of all the states.

Most of the states possessing permanent tenure laws prescribe procedure for dismissal of teachers. Much variation exists among these laws with reference to such procedure. A dismissal by any other method than that prescribed in such states is illegal. All the states provide for the charges brought against the teacher to be in writing. In most of the states these charges must be brought by or through some official of the school organization. All the states but Louisiana provide for the teacher to have notice of the hearing on the charges. The modal length of this notice seems to be from ten to thirty days. Boards of

education hearing the charges do not need to assume the formality of a court of law.

The teacher is granted the right of legal counsel with power to cross-examine witnesses and school officials under the laws of seven states. This feature has evoked the criticism of many educational authorities.

The power to dismiss lies with the employing boards in all the states included in this study. The intention of most of the laws seems to be that the teacher shall be discharged only on professional grounds.

The teacher is granted the right of appeal in some states to higher educational authorities on questions of fact. Although not always mentioned in the tenure act, an appeal is always available by the teacher to a court of legal jurisdiction on a question of law. The California code permits a court of law to examine the proceedings of the local boards on questions of fact. Mandamus lies to restore a teacher to his position where he has been illegally discharged under a permanent tenure law.

CHAPTER IV.

CAUSES FOR DISMISSAL

In Chapter III certain cardinal features were considered which are incorporated in most present-day tenure legislation. In this chapter the causes for dismissal which are most commonly found among the states possessing permanent tenure legislation will be considered. The purpose of this chapter is not greatly unlike that of the preceding one in that we are still concerned with the basic features of modern tenure legislation and the extent with which they have been incorporated into the laws of each state within the scope of this study.

Perhaps the one issue which has been accorded most common agreement among the advocates of tenure is the removal of the teacher only for stated causes. Again, for the purpose of comparative criteria the list of justifiable causes for dismissal as worked out by the Committee of One Hundred on the Problem of Tenure is cited. This list of

¹ National Education Association, Report of the Committee of One Hundred on Problems of Tenure, p. 151, Washington, D.C. 1924.

causes reads as follows:

1. Immoral or unprofessional conduct.
2. Incompetence (inefficiency-incapacity).
3. Evident unfitness for teaching.
4. Persistent violation of or refusal to obey state laws.
5. Insubordination.
6. Wilful neglect of duty.
7. Malfeasance or non-feasance when found guilty.

Obviously, it has been the effort of tenure legislation sponsors to restrict those causes to professional justification. In most cases the letter of the tenure laws, if carried out, would seem to indicate the realization of this end. Violations of the spirit of tenure enactments, however, still defeat the purpose of the law in many instances.

What, then, are the bases for dismissal as found in the various states with permanent tenure laws? Examination shows that they are specifically set out in all the states except Colorado. The act of that state merely says that the permanent teacher shall have "tenure of his or her position during efficiency and good behavior".

In the acts of the other states analysis shows a marked similarity in their stated causes and a general acceptance of the recommendations of the Committee of One Hundred. Table VII gives the causes which occur most frequently in the various laws and each state which has included that cause in

its tenure law.

TABLE VII. CAUSES FOR DISMISSAL IN THE STATES WITH
PERMANENT TENURE LAWS

State	Causes
California	Immoral conduct, insubordination, unprofessional conduct, incompetence, intemperance, promotion of efficiency of service, breaking of contract by teacher.
Colorado	Promotion of the efficiency of the service.
District of Columbia	Immoral conduct, insubordination, incompetence.
Indiana	Immoral conduct, wilful neglect of duty, insubordination, incompetence, promotion of the efficiency of the service.
Illinois	Immoral conduct, insubordination, unprofessional conduct, incompetence.
Louisiana	Inefficiency or incompetence.
Maryland	Immoral conduct, wilful neglect of duty, insubordination, unprofessional conduct, incompetence.
Massachusetts	Unprofessional conduct, promotion of efficiency of the service.
Minnesota	Immoral conduct, physical disability, unprofessional conduct, incompetence, breaking of contract by teacher.
New Jersey	Physical disability, incompetence, unprofessional conduct, promotion of efficiency of the service. ^a
New York	Immoral conduct, wilful neglect of duty, insubordination, incompetence, breaking of contract by teacher.
Oregon	Immoral conduct, wilful neglect of duty, intemperance, violation of state or federal law.
Wisconsin	Immoral conduct, incompetence.

a. As used in this table incompetence includes inefficiency.

It will be noted from Table VII that all the states except Colorado and Louisiana name either immoral or unprofessional conduct as a legitimate cause of dismissal. All states except Oregon, Massachusetts, and Colorado have included incompetence as a specific cause. The promotion of the efficiency of the service is a valid cause in New Jersey, Massachusetts, California, Colorado and Indiana. It will be observed that this cause was not listed by the Committee of One Hundred nor was the breaking of the contract by the teacher included in that committee's recommended reasons for discharge. This latter is now a statutory cause in New York, California, and Minnesota. The code of the District of Columbia provides that a teacher may be dismissed for pedagogical inefficiency without a hearing. This is the only cause named in the Louisiana code, but must be proved in that state in a hearing before the parish board. It is noteworthy that the specific causes listed in the Indiana law, namely: incompetency, insubordination, neglect of duty, immorality, and promotion of the efficiency of the service, seem to epitomize the most commonly accepted reasons given in all tenure legislation for discontinuance of the teacher's contract.

It has become a well established rule of law that where the statute specifically enumerates the causes for which a teacher may be removed or dismissed the teacher cannot be

removed or dismissed for any other cause.² The assumption is that the enumeration of the causes in the statutes was intended to be exhaustive and that the legislature would have expressed other causes in the law if it had intended that teachers could be removed for such other causes. The court in a New York case³ clearly expressed the law on this point when it said:

It is unreasonable to believe that the draftsmen of the Greater New York charter or the legislators who enacted it. . .having. . .provided in the charter for dismissal for specified causes, should have intended by the grant of any general power to the board of education to authorize the removal of teachers from their employment on any other grounds or in any other manner than those drafted in the statute.

In view of this attitude by the courts the advantage to the teacher of stated, specific causes for removal becomes apparent. It precludes the dismissal of competent teachers for personal and political reasons and other causes that cannot be justified on a professional basis. If the spirit of the laws is followed by the courts it unquestionably gives to the teachers that security of position for which they have striven.

² Kennedy vs. Board of Education, 82 Cal. 483, 22 Pac. 1042.

³ People vs. Maxwell, 177 N.Y. 494, N.E. 1092.

Summary

Specific causes for the dismissal of the teacher on permanent tenure are set out in the laws of all the states within the scope of this study with the exception of Colorado. The general trend of these statutory causes seems to follow the recommendations of the Committee of One Hundred on the Problem of Tenure in 1924. The most common causes for removal of the teacher are: incompetence, insubordination, immoral and unprofessional conduct, neglect of duty, and the promotion of the efficiency of the service. These are the causes specifically named in the Indiana Tenure Law.

Where the statute specifically names the causes for dismissal the teacher cannot be dismissed for any other cause. The list of causes as specified by the legislature is presumed to be exhaustive.

A statement of specified causes for dismissal in the tenure law bestows upon the teacher a distinct advantage in the retention of the teaching position. It eliminates the possibility of dismissal for petty, personal, or political reasons.

CHAPTER V.

COURT DECISIONS INVOLVING DEFINITION OF TERMS

At an earlier point in this work it was pointed out that the first major division of the study consisted of an analysis of the tenure laws of the several states having permanent tenure enactments with a view of determining their common basic features. So far in the discussion, therefore, we have been primarily concerned with the content and application of the tenure laws in the various states within the purview of our previously defined study. Little attention has been paid to legal decisions up to this point and only those few have been cited that were thought necessary to enrich the reader's comprehension of the subject at that point. We have analyzed the laws from the standpoint of the intent of the legislators as evidenced by the provisions which they incorporated in the various enactments. But no study of law is complete which stops short of the interpretation of that law by the courts. The interpretation which the judiciary places upon a law is often as important as the intent which was originally breathed into it by its author. We now turn in our analysis to the second

major divisions of this dissertation - a study of the decisions of the Supreme and Appellate Courts in which these laws have arisen in litigation to note the trends of interpretation which have formed with reference to those basic features discovered in the foregoing chapters. Throughout this work it has been the intent of the author to cite only those cases which have arisen in the states listed in this study and which have involved some feature of the permanent tenure law of that state. This elimination of irrelevant cases insures a pertinence of the cases cited to the subject of the study that might otherwise not be had if such limitation were not imposed. It supplies the very definite assurance that each case cited is in controversy over some issue of tenure of the teacher as defined in our study and, therefore, wholly relevant to the subject being examined. However, in a few extremely rare instances, cases have been cited that violate the limitations set out above but justify their appearance in the study because they clarify some point that has not yet been ruled upon in any case within the limits previously described. In each instance where such case has been cited the fact that it does not fall within the scope of this limited perspective of the study has been noted in order to avoid any confusion over its relevancy.

Before proceeding to the study of court decisions over

various phases of the tenure laws it is first necessary to glance for a moment at the meanings of some of the terms which are employed in those laws and the interpretation which the courts have placed upon them. In many instances it is as important to know definitions which the courts have imposed upon some of these tenure law terms as it is to know the disposition of the court with respect to some of the principles of law involved.

Fortunately, there has been little confusion in litigations involving the tenure laws with respect to the definition of the word "teacher". In all states within the scope of this study the legal concept of that term has been clarified in the wording of the statute in that each law specifies the types of educational employees to which the permanent tenure law shall apply. While this definition may not coincide with the layman's definition of the term "teacher" in many instances it nevertheless must be the construction placed upon the word in this dissertation. These various types of educational employees are listed in Table III. It will be noted upon examination of that table that in the eyes of the law, a "teacher" must necessarily be any educational employee within the purview of those types listed there to whom permanent tenure rights may accrue.

Some confusion has arisen over the definition of the word "cause" as used in the dismissal of teachers under the

permanent tenure laws. The reasoning has been advanced that all dismissals are for cause, irrespective of the merit of that cause. As used in this study, dismissal for cause is contrasted with dismissal at pleasure. In a North Dakota case,¹ the court has well defined the word "cause" as employed in this work. This case did not arise out of a tenure law included in this study but the concise definition of the term "cause" warrants its citation at this point.

The term "cause" as used in (statute) providing that the board of education shall have power to dismiss for "cause" refers to a real cause affecting the interests of the school as distinguished from removal at the pleasure of the school board.

In all the states included in this study with the exception of Colorado the causes for dismissal are stated in the tenure law and this fact aids the meaning of the term. In other words the cause must not only be a "real cause affecting the interests of the school" but it must be a cause specified in the statute.

Definition of the term "dismissal" is found in a recent California case.² In this case the teacher had acquired

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Clark v. School District, 7 N.D. 297.

²

Gentner v. Board of Education of Los Angeles, 25 Pac. (2nd) (Cal.) 824.

permanent tenure rights but was not assigned to a position at the beginning of the school year 1927-28. On October 27, 1927, charges of incompetency and unfitness for teaching were filed with the appellee school board and the date of hearing the charges was set for November 14, 1927. The teacher was ordered dismissed by the board on November 16, 1927, after a finding by them that the charges were true. The teacher then brought an action in mandamus to be reinstated. In commenting upon the meaning of the word "dismissal" the court said:

It is apparent from the express language of the provision that a permanent teacher cannot be deprived of his status until after a hearing has been held. "Dismissal" as used in the tenure law refers to the action of the board terminating the status of a permanent teacher. Until such dismissal the teacher retains his tenure and the rights incident thereto.

In the construction of the statute, therefore, a teacher on permanent tenure is not "dismissed" until status of permanency has been terminated by the school board in the regular procedure prescribed by statute and until such regular dismissal the teacher retains all rights incident to permanent tenure.

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In another California case the term "dismiss" was construed as including the right to "suspend" the teacher. In

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Goldsmith v. Board of Education of Sacramento City High School District et al., 225 Pac. (Cal.) 783.

this case the teacher was suspended for a period of ten weeks for unprofessional conduct. In an action for reinstatement the teacher contended that the power of the board to "dismiss" did not include the power to "suspend". In its decision on this point the court said:

It may be conceded that as generally used in connection with legal proceedings in the courts of justice the word "dismiss" means putting an end to a proceeding. We are of opinion, however, that the word "dismiss" as used in the section in question could not have been intended by the legislature so to restrict the power of the board as to require it in all cases of guilt under said section to impose as a punishment the permanent dismissal of the offending teacher. It is certainly true that the legislature intended that for any of the offenses enumerated or contemplated by said section there should be some sort of punishment. As used in common vernacular, the word "dismiss" is often used interchangeably with the word "suspend", and it is clear that the interpretation of that word as so used is the only one that may be given it to relieve the section from the imputation of being absurd. We think it necessary we should use the maxim, "The greater contains the less". and, therefore, the word "suspend" should be held to be included within the word "dismiss" as used in said section. So interpreting, then, the word "dismiss", and as it is believed the legislature intended it should be understood as so used, the section vests in the board discretion of determining, in any given or particular case, whether the accused teacher should be permanently or only temporarily dismissed.

As defined in this case the power of the board to dismiss implies the power to suspend the teacher temporarily. In other words, the board is empowered to inflict a lesser punishment than absolute dismissal. While the reasoning employed in this case may be sound it is, nevertheless, unique and no similar holding is found in any other state having a permanent tenure law.

The question of whether the teacher is an "employee" or an "officer" of the school corporation has arisen in a number of cases and in several of the states. The issue has been raised in all cases by an attack upon the constitutionality of the law inasmuch as the constitution of most of the states forbids life tenure of an "officer". The Constitution of Indiana is illustrative with a provision that "the general assembly shall not create any office the tenure of which shall be longer than four years". Without exception the courts have held on this point that the teacher is an "employee" and not an "officer" inasmuch as the teacher does not exercise any governmental powers of the school corporation. An extension of this principle was adopted in an Oregon case ⁴ in which it was held that an action would not lie to compel a school board to reinstate a teacher as principal after she had been demoted to the position of an assistant teacher. In this case the court held that even a principalship was not an office and that the principal did not hold title to any particular position within the school district to which she had a right to be restored as to an office. She was construed to be nothing more than an employee and was bound by the law of her employment to serve where she was directed. This definition of

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Alexander v. School District No. 1 in Multnomah County et al., 164 Pac. (Ore.) 711.

the teacher as an "employee" is well established.

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In a significant California case a definition of the terms "employ" and "employed" has been recently laid down. In this case an issue arose over the nature of the teacher's employment status and the court was compelled to answer the question: when is a teacher employed? In commenting upon the meaning of the words "employ" and "employed" the court said:

The words "employ" and "employed" can be used in various senses and be given different meanings. A person may be said to be "employed" in a certain avocation when such person's time is occupied therein without a contract of hiring or expectation of compensation. In another sense the words imply services rendered, or to be rendered, for a compensation upon a contract either express or implied. We think the latter definition descriptive of the term "employment" as used in the school laws of California, with the notation that these laws require the employment to originate in an express and not an implied contract.

In view of this decision, therefore, the teacher is not "employed" within the meaning of the tenure laws unless such employment is based upon a contractual relation between the teacher and the school board. In California and most of the other states this contract must be a written one.

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In a case involving a similar issue the Oregon Supreme Court was called upon to place a legal construction upon the

5
Gould v. Santa Ana High School District et al., 21 Pac. (2nd.) (Cal.) 623.

6
Taggart v. School District No. 1 of Multnomah County et al., 188 Pac. (Ore.) 1119.

words, "regularly appointed" as they appear in the Oregon Tenure Law. The statute in that state provides that:

Teachers who have been employed in the schools as regularly appointed teachers for not less than two successive annual terms shall be placed by the board of directors upon the list of permanently employed teachers.

In this case the teacher had been appointed by the superintendent of the school district to substitute in the place of the regularly appointed teacher who was ill. The substituting teacher taught for three and one half years in the absence and during the illness of the regularly appointed teacher. At a later date the regularly appointed teacher died and a new regularly appointed teacher was designated to take her place. The substituting teacher was then notified by the school board that her services were no longer needed. Thereupon, she brought an action against the school board to retain her position, contending that she was a "regularly appointed" teacher within the meaning of the statute. The opinion of the court in this case, both concise and significant, is quoted at some length as follows:

These words, "regularly appointed" mean something. They are a limitation upon the class of teachers whose tenure comes under the protection of the statute. It is not every teacher who may be employed by the district, but only those who were "regularly" appointed who share in its favors in this regard. When we speak of any act of any officer or incorporated body being "regular" we mean that it is in accordance with the prescribed authority, that it is according to the usual and appropriate methods of proceeding. And this, we

think, was clearly the sense in which the word "regularly" was used in the legislative act in question. A teacher appointed as substitute, by the superintendent, is not a regularly appointed teacher. The fact that a school board, having authority under the law, to make contracts with teachers, accepted the services of a teacher irregularly appointed by the superintendent of the school district, did not render her a "regularly" appointed teacher within the meaning of the statute relating to the listing and rights of permanent teachers.

The decision in this case is important because it adheres to the principle that the teacher, in order to acquire the rights of permanent tenure, must proceed along the regularly prescribed channels as provided by the statute. It is unquestionably, as pointed out by the court in this case, a protection to the competent teacher inasmuch as it bestows upon the school board the power of eliminating the incompetent teacher before she has acquired permanent tenure rights. It is obvious that inefficient teachers would flood the permanent tenure fold were the bestowal of those rights not carefully guarded.

Definition of the word "position" was recently given in a California case.⁷ In this case the teacher had been teaching in two schools within the same school district and was suddenly dismissed without cause and without filed charges or a hearing. He brought an action under the California

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Cullen v. Board of Education of City and County of San Francisco et al., 15 Pac. (2nd.) (Cal.) 227.

statute to be restored to his position. The court held that the word "position" did not refer to any particular place of employment but that in legal concept it meant the employment which the statute automatically effected upon the teacher's classification as a permanent teacher. In other words, it upheld the right of the school board to assign the teacher to any place of equivalent teaching rank within the district but also held that permanent tenure rights might be acquired by continuous service of the teacher anywhere within the district. The word "position" did not give to the teacher the right to be restored to any one particular school where he may have taught; it merely gave him a right to be employed somewhere in the district in a position of equivalent teaching rank. In its comment the court said:

But we should not be understood as holding that this right of tenure guarantees that a teacher must be retained in any particular school or assigned to teach any particular class or classes. This right of tenure is a right which the teacher enjoys to continue in the position or positions to which he has become elected under the statute, in a position or positions of a rank and grade equivalent to that occupied for the probationary period and to which the teacher has thus become "elected" under the statute.

The decision in the above recited case that the word "position" refers to an abstract right of the teacher to continuous employment rather than to a particular school or community and the accompanying right of the school board to assign the teacher to any employment of equivalent teaching rank within the school district has been generally followed

in most of the states.

8

An unusual case arose under the Massachusetts Tenure Law in which it became necessary for the court to determine what was meant by the term "vacation period" as used in the statute. The teacher in this case was dismissed for insubordination but brought an action to be reinstated on the ground that the dismissal did not comply with the statute which provided that the notice of the school board's intention to vote on her dismissal must be given "at least thirty days prior to meeting exclusive of the customary vacation periods". The notice was received on November 1, 1919, that a vote would be taken on her dismissal on December 6, 1919. The sole question in the case was whether or not the Thanksgiving vacation was a "customary vacation period" within the meaning of the statute. The court in this case decided against the teacher, holding that the Thanksgiving vacation period was not a "customary vacation period" within the meaning of the statute and that, therefore, the notice had been given thirty days prior to the day on which the vote for dismissal was taken. The decision of the court in this case, however, was influenced by local precedent in the community and it is to be borne in mind that other courts in other states might determine this issue differently.

8

Duffey v. School Committee of Town of Hopkinton, 127 N.E. (Mass.) 540.

Summary

In this chapter data pertaining to the legal definitions of certain words used most frequently in the tenure laws of the states were examined. It was found that the word "teacher" has been automatically defined in the various state laws themselves by means of provisions prescribing the types of educational employees to which the laws shall apply. With the exception of Colorado, the word "cause" when used in this study in connection with the dismissal of the teacher, must be a cause stated in the law of the state and must be a real cause affecting the interests of the school. In this sense dismissal for "cause" is contrasted with dismissal at the pleasure of the school board. The word "dismissal" refers to the formal act of the school board as prescribed by statute and until such dismissal the teacher retains her status as a permanent teacher. It has been held that the word "dismiss" includes the power of the school board to temporarily "suspend". It is well established that the teacher is an "employee" of the school corporation and not an "officer". It has been held that a teacher is not "employed" under the tenure law unless his service arises out of a contractual relationship with the school board, either express or implied. In most states this contract must be express. The words "regularly appointed" have been construed as meaning only that appointment which is made in accordance with the prescribed method set out

in the state statute. Tenure rights will not accrue to an irregularly appointed teacher. The word "position" when used in connection with permanent tenure laws refers to the right of the teacher to continuous employment in the district and not to any particular place. The right of the teacher to retain her "position" does not preclude the right of the school board to assign her to any employment within the district of equivalent teaching rank. It has been held that the Thanksgiving vacation period does not constitute a "customary vacation period" within the meaning of the Massachusetts Tenure Law.

CHAPTER VI.

COURT DECISIONS INVOLVING SCOPE OF TENURE LAWS

In Chapter V it was considered expedient to insert a discussion of the legal definitions of certain terms used in the various tenure laws in order to create in the mind of the reader with respect to those terms an enrichment of understanding considered necessary to a comprehensive interpretation of the court decisions discussed in the following chapters. We shall now proceed to a discussion of those cases, paralleling as closely as possible the arrangement of the subject matter in the foregoing chapters of the work by an analysis of the court decisions in the same order as the laws from which they evolved were examined. Obviously, the subject matter of Chapter I, preliminary and explanatory in character, precludes the origin of any court decisions with respect to its content. We shall now proceed to a discussion of those cases which have arisen concerning the scope of the tenure laws, the subject matter of Chapter II.

Application of Tenure Laws

No court decisions involving the scope of tenure laws

with reference to administrative jurisdiction were found in this study. The reason for this is apparent. The tenure act in all states prescribes the extent to which the law shall apply with respect to physical limits and the power to prescribe such limits is final with the legislative body. Under ordinary circumstances it is not susceptible to judicial review. In other words, if the legislature enacts a tenure law applying to the entire state it is not within the province of the court to say that such law shall apply only to certain districts. It is only where the intent of the legislative body is in doubt or in need of judicial interpretation that the courts enter the picture to determine the rights of the parties. Since each tenure enactment prescribes the limits of its own application in self-explanatory terms, controversies involving the issue seldom enter the channels of litigation.

The nearest approach to court decisions concerning the jurisdictional application of the tenure laws is found in a few cases that have attacked the laws as being discriminatory because they applied only to certain limited towns or districts and were, therefore, unconstitutional. But in these cases the basis of classification has always been the center of attack rather than the power of the legislature to set up such classification. In no known instance have these attacks on the constitutionality of the laws been sustained for this reason. These cases, moreover, are considered so distantly

related to the subject matter of this chapter that further discussion at this point is considered illogical and they will be discussed more fully in a later chapter.

Obviously, therefore, we are primarily concerned in this chapter with the scope of the tenure laws as they apply to the various types of educational employees. Even in this sense, the amount of litigation arising from this issue is small because of the fact that the statute in most states is self-explanatory and defines what is meant by the word "teacher", thus naming those types of educational employees to whom it applies. Some cases, however, have arisen for judicial interpretation in spite of the attempts of the legislators to free the laws from ambiguity.

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A case involving the application of the Oregon Tenure Law to a substitute teacher arose in 1920. In this case the plaintiff had been appointed by the superintendent of the high school district to substitute in the place of a regularly appointed teacher who was ill. The plaintiff taught for three and one half years during the illness of the regular teacher. At a later date the regularly appointed teacher died and a new regularly appointed teacher was named to take her place. The plaintiff then brought an action against the school board, claiming that she was a regularly appointed teacher within the meaning of the statute and entitled to the

¹
Taggart v. School District No. 1 of Multnomah County et al., 188 Pac. (Ore.) 1119.

rights of a permanent teacher. The Oregon Supreme Court held in this case that the plaintiff had not been regularly appointed and was only a substitute teacher and that the Oregon Tenure Law did not apply to substitute teachers.

In a Massachusetts case ² it has been held that the tenure law of that state does not apply to one doing the work of a clerk and a principal. Here, the plaintiff was elected assistant principal of the school and in conjunction with this position she did certain clerical work around the school. After serving in this capacity for three years she was discharged. After her dismissal she brought an action for reinstatement on the ground that she was a teacher and had acquired permanent tenure rights. The court refused to sustain the contention of the plaintiff in this case ruling that she was not a teacher but was merely a person doing the work of clerk and assistant principal. Therefore, she was not entitled to discharge in accordance with the statute governing the discharge of teachers.

A recent decision in a case ³ involving the tenure rights of a principal who did some classroom teaching has been rendered by the California Supreme Court. In this case the

² Lamarsh v. School Committee of Chicopee, 172 N.E. (Mass.) 117.

³ Gastineau v. Meyer et al., 22 Pac. (2nd) (Cal.) 31.

plaintiff was employed by the trustees of the school district as principal of the high school in 1925. In 1929 he was served with notice that he had been classified as a permanent employee. In May, 1931, the plaintiff was notified by the board that he was to teach school only, that he was no longer principal, and that he was not then nor had he ever been a permanent employee. His salary was reduced to about two-thirds of the former amount. The following year he was served with notice that he had been discharged from the service. The evidence showed the plaintiff had taught for three hours every day from 1925 to 1931 in addition to his duties as principal. After his dismissal he brought an action for reinstatement. In a significant opinion the California Supreme Court supported the position of the plaintiff in this case, saying, in part:

The language of the statute clearly implies that, while one engaged in an administrative or supervisory capacity may not be classified as a permanent principal, yet if, at the same time, he also successfully performs the required services as a teacher, he is nevertheless entitled to permanent tenure as a "classroom teacher". Since the appellee was qualified as a teacher and actually engaged in teaching for the required length of time and in strict compliance with the requirements of the statute, he certainly should not be deprived of his vested right to permanent tenure as a teacher merely because he also performed other services at the same time. The appellee is not claiming he is entitled to permanent tenure as a principal of the school, but is insisting that he has automatically attained the status of a permanent teacher. In that contention we think he is correct.

While the case cited above lays down the principle that performance of the duties of a principal when done in conjunc-

tion with classroom teaching does not operate to destroy the rights acquired by such classroom teaching, it has been held in California that tenure rights do not accrue to the principal who does no teaching. This decision held that neither the principal nor the vice-principal were entitled to permanent tenure rights under the California Statute.⁴

An apparent conflict on the question of application between the California statute and a provision of the charter of the City of San Francisco was brought into litigation in 1933. In this case⁵ the plaintiff had served as a principal of an evening high school in San Francisco for a period of five years when he was dismissed. By section 135 of the charter of San Francisco, all principals and vice-principals were to be classified as permanent teachers after they had served a satisfactory period of three years. The state tenure law did not go so far as to permit principals or vice-principals to acquire permanent tenure. The plaintiff brought an action in mandamus for reinstatement based on the charter of San Francisco. The question for legal determination in the case was: were the rights of the parties to be determined by the state statute or the charter of the City of San Francisco?

The court held in this case that no conflict existed

⁴ Klein v. Board of Education of City and County of San Francisco et al., 27 Pac. (2nd.) (Cal.) 88.

⁵ Anderson v. Board of Education of City and County of San Francisco et al., 15 Pac. (2nd.) (Cal.) 774.

between the provision of the city charter and the state law, commenting as follows,

Our conclusion is that section 135 of the San Francisco charter is wholly consistent with and in nowise in derogation of the general purposes of the state tenure law and that, in adding principals and vice-principals to those who are protected from dismissal without cause, the city has merely furthered the general purposes of the state act or clarified that act, as the case may be, without taking anything away from its principles or purposes.

The court in this case followed the established principle that wherever possible both city and state enactments will be construed in such a way that both may stand so long as they are not in irreconcilable conflict.

A principal in an Oregon case⁶ instituted an action to mandate the board to reinstate her to the position of principal in a school where she had acquired permanent tenure rights, after she had been transferred to the position of classroom teacher. This case was decided on the issue of the right of the school board to make such transfer within the school district rather than upon the question of a principal's eligibility to permanent tenure rights, but the right of the principal to bring the action was not questioned by the court. By tacit consent the court ruled that the Oregon Tenure Law applies to principals as well as teachers inasmuch as the work "teacher" is defined to include supervisors, principals, and instructors in the Oregon code.

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Alexander v. School District No. 1 of Multnomah County et al., 164 Pac. (Ore.) 711.

One other case is cited here as worthy of note on connection with the application of the tenure law. It raised the issue under the California law of whether the tenure law of that state applied with equal favor to both sexes of teachers. The plaintiff in this case, a woman, had taught physical education and hygiene in a school district for eight years prior to 1932 and had acquired permanent tenure rights. During this time she had received the same compensation as a male teacher on the same subjects in the same district. In 1932 the woman teacher's salary was reduced about five hundred dollars under that of the male teacher. The California statute provides,

Females employed as teachers in the public schools of this state shall, in all cases, receive the same compensation as is allowed male teachers for like services, when holding the same grade certificate.

The plaintiff then brought an action to compel the board to pay her the same salary as the male instructor doing the same kind of work.

The court in this case sustained the contention of the plaintiff and held that the board did not have the right to make such discrimination between the sexes of the two teachers who were performing like services. Admitting the fact that school boards are empowered to exercise reasonable discretion in determining the amount of compensation to be paid to

teachers under their jurisdiction, the court construed the discrimination in this case to be an abuse of that power.

It will be noted that much variation and lack of agreement exists among the decisions cited in this chapter. This is largely due to the fact that the tenure enactment of most of the states arbitrarily defines the scope of the law in that state by setting out what is meant by the term "teacher". This definition differs in many states. In Colorado the term applies only to the classroom teacher. In California it extends even to the school nurse, librarian, and supervisor of attendance. Naturally, such varying conceptions of the subject matter of the laws cannot help but bring varying court decisions arising therefrom. The cases cited in this chapter, however, are more enlightening to point the attitude of the court with respect to the law in that particular state rather than to show the trend of legal interpretation with respect to the tenure movement as a whole.

Summary

Tenure laws in all the states prescribe the extent of their application so far as administrative jurisdiction is concerned. This fact has practically eliminated litigation on this issue. No cases have been found where the laws have been held unconstitutional for the reason that the

legislature prescribed discriminatory bases of classification in defining the extent of application. The amount of litigation arising from the question of application to types of educational employees is small. This is due to the fact that the tenure laws of most of the states define what is meant by the word "teacher" and thus specify the classes of educational employees to whom the law applies.

It has been held in an Oregon case that the tenure law does not apply to a substitute teacher. The Massachusetts Law has been held as not applicable to one doing the work of clerk and principal. The California Supreme Court recently held that a teacher did not forfeit his right to permanent tenure because he did other duties in addition to teaching. Principals and vice-principals, however, have been construed as ineligible to tenure privileges under the California statute. A provision of a city charter granting tenure rights to a principal has been recently upheld by the California Supreme Court on the grounds that it extended the purposes of the state statute instead of conflicting with it. The Oregon Tenure Law does apply to principals inasmuch as it includes them in the meaning of the word "teacher". A recent case in California decided that no discrimination in the salary of tenure teachers performing like service could be based on sex. Much lack of agreement exists among the court decisions with respect to the application of the laws to types of educational employees. This is caused by varying definitions of what is meant by the term "teacher" in the various state laws.

CHAPTER VII

COURT DECISIONS INVOLVING PRINCIPAL PROVISIONS OF TENURE LAWS

Data previously examined in Chapter III disclosed certain principal provisions that are common to most of the permanent tenure laws now in operation. In this chapter we shall discuss the court decisions that have arisen from legal controversy involving these basic provisions of the laws.

The Period of Probation

One feature which was found to be common to all the state tenure laws considered in this work was the provision for a probationary period prior to placement on permanent tenure. Several issues with respect to the period of probation have come before the courts for judicial interpretation. One of the most important cases¹ in which the court clarified the rights of the teacher with respect to the period of probation was decided by the Supreme Court of California. In

¹ Thibaut v. Key et al., 14 Pac. (2nd.) (Cal.) 138.

this case the plaintiff was employed May 24, 1930 to teach in a California school district by the trustees of the district. The plaintiff taught during that school year and on May 20, 1931 the trustees entered into a contract with one Moore to teach in the same position during the ensuing school year. The trustees did not notify the plaintiff of her dismissal or removal. There could only be one teacher for the school in question. The plaintiff then brought an action against the trustees for reinstatement on the ground that her contract carried on for a second year. Relative to the dismissal of probationary teachers the California statute provides: "On or before the tenth day of June in any year the governing board may give notice in writing to a probationary employee that his services will not be required for the ensuing year." In another place the law in that state provides: "The board of school trustees shall have power and it shall be their duty to dismiss probationary employees during the school year for causes only, as in the case of permanent employees".

The California Supreme Court in this case supported the teacher, saying, in part,

The court said in the case of Owens v. Board of Education, 68 California Appellate 403, 229 Pacific 881 that the statute, the one mentioned above, provides that each teacher employed for one year shall be deemed reemployed, except discharged for cause after hearing, or in the case of a probationary teacher, by serving her with notice in writing on or before June 10th, we conclude that the intent and meaning of the law is as though it read: Permanent teachers cannot be discharged except for good cause after

hearing, or by serving them with written notice on or before June 10th, that their services will not be required for the ensuing year. We, therefore, conclude that the appellee was the legally employed teacher of said district for the ensuing year.

In brief, the probationary teacher in California may be dismissed at the pleasure of the board by giving written notice prior to June 10th of any year during the probationary period. After the expiration of that date she can only be dismissed in the same way the permanent teacher is dismissed.

Perhaps the intent of the probationary period has been best defined by the court in a New Jersey case.² In this case the teacher had taught for three consecutive years as a probationary teacher under the New Jersey statute which provides,

The services of all teachers, principals, and supervising principals of the public schools in any school district of this state, shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in the district, unless a shorter period is fixed by the employing board.

In each yearly contract of the teacher with the board there was a provision that the contract might be terminated by either party on thirty days notice. On July 15, 1929, exactly three years after the date of her first contract, the teacher was notified by the board that her services were to terminate on August 15, 1929. The teacher brought an action against the board because of this ruling and the higher court ruled against her. The important feature of this decision was the construction

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Carroll v. State Board of Education, 152 Atl. (N.J.) 339.

which the court placed upon the statute by implication with regard to the probationary period. It construed this provision to be the intent of the legislature to set up a three year period of apprenticeship and probation that the teacher must satisfactorily serve before she could become eligible for permanent tenure. This is perhaps the clearest expression of the court to be found relative to the purpose of the probationary period.

The question of whether a teacher is automatically placed on permanent tenure upon the expiration of the probationary period does not find agreement among the courts. It has been held that such classification is not automatic in a New York case.³ The teacher in this instance had taught three consecutive years from 1928 to 1931. She was then dismissed and brought an action in mandamus to be reinstated. It appears that the school board did not formally classify her as a permanent teacher. The New York statute provides that,

At the expiration of the probationary term of a person appointed for such term, the superintendent of schools ... shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory.

The teacher in this case based her contention that she was entitled to permanent tenure upon the following provision

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Holm v. Board of Education of the City of Rochester, 252 New York Supp. 389.

of the New York code:

Such persons and all others employed in the teaching of the schools of a city, who have served the full probationary period, or have rendered satisfactorily an equivalent period of service prior to the time this act goes into effect shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing, and by the affirmative vote of a majority of the board.

The New York Supreme Court held in this case that permanency of tenure did not fall automatically upon the teacher even though she had served her three year probationary period. The above quoted provision of the statute requiring the superintendent's report and formal classification were held to be requisite before the status of permanent tenure was effected. The court reasoned in this case that the provision for discontinuance of the services of the teacher at any time during the probationary period does not give a teacher whose services are not discontinued permanent tenure.

A ruling contrary to this is found in a California case⁴. Here the court said, "A teacher becomes automatically classified as a permanent teacher at the end of the two years of successful service." It is evident that court decisions on this point are dependent, to a great extent, upon the wording of the statute of that particular state.

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Owens v. Board of Education, 229 Pac. (Cal.) 881.

The influence of peculiar provisions in the various state enactments is exemplified in another California case .⁵ One provision of the California act is to the effect that,

Any person not under permanent tenure who shall fail to signify his acceptance within twenty days after notice of his election or employment shall have been given him shall be deemed to have declined the same.

In the instant case the plaintiff was a probationary teacher and was employed for the school year of 1930-31. On April 23, 1931, she was presented with a contract for the ensuing year but refused to sign the contract at that time stating that she was going to become married. On May 1, 1931, she called on the superintendent of the school district and told him that she desired to continue teaching school. At a later date the superintendent received her blank contract and tore it up. The board of trustees then commenced to look for a teacher to fill the vacancy. On August 23, 1931, the plaintiff appeared and asked the superintendent to place her on the substitute list. This was granted. On October 23, 1931 the plaintiff sent a letter to the board asking to be reinstated as a probationary teacher, which was refused. She then brought an action against the board. The court, in its opinion, quoted the statute cited above and held that, inasmuch as she had refused to accept her election for the next year she had forfeited her right to future tenure.

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Snider v. Severance et al., Pac. (2nd.) (Cal.) 328.

In other words, the court upheld the provision of the California code requiring acceptance of election to another year's employment by the probationary teacher within twenty days or forfeiture of claim to such ensuing tenure.

The question of sufficient notice to comply with the statute in the dismissal of a probationary teacher was determined by the California Supreme Court in 1928. In this case the teacher had signed a contract to teach as a probationary teacher for the school year 1926-27. On May 23, 1927 the board of trustees met and decided not to employ the teacher for another year. On the morning of May 25, 1927 the clerk of the board informed the teacher orally of such decision of the board. On June 8, 1927, a written notice was sent to the teacher but which she did not receive until June 16, 1927. On June 23, 1927, a registered letter was sent to the teacher notifying her to the same effect. The California statute provides that the board shall have power to dismiss probationary teachers during the school year for cause only, as in the case of permanent teachers, except that on or before the tenth day of June in any year the governing board may give notice in writing to a probationary teacher that his services will not be required for the ensuing school year. The statute further provides that the notice that

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Blalock v. Ridgway et al., 267 Pac. (Cal.) 713.

be sent shall be delivered, (1) by the clerk or secretary of the board, in person, or (2) sent by registered United States mail, postage prepaid, and to the last known address of the teacher. The question before the court in this case was whether the notice of dismissal as given in this case conformed with the requirement of the statute. The higher court held in this case that inasmuch as the written notice didn't reach the teacher until June 16, and inasmuch as the statute did not provide for oral notice to be given, that the board did not give notice in such a way as to be in conformity with the requirement of the statute and that the teacher could not be dismissed after June 10 except for good cause shown.

Numerous cases have arisen under this provision in the California statute relative to the dismissal of probationary teachers. In one of these ⁷ it was held that notice of dismissal, in order to conform to the statute, did not need to be in the exact language of the statute. In another ⁸ it was held that such notice of dismissal might be made by a clerk or messenger or through any agency by which a delivery might be made. The court said in this case that the act of serving

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Volandri v. Taylor et al., 12 Pac. (2nd.) (Cal.) 462.

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Steele et al. v. Board of Trustees of the Pittsburgh Public Schools et al., 9 Pac. (2nd.) (Cal.) 217.

the notice to the teacher was purely ministerial and that it might be delegated by the clerk to another agency. In still another California case we find a most succinct statement of the law with respect to the dismissal of the probationary teacher. Here the court said in part,

Two things must occur: The notice must be in writing and must be delivered to the teacher or deposited in the registered mail prior to June 10. Failure in either respect is an insufficient notice under the statute which automatically re-elects the teacher for the ensuing year.

The Colorado Supreme Court was forced to rule on the definiteness of certain charges in the dismissal of a probationary teacher in 1925. In this case the teacher began teaching on September 3, was married on December 4, and was discharged on December 21 of the same year. The causes for her dismissal were not definite and specific as the statute required but consisted largely of rumors pertaining to her marriage. The teacher was not sent a notice of the charges against her, the time and place of the hearing, nor was she permitted to appear at the hearing, all of which was contrary to the statute. The Colorado court in this case merely upheld the statute, holding that good cause shown, as required by the

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Reed v. Board of Education of Monterey Union High School District et al., 14 Pac. (2nd.) (Cal.) 330.

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School District No. 25 in Weld County v. Youberg, 235 Pac. (Col.) 351.

statute, means specific accusation, notice, evidence of the charge before the board in its official capacity, and an opportunity to the teacher to be heard and refute the charges. It held further that the charges were too indefinite to form a reasonable basis for the cancellation of the teacher's contract. In this case the underlying principle of all tenure legislation that the teacher be given notice of definite charges, and the right to appear before the board and refute those charges, was merely reaffirmed.

Procedure Of Removal

In order to clarify the discussion of court decisions relative to the procedure of removal it is to be understood that only the removal procedure of the teacher on permanent tenure will be discussed in this connection. The procedure for dismissal of the probationary teacher has been discussed in connection with the topic dealing with the period of probation immediately preceding. It was felt that a more vivid conception of the probationary period and the rights of the teacher during such period might be acquired if all matters pertaining to the subject were presented in a unified picture.

It has been pointed out that the courts have uniformly upheld the basic principles of tenure legislation with respect

to the protection of the probationary teacher by giving judicial sanction to enactments requiring stated charges, sufficient notice, and a hearing before the board. Likewise, the courts have been even more zealous in their support of these privileges with respect to the permanent teacher. It has been well established that the power of dismissal cannot be exercised unless the procedure of dismissal as outlined in the statute is followed. This is true even where the cause for dismissal may be a legitimate one. An Oregon case ¹⁰ clearly expresses the great weight of judicial opinion on this point. In this case a teacher on permanent tenure had been dismissed without either having charges filed against her or given the right of hearing before the board. She brought an action for reinstatement on the ground that her discharge had been contrary to the statute providing for the procedure of dismissal. The court said in part:

When a teacher is placed "upon the list of permanently employed teachers," that teacher by force of the law shall continue to serve until dismissed in the manner provided for by chapter 37, and "the manner herein provided" contemplates that there shall be a complaint, which must be in writing and filed with the clerk of the board, the teacher shall be given a written notice, stating the reason for the proposed dismissal, together with a copy of the complaint which has been filed, and, if the teacher files a written request with the clerk, then the board must give the teacher a hearing within ten days. It is true that the power to dismiss exists, but the power cannot be exercised unless the board observes the procedure pointed out by the very statute which confers the right to dismiss.

It has been further held that it is not necessary for the statute to expressly provide for notice and hearing; it is sufficient to entitle the teacher to notice and hearing if the statute provides that the teacher may be dismissed for cause only. In a recent case ¹¹ the Massachusetts Supreme Court commented on this point as follows:

Where the power is given to remove "for cause", removal is not authorized without notice and hearing even though the statute does not so provide in terms The term "removal for cause" means "removal for cause sufficient in law". That can only be determined after an opportunity to be heard and a finding so that the sufficiency of the cause may be determined in court.

While it has been consistently held by the courts that a hearing before the board in its official capacity was necessary to a legal dismissal it is not necessary that such hearing be conducted with the formality of a trial in court and the adherence to technical rules of court procedure. Compliance with the statute is sufficient if the teacher is given an opportunity to hear the charges against him and the right to defend himself. This rule has been expressed in a California case ¹² and rather clearly described in a case which arose under the Colorado law in which the manner of carrying on the hearing was set forth in

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Corrigan v. School Committee, 145 N. E. (Mass.) 530.

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Gaderer v. Grossmont Union High School District of San Diego County, et al., 13 Pac. (2nd.) (Cal.) 401.

detail, as follows:

The statute provides a teacher can only be discharged upon good cause shown. Neighborhood talk and rumors, report to the board by individual members upon personal investigation that there was some foundation for the talk, without specific charge made against the teacher, with notice and opportunity to refute said charge before the board acting officially, is not good cause shown. While we do not mean there must be formal pleadings and trial before the board with the rules and formalities of court procedure still we think that good cause shown means specific accusation, notice, evidence of the charge before the board in its official capacity, and an opportunity to the teacher to be heard and refute the charge.¹³

Adherence to the procedure of dismissal as outlined in the statute has been further stressed in a Massachusetts¹⁴ case. The Massachusetts law provides that "no teacher shall be dismissed unless the superintendent of schools shall have given to the school committee his recommendations as to the proposed dismissal". In this case the teacher had been dismissed without the superintendent having given such recommendation. The Massachusetts Supreme Court held that the school board here acted beyond their power in discharging the teacher since no recommendation by the superintendent had been made relative to the proposed dismissal.

¹³ School District No. 2, Fremont County v. Shuck, 113 Pac. (Col.) 511.

¹⁴ Duffey v. School Committee of Town of Hopkinton, 127 N.E. (Mass.) 540.

In another Massachusetts case the following language was held to be sufficiently specific to comply with the statute of that state in describing the cause of the teacher:

The committee's dissatisfaction with her work, and belief that she has not demonstrated constructive leadership and necessary administrative capability.

The teacher in this case was held to be legally dismissed and not entitled to a more detailed description of the cause for removal.

When the statute is complied with in the removal procedure of a teacher on permanent tenure it then becomes incumbent upon the teacher to defend himself against the charges brought against him. Contrary to the rules of jurisprudence, the burden of proof is upon the teacher to prove his innocence of the charges. Refusal to make such defense justifies the board's action in dismissing the teacher. If he refuses to attend the hearing or, attending, fails to explain his conduct with respect to the charges against him, and the board acts in good faith on the evidence presented before it at the hearing, an appeal to a court of law will be denied the teacher. The opinion of a California court on this point is quoted here at some length:

There is nothing in the record which reveals definitely testimony was taken or what facts were developed upon the hearing before the school board,

except that the record shows that witnesses were sworn and testified in support of the charges which were then pending before the board; that appellant was present and represented by counsel at the hearing; that he did not testify, make any statement, or offer any evidence in his own behalf. With this situation it must be assumed that the proof which was produced before the school board with the exception, of course, of the testimony of the appellant himself, was such as to substantially establish the facts as they were proven upon the hearing in the trial suit.

The proceedings before the school board cannot be likened to a criminal proceeding, where generally the entire burden of proof rests upon the prosecution. The teacher must have known that the school board was the body empowered with the original authority to act upon the charges and dismiss him from his employment, and that, if his actions and conduct were such that they could be explained before the board in a satisfactory manner, it was not only his right, but his duty, to do so.¹⁶

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It has been held, however, in an Oregon case that the teacher may be dismissed summarily without a hearing for a breach of the contract of teaching. An Oregon statute provides:

Teachers in the public school shall, to the utmost of their ability, inculcate in the minds of their pupils correct principles of morality and a proper regard for the laws of society, and for the Government under which they live.

In this case the teacher was found guilty of violating this statute and was dismissed at once without a hearing. She then brought an action for reinstatement. The higher court

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Lee O. Garber, "The Law Governing the Dismissal of Teachers on Permanent Tenure", The Elementary School Journal, XXXV (October, 1934), p. 132, as cited from *Gaderer v. Grossmont, Union High School District of San Diego County et al.*, 13 Pac. (2nd.) (Cal.) 401.

17

Bump v. Union High School District No. 3, 24 Pac. (2nd.) (Ore.) 330.

supported the action of the school board, holding that the above quoted statute was a part of the teacher's contract and its violation amounted to a breach of the teaching contract. The statute itself further provides that in instances of this nature the board shall have the ordinary legal remedies and the right of summary dismissal was ordinarily a legal remedy which was available before the tenure statute was enacted. It is to be noted that the court here drew distinctly the line between that type of act which constitutes a stated cause of dismissal as enumerated in the tenure law and that type of act which, beyond the scope of the tenure law, constitutes a breach of the teaching contract.

A teacher is not entitled to active employment during the pending of dismissal proceedings against him. Neither is he entitled to receive salary during the period in which he has not taught pending such dismissal proceedings if it is found that cause for such removal existed. This ruling has been laid down in the courts of both California¹⁸ and New York¹⁹.

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Gentner v. Board of Education of Los Angeles City High School District et al., 25 Pac. (2nd.) (Cal.) 824.

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Levitch v. Board of Education of City of New York, 209 New York Supp. 271.

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A unique case involving the rights of the teacher on permanent tenure arose under the California code in 1931. The teacher was illegally dismissed and made no protest of his dismissal until after another teacher had been hired to fill the position. He then brought an action for reinstatement. The higher court held that such delay in asserting his right under the tenure law did not estop him from making and sustaining a claim for reinstatement to his position even after another teacher had been hired to take his place. There is some question as to how other courts would rule on this issue inasmuch as the court in this case established a precedent that might ultimately have a tendency to place a premium on the negligence of the teacher if carried much farther in its application.

The law is clear, therefore, on the proposition that the procedure of removal as outlined in the statute must be followed if the dismissal is legal. The courts have unanimously adopted this rule. The only line of cases that partake of the nature of an exception to this rule are those cases in which the teacher is guilty of a direct breach of the teaching contract. In such cases dismissal may be summarily effected without a hearing and still be upheld by the courts. Closer analysis, however, of the difference between instances of this

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Anderson v. Scranton et al., Board of Trustees, 295 Pac. (Cal.) 544.

nature and commission of causes for dismissal enumerated in the statute clarify the reason for such judicial distinction. Where the statutory procedure of removal is followed by the board the burden of proof falls upon the teacher to disprove the charges against him. This rule is contrary to the established rules of evidence in courts of law with respect to the rights of the accused.

The Appeal

It was found in Chapter III that various types of appeal from the decision of the school boards were provided for in the various state tenure laws while some of them provide that the decision of the local board shall be final. It was pointed out, however, that the weight of authority holds that even in those states which provide that the decision of the local board shall be final such finality refers to questions of fact and not to questions of law. In other words, there is a well-marked path of judicial opinion holding that the teacher on permanent tenure always has an appeal upon a question of law following dismissal. This line of reasoning regards the school board as a quasi-judicial body with power to dismiss the teacher so long as it does not act corruptly, arbitrarily, or in bad faith. The determination of the board is conclusive with regard to the existence of facts and the function of the courts on appeal is to determine such questions as whether the board abused its discretion or whether the cause assigned was a legal cause for dismissal. This ruling was laid down

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in a California case and has been followed in most of the other states and even in those states where the statute provides for the appeal to be made to some higher educational

authority before recourse to the courts can be taken. In other words, the finding of the school board or some higher educational authority is construed as final in such questions of fact as to whether the teacher did or did not do the act of which he is accused but the courts have reserved the right to entertain, in all cases, the determination of such questions of law as relate to jurisdiction, interpretation of the law, or an abuse of discretion by the school board or educational authority. The one exception to this is found in the California code which provides:

Nothing in this part shall be construed in such a manner as to deprive any person of his rights and remedies in a court of competent jurisdiction on a question of law and fact.

In other words, while an appeal in the other states may be had by the dismissed teacher only upon a question of law, in California it may be taken upon either a question of law or fact. This provision has been supported in at least two court decisions. In one the court said, "Any teacher may have²³ a court action determine the truth or falsity of the charges" and in the other the same ruling was couched in these terms, "The decision of the school board is not final; a teacher discharged after a trial before a school board is entitled to a

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Alexander v. Manton, 255 Pac. (Cal.) 516.

complete new trial in court"²³.

The question of the steps necessary to perfect the appeal arose in a recent Indiana case²⁴. The plaintiff in this case was a teacher on permanent tenure and had been dismissed in a hearing before a township trustee. He then requested the trustee to certify to a transcript of the proceedings of the hearing in order that he might appeal to the county superintendent. This the trustee refused to do and the plaintiff brought an action to mandate the trustee to certify to the transcript. No appeal bond was posted by the plaintiff within ten days and the trustee contended that the same rules of appeal should apply that govern the appeal from justices of the peace and that, therefore, an appeal bond was necessary to perfect the appeal. In its opinion the Indiana Supreme Court set out what is thought to be the prevalent attitude of the courts on this point, saying, in part:

We don't think that the statutory requirements respecting appeal bonds in appeals from the decisions of justices of the peace are applicable to the appeals authorized in section 2 of the Tenure Act. The appeal contemplated in the Tenure Act is informal and involves little expense. The superintendent is merely to investigate the case and give his decision without any hearing or the filing of any briefs by interested

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Saxton v. Board of Education of Los Angeles City School District et al., 276 Pac. (Cal.) 998

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State ex rel Clark v. Stout, 187 N.E. (Ind) 267

parties. The so-called appeal amounts to little more than a review of the acts of the township trustee by his superior administrative officer, and in our opinion, the plaintiff performed his sole duty in respect to the appeal when he gave notice to the appellee and requested that copies of the papers on file and a transcript of the proceedings and of the evidence introduced at the hearing be transmitted to the county superintendent."

Examination of the cases that have been decided thus far on the subject of the permanent teacher's right of appeal following dismissal discloses the right to be recognized by the courts with respect to matters of law but limited with respect to questions of fact. This points to the conclusion that judicial sanction is being given to the principle that questions of educational character should be decided by educational tribunals and questions of legal interpretation reserved to courts of law.

Summary

Examination of data in this chapter disclosed that the period of probation is looked upon by the courts as a period of apprenticeship which the teacher must satisfactorily serve before she is eligible for permanent tenure. This coincides with the educational view of the purpose of the period. The probationary teacher in California may be dismissed without good cause shown if notified before June 10 of any probationary year. After that date she can only be dismissed in the same way the permanent teacher is dismissed. The question of whether

the teacher is automatically placed on permanent tenure at the end of the probationary period does not find agreement among the courts of the various states. It has been held in a California case that acceptance to permanent tenure must be accepted within twenty days or the right to it is forfeited. Other California decisions have held that the notice of dismissal of the probationary teacher does not need to be in the exact language of the statute and that the act of serving such notice is purely ministerial and may be delegated by the clerk of the school board to any agency capable of serving such notice. Vague and indefinite charges were held too general to constitute cause for dismissal of a probationary teacher under the Colorado law. The procedure for dismissal as outlined in the statute must be followed in order to effect a legal dismissal of the probationary teacher.

The procedure of dismissal as provided for in the statute must be followed with respect to the dismissal of the permanent teacher or the removal is illegal. This is true even where the cause for removal be legitimate. It has been held in a Massachusetts case that a permanent teacher is entitled to notice and hearing before the board if the statute provides for removal only for cause. "Removal for cause" has been interpreted by the courts to mean "removal for cause sufficient in law". The hearing before the board need not be conducted with the formality of court procedure in order for it to be legal.

Compliance with the statute is effected if the teacher is given an opportunity to hear the charges against him and the right to defend himself. If the procedure of removal is followed by the board it becomes the duty of the teacher to appear and disprove the charges against him. The burden of proof is then upon him. It has been held in an Oregon case that the teacher may be dismissed without a hearing before the board if he has been guilty of a breach of the teaching contract. This is regarded as a sound rule of law. It has been held in a California case that the teacher is not entitled to active employment during the pending of dismissal proceedings against him. It has also been held in both California and New York that the teacher is not entitled to salary during the pending of dismissal proceedings against him if it is found that cause for removal existed. The teacher is not estopped from asserting his right to his position as a permanent teacher even after someone else has been hired to take his place.

The teacher on permanent tenure always has an appeal to a court of law on a question of law following his dismissal. In those cases where the statute provides that the decision of the local school board or educational authority shall be final, reference is had to the finality of questions of fact rather than to questions of law. In California case may be

taken immediately to a court of law by the teacher either upon a question of law or fact. It has been held in an Indiana case that the appeal of the teacher from the decision of the township trustee is not governed by the rules of appeal in legal issued from justices of the peace to such an extent that an appeal bond is required of the teacher. The principle that questions of educational character should be decided by educational authorities and questions of legal interpretation reserved to courts of law seems to be receiving judicial sanction.

CHAPTER VIII

COURT DECISIONS INVOLVING DEFINITION OF TERMS

It was found in Chapter IV that all the state tenure laws within the scope of this study, with the exception of the Colorado law, stated specifically the causes for which the teacher on permanent tenure might be dismissed. It is also the well-settled rule of law that these lists of stated causes have been construed by the courts to be exhaustive and the teacher acquiring permanent tenure under a statute in which the causes for dismissal are enumerated can be dismissed for no other cause. It would seem, therefore, that with such careful definition of the sole causes for dismissal there would be little need for judicial interpretation of such clarified intent of the legislators. Such is not the case. In spite of clear and definite expression by the legislative bodies on this issue the courts are constantly called upon to interpret various provisions of these statutes.

All discussion relative to marriage of the woman teacher as constituting a cause for dismissal has been limited to the chapter dealing with the tenure status of the married woman and will accordingly be omitted from this chapter. Although it might have been discussed at either point with little

sacrifice of logical order it was felt that its closer relationship with the entire subject of the rights of the married woman teacher and permanent tenure dictated its insertion at that point. In connection with this chapter, therefore, the subject of marriage by the woman teacher as constituting a cause for dismissal will be summarily dismissed with the brief statement that it has been rather uniformly held by the courts as not sufficient to constitute such cause for dismissal of the teacher on permanent tenure.

Most of the statutes enumerating the causes for dismissal include insubordination of the teacher as one. To all intents and purposes, insubordination may be defined as the refusal of the teacher to obey all reasonable rules and regulations of the school board. However, it has become necessary for the courts to decide whether a rule was "reasonable" or not. An instance of this nature arose in a California Case ¹. In this case the Board of Education of San Francisco passed a ruling requiring all teachers to live within the city during the school term. The plaintiff in this case resided across the bay in Berkeley and brought an action to enjoin the enforcement of the rule. The court sustained the right of the board to enforce this regulation in the following language:

In contemplation of the fact that the teacher stands

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Stuart v. Board of Education, 118 Pac. (Cal.) 712

in loco parentis, that it may become her duty to devote her time to the welfare of individual pupils even outside of school hours, that the hurrying for boats or trains cannot be regarded as conducive to the highest efficiency on the part of the teacher, that tardiness may result from delays or obstructions in the transportation which a non-resident teacher must use, and finally, as has been said, that the "benefit of pupils and resulting benefits to their parents and to the community at large, and not the benefit of teachers, is the reason for the creation and support of the public schools" (Bates v. Board of Education, 139 Cal. 145, 73 Pac. 907), all these, and many more considerations not necessary to detail, certainly make the resolution a reasonable exercise of the power of the board of education . . .

Nor can we agree with respondent that the resolution in question is the imposition of an additional "qualification" which a teacher must possess, which qualification is not within the power of the board of education to exact. True, section 1793 of the Political Code, in conjunction with 1791 thereof, does prescribe certain qualifications and give a list of causes and reasons for which teachers may be dismissed or removed, but a regulation concerning residence is not an added "qualification" within the contemplation of this law, any more than would be a resolution that a teacher should be free from contagious disease; and it would scarcely be said that, if the board of education passed a resolution to that effect, it would add another and an unlawful "qualification" to those prescribed by the Political Code. Nor does it matter in this case, as respondent argues, that the board of education has no power to dismiss a teacher except for the reasons prescribed by section 1793 of the Political Code. That section itself contemplates dismissal for insubordination and clearly a refusal of a teacher to comply with a reasonable regulation of the board would be such insubordination.

It is to be noted here that the court denied the injunction because the rule of the school board was construed as a "reasonable" one. It is a well settled principle that local boards have the right to enforce reasonable rules and that failure of the teacher to obey such rulings constitutes

insubordination within the meaning of the statute.

Under most of the tenure laws incompetency and inefficiency constitute causes for removal. It has been held,² although in a case where permanent tenure was not in issue, that the burden of proof is upon the school board when a teacher is dismissed for incompetency. In this case the court reasoned that the teacher's certificate is prima facie evidence of competency and must be overcome by positive evidence to the contrary.

The Supreme Court of New York has declared that lack of patriotism on the part of the teacher may constitute incompetency and inefficiency under the code of that state. In this case the teacher was called before the board to give her views upon certain questions relating to the war with Germany in 1918. Among others were included the following answers: (1) She would not uphold the United States in resisting invasion, (2) She did not want to help the government in carrying on the war, (3) She would not urge her pupils to support the war, (4) She would not urge them to perform Red Cross services, (5) She would not urge them to buy thrift stamps and (6) She was opposed to the war. She was dismissed on the grounds of

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School Directors v. Reddick, 77 Ill. 628.

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McDowell v. Board of Education, of City of New York, 172 New York Supp. 590.

incompetency and inefficiency and subsequently brought an action for reinstatement under the tenure law.

In supporting the decision of the school board in this case the higher court said, in part:

It is of the utmost importance to the state that the association of teacher and pupil should tend to inculcate in the latter principles of justice and patriotism and a respect for our laws. This end cannot be accomplished if the pupil finds his teacher unwilling to submit to constituted authority. The finding, dismissing the teacher on grounds of incompetency and inefficiency, was correct and within the statute. The substance of the finding of the board is that the appellant is unfit to remain a teacher in our public schools and this court will not, under the circumstances, undertake to say that the board was in error.

4

In a Colorado case it has been held that mere delay in reporting at the beginning of the school year did not constitute neglect of duty that would warrant dismissal under the statute. In this case the teacher did not report for teaching duty until after twenty-two days of the school term had elapsed. The court, however, refused to regard this as sufficient neglect of duty to constitute cause for dismissal under the Colorado code.

The courts are in general agreement that a justifiable decrease in either pupil or teacher personnel constitutes cause for dismissal. If enrollment decreases to a point where economy demands dismissal of teachers on permanent tenure the action has

been supported by the courts. In this respect the teacher on permanent tenure is afforded less protection by the statute than the teacher with a definite contract as it has been held that teachers with definite contracts cannot be dismissed for this reason. Justification of this policy is found in the intent of the legislators to interfere in no way with the right of school authorities to take whatever action efficient administration of the school system might demand. Statutes providing for permanent tenure are to be interpreted as "intending only a regulation of dismissal for causes personal to the employee" .

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A California case is in point here. The plaintiff in this case was a teacher on permanent tenure who had been dismissed for reasons of economy. Alleging that dismissal could not be based on this ground, the teacher brought an action for reinstatement. The court upheld the right of the board to make the dismissal for the reason given, saying in the course of its comment:

There is nothing . . . in . . . any decision of this court, which holds that the board of education, in

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Funston v. District School Board for District No. 1, 278 Pac. (Ore.) 1075.

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Lee O. Garber, "The Law Governing the Dismissal of Teachers on Permanent Tenure", The Elementary School Journal, XXXV (October, 1934), p. 118, as cited from Bates v. Board of Education, 72 Pac. (Cal.) 907.

the interest of economy, or for any other good and sufficient reason, may not reduce the number of classes in the public schools; and, this being so, it inevitably follows that the board must possess the power of determining what teacher, in such event, shall be retired, and it would be absurd in such a case to contend that the teacher so retired would continue to draw pay without performing any services, the same as when he did. The public schools were not created, nor are they supported, for the benefit of the teachers therein, . . . but for the benefit of the pupils, and the resulting benefit to their parents and the community at large.

7

In a recent Indiana case, however, it has been held that school boards may not dismiss teachers on permanent tenure for reasons of economy and retain other teachers who are not on tenure if the teachers on permanent tenure are qualified to teach in the positions for which the non-tenure teachers are retained. In this case a rather wholesale dismissal of a group of teachers on permanent tenure in the City of Terre Haute brought this issue into the courts. Teachers who had not acquired permanent tenure were placed in some of the positions vacated by the dismissal of the tenure teachers. In its decision the Indiana Supreme Court denied the right of the board to follow such procedure saying that "to construe the statute otherwise would give to a school board power to do indirectly what it is prohibited from doing directly".

This Indiana decision has been supported in a New Jersey

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Barnes v. Mendenhall et al., 183 N.E. (Ind.) 556.

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case in which a similar issue was involved. In this case, the plaintiff acquired permanent tenure in the Ventnor Public Schools as a teacher of a special class. She was then dismissed while some of the other teachers who had not acquired permanent tenure were permitted to continue teaching. Evidence showed that the plaintiff was qualified to teach in some of the classes for which the non-tenure teachers had been retained to instruct. The court held in this case that the school board could not deprive her of tenure by abolishing the classes she had been teaching. In commenting on this issue, the court said in part:

Granting that apart from the statute, a school board may in the interest of economy reduce the number of teachers, the protection afforded by the statute would be little more than a gesture if such board were held entitled to make that reduction by selecting for discharge teachers exempt by law therefrom, and retaining the non-exempt. If such reduction is to be made at all, and a place remains which the exempt teacher is qualified to fill, such teacher is entitled to that place as against the retention of a teacher not protected by statute.

In a later case the Supreme Court of New Jersey again followed this same reasoning with regard to another case of similar character. Twenty-two teachers on permanent tenure were dismissed in the town of Kearney for reasons of economy while fourteen teachers who had not yet acquired permanent

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Seidel v. Board of Education of Ventnor City, 164 Atl. (N.J.) 901.

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Board of Education of the Town of Kearney v. Horan et al., 168 Atl. (N.J.) 132.

tenure were retained. In an excerpt from its decision the court made the following clarifying statement:

As to the supposition cases of (a) two or more tenure teachers and only one place available, and (b) one tenure teacher and several non-tenure teachers liable to discharge, the simple answers are: (a) the board must use its discretion in selecting the tenure teacher; and (b) the board must use similar discretion in selecting the non-tenure teacher to discharge.

The rule is well established that a teacher cannot be required to perform service of a kind other than that provided for in his contract. The principle of this rule has been applied by the courts to the teacher on permanent tenure. It has been held in a New York case ¹⁰ that the board of education cannot assign any teacher to a position of lower grade in which a loss of rank and salary is involved without authorization to do so under the statute. It was contended by the board in this case that a teacher who had been promoted to a higher position could be reassigned to a lower position at the discretion of the board and without a hearing. The court refused to support this contention of the board in the following language:

While the interests of the schools, which are supreme, may require the reassignment of a teacher promoted to a higher grade, as we read the statute, the reassignment must be founded on cause shown after an opportunity to be heard. Some fact must be alleged and proved to justify it, or the scheme to protect the tenure of teachers can be defeated, in all cases of promotion, by arbitrary reassignment to the former position.

A similar issue has arisen under the California statute. The teacher in this case was assigned to a position of lower rank and salary than the one she had held prior to a year's leave of absence. Upon her return and notification of such demotion, she brought an action to be reinstated to her former position. The court held in this case that the teacher had a right to be reinstated to such former position, justifying its action in the following terms:

It will be observed from the statement of the case that the respondent was not dismissed entirely from service as a teacher. She was removed from the grade in which her certificate and the statute entitled her to teach, which was as much a violation of the statute as if she had been dismissed, and not given another position.

We do not wish to be understood as holding that the board of education has not the power to transfer a teacher from one school to another of the same grade. The statute does not guarantee to a teacher the right to continue in any particular school, but to continue as such teacher in a certain grade, and the transfer of teachers from one school to another may be necessary for the good of the schools, and should not be prohibited.

It has been held, however, under the California code that a teacher on permanent tenure might be transferred from the third grade to the first grade at the discretion of the local board.

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In this case the court laid down a rather arbitrary basis of teacher classification in recognizing but three grades of position; namely, primary, grammar school, and high school. In justification of its rule in this case, the court said:

It is in this statutory sense that we must regard the term "grade" when seeking a limitation upon the

powers of the defendant to transfer and assign teachers, as it will not be pretended that the asserted right of the teacher to teach a particular class within a particular grade, in preference to another class within the same grade, can be upheld without express statutory authority.

The right of the school board to dismiss a teacher on permanent tenure for political activity has come before the courts for decision, although such cause for dismissal is not commonly listed in the statutes. The first of these cases arose in California. The teacher in this case¹² was a permanent teacher under the California act. On September 1, 1922, the appellant urged the students in his classes to vote for a certain Mr. Golway, who was a candidate for the superintendency of schools of Sacramento County, in the following remarks:

Many of you know Mr. Golway, what a fine man he is, and that his hopes are to be elected soon. I think he would be more helpful to our department than a lady, and we need more men in our schools. Sometimes your parents do not know one candidate from another; so they might be glad to be informed. Of course, if any of you have relatives or friends trying for the same office, be sure and vote for them.

Upon a complaint by the incumbent superintendent of schools to the school board, the plaintiff was suspended for a period of ten weeks upon the ground of unprofessional conduct. The teacher sought a writ of mandamus to compel the board to reinstate him, but such writ was refused and the court justified the action of the board in the following language:

It is to be observed that the advocacy before the scholars of a public school by a teacher of the election of a particular candidate for a public office—the attempt

thus to influence support of such candidate by the pupils and through them by their parents-introduces into the school questions wholly foreign to its purposes and objects; that such conduct can have no other effect than to stir up strife among the students over a contest for a political office, and the result of this would inevitably be to disrupt the required discipline of a public school. Such conduct certainly is in contravention not only of the spirit of the laws governing the public-school system, but of that essential policy according to which the public-school system should be maintained in order that it may subserve in the highest degree its purposes.

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It has been held, however, in a Massachusetts case that the mere political views of the teacher did not constitute sufficient cause for the board to abolish the position which he held and thereby effect his dismissal. In this case, the school board by a vote of 5 - 3 decided to abolish the plaintiff's position and the evidence indicated that such action was taken solely because of political reasons. The court held that such abolition had not been done in the interest of public welfare and that the school board had not acted on the merits of the question. The teacher, therefore, was reinstated to his position by the court.

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A recent case involving a new cause of dismissal arose under the "good and just cause" provision of the Indiana Tenure Law. In the City of Evansville, the school board had a rule compelling the retirement of a teacher when he reached

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Sweeney v. School Committee of City of Revere, 144 N.E. (Mass.) 377.

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School City of Evansville v. Culver, 183 N.E. (Ind.) 370.

present.

teacher, thus doing indirectly what the tenure act sought to prevent. The court would be to allow the board to limit the tenure of every teacher in the retirement rule of the local school board in the same manner as the law. The court took the position that the plaintiff, therefore, was not guilty of insubordination under the law. The court held by this rule was not a reasonable one to require a sufficient cause for dismissal. It was further held that such refusal by the plaintiff to retire did not constitute a sufficient cause for dismissal. The court further held the action of the Evansville board in this case, holding the plaintiff to the law. The Indiana Supreme Court refused to grant a writ of habeas corpus under the "Good and Just Cause" provision of the law. The school board alleging that his act constituted a sufficient cause for dismissal under the "Good and Just Cause" provision of the law, the school board alleging that his act constituted a sufficient cause for dismissal under the "Good and Just Cause" provision of the law, refused to retire upon reaching such age. The plaintiff in this case, who was on the age of seventy.

Summary

In this chapter the cases which have arisen with respect to the causes for dismissal were examined. It was found that the teacher's guilt or innocence of insubordination depends to a great extent upon the reasonableness of the rule which he has violated. If the court construes the rule to be a reasonable one its violation will be held to be insubordination. If construed to be unreasonable, the teacher's violation will not constitute cause for dismissal. It has been held in a California case that a ruling of a local school board requiring all teachers to reside within the city in which they were teaching during the school term was not unreasonable.

An Illinois case has held that the burden of proof is upon the school board to prove the incompetency and inefficiency of the teacher where such causes are alleged in dismissal. A New York case has held that lack of patriotism during the war with Germany constituted incompetency on the part of the teacher. A delay of twenty-two days in reporting for duty at the beginning of the school year has been held not to constitute inefficiency sufficient to warrant dismissal.

The courts are uniformly agreed that a decrease in pupil or teacher personnel constitutes cause for dismissal if done in the interest of economy. This rule is based on the desire of legislatures and courts alike to preserve to those charged with

the administration of the schools the right to take whatever action efficient administration demands. It has been held, however, in Indiana and New Jersey that school boards could not dismiss permanent teachers for reasons of economy and retain non-tenure teachers where the teachers dismissed were qualified to fill the positions for which the non-tenure teachers were retained.

A teacher cannot be required to perform a service other than that provided for in the contract. A New York case has held that the school board cannot assign a teacher to a position of lower rank and grade without authorization to do so under the statute. This case has been supported by a California decision. Another California case has held, however, that a teacher may be transferred from the third grade to the first grade at the discretion of the board. For purpose of classification the California court laid down three types of teaching rank under the law of that state: primary, grammar school, and high school.

A California case has held that political activity within the schoolroom constitutes cause for dismissal under the California code. A Massachusetts case, however, has said that a teacher cannot be dismissed for his political views by abolishing his position.

A local board ruling in Indiana requiring retirement of a teacher upon reaching the age of seventy was held by the Indiana Supreme Court as unreasonable and its violation, therefore, did not constitute insubordination.

CHAPTER IX

TENURE STATUS OF THE MARRIED WOMAN TEACHER

Much controversy and litigation resulting therefrom has recently arisen over the status of the married woman and the permanent tenure laws. Many of these questions have been carried to the courts for determination. While it may be said in general that the courts in dealing with these cases have sustained the philosophy of modern education which tends toward the liberation of personality the conclusions arrived at by the courts are not altogether in agreement.

One rule which does seem to find common agreement among the various state supreme courts that have expressed themselves on this issue is that marriage, in and of itself, does not constitute a legal cause for the dismissal of a teacher after she has become a permanent teacher. A case recently decided by the Supreme Court of Indiana¹ illustrates the reasoning of those courts that hold that marriage is not sufficient cause for dismissal. In this case the relatrix was a permanent teacher under the Indiana Tenure Law in the City of Elwood. Subsequent to the acquisition of her permanent status the school trustees adopted a resolution that in the future no

¹ School City of Elwood et al., v. State ex rel. Griffin, 180 N.E. (Ind.) 471

married women should be employed in the Elwood schools as teachers and that necessary steps be taken to terminate the indefinite contracts of all married women teachers in the school corporation. The relatrix was accordingly dismissed. The school trustees admitted that they did not take the action because of the "incompetency, insubordination, . . . neglect of duty (or) immorality" of the relatrix, nor because of "justifiable decrease in the number of teaching position", but contend that their action was lawfully taken under the remaining ground stated in the Indiana statute, viz: "other good and just cause". In this case the court reasoned as follows:

If a teacher, after marriage, becomes inefficient, impaired in her usefulness, neglectful or otherwise incapable of performing her duties as a teacher in a proper manner, then good reason - "other good and just cause" - would exist for her dismissal; but marriage, in itself (in the absence of a statutory provision to the contrary), does not constitute a good and just cause (as provided in the Teachers' Tenure Law) for the discharge of a teacher.

Marriage as an institution involves no element of wrong, but on the contrary is protected, encouraged, and fostered by a sound public policy. The arbitrary determination of the school board that the marriage of women teachers (it is noted that the resolution of the school board attempted to operate against women only, and not against men teachers who married) was "good and just cause" for their removal is, as a matter of law, declared to be erroneous and invalid.

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A Wisconsin case follows this same line of reasoning. In this case the teacher was employed in 1914 while single. She

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State v. Board of School Directors of City of Milwaukee,
191 N.W. 746.

taught continuously until she was dismissed in 1921, at which time she had become a permanent teacher. In 1921 the school board ruled that married women should not be transferred, promoted, or permanently appointed to regular teaching positions except in clearly attested cases where the teacher became the sole support of a family by reason of the death or incapacity of the husband and that the married teacher should be known by her married name on all school records and printed matter. The teacher in this case was married in March, 1921, and made no report of her marriage at that time and signed the pay roll in her maiden name during the remaining school term. Prior to the commencement of the school term in September of that year she reported the fact of her marriage to the school officials, whereupon she was suspended from service upon the following reasons:

The ground for your suspension is that you repeatedly signed your former maiden name to the school records during the second semester of the last school year in violation of the board's proceedings in this regard.

The court found in this case that the only rule governing the subject of causes for dismissal of teachers was article XVII, which is as follows:

The committee on complaints shall hear all charges against teachers and janitors and shall, subject to the approval of the board, dismiss teachers and janitors by majority vote for misconduct, incompetency, inefficiency, or inattention to duty.

The court held that the cause given for dismissal in this

case was not among the causes mentioned in the article governing and said,

Such a dismissal cannot be at the mere pleasure of the board. . . . We feel constrained to hold that the facts as presented in this record will not and do not support a finding that there was either misconduct or inattention to duty by the relator (teacher) such as warranted the severe penalty inflicted by the determination of the school board in the particular instance.

A case recently decided in California is also in point here. The teacher in this case had acquired permanent status under the California Tenure Law. Just before the end of the school year she became married and because of the fact the trustees of the school asked her to tender her resignation as a teacher, which she refused to do. Prior to the opening of the following fall term of school the school trustees assigned the teacher to teach outside the county in which she had acquired her tenure, and further, she was assigned to teach in a tuberculosis sanitarium where there were about twenty-five children of school age. The teacher then brought action to compel the trustees of the school to assign her to a school in the district in which she had acquired her tenure. In supporting the contention of the teacher in this case and ordering her assigned to a school in the county in which her permanent status was acquired the court said,

The transfer to a class in a tubercular institution

remote from the district where she earned her status as a permanent teacher is too severe a penalty for marriage. Marriage is not a legal ground for forfeiting one's status as a permanent teacher. The inevitable result of the procedure in the present case is to accomplish by circuitous methods what the law does not directly permit.

A decision contrary to this line of reasoning, however, is found in a Massachusetts case.⁴ In this case it appears the school committee of Hopedale employed the teacher, who was then unmarried, as a teacher in the public schools. It appears from the evidence in this case that the teacher, contemplating marriage, spoke with the superintendent to find out whether marriage would affect her position and was told that it would not and that he thought married teachers the best teachers and would keep her on the teaching force. She continued in service until October, 1930, at which time she had both married and acquired permanent tenure under the Massachusetts Tenure Law. In September, 1930, the school committee advised the teacher by letter that her dismissal was proposed for the reason that the committee had voted to eliminate married teachers from the teaching force. The teacher was thereupon dismissed for this reason and subsequently brought an action to compel the school committee to reinstate her as a teacher. The Supreme Court of Massachusetts, in upholding the school committee, reasoned as follows:

It is manifest that the broad power of dismissal as

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Sheldon v. Committee of Hopedale 177 N.E. (Mass.) 94.

it had existed at least since 1844 was not confined further than by the express limitations imposed in 1914 and 1921. If they are complied with, the dismissal rests as fully as it ever did in the discretion of the committee. The teacher is notified of what it is proposed to do. He is given at least thirty days to consider his own course of action. He shall be heard if he desires, and a witness may accompany him. He has the chance of a recommendation from the superintendent that he be retained. Nevertheless, faithful service, good morals, ability in his profession, on his part, are not conditions upon the powers of the committee. If in its judgment the welfare of the schools so requires and by a two-thirds vote it decides to dismiss, the dismissal is valid. It is not essential that the recommendation of the superintendent shall favor the dismissal. The board must have the superintendent's advice . . . but nothing in the law indicates that it must control their action. Any other position would place the superintendent above the board. Here, whatever may have been or may still be his opinion on the broad question of the value of married women as teachers, as one charged with carrying out its policies he has given his recommendation for this application of its rule. It is no subterfuge. Nothing in the statutes makes the decision dependent upon what may have happened in the case of other teachers. No action taken by the teacher in reliance on such a representation stops the future board.

A decision that wise administration of public schools calls for the elimination of women teachers if they are married is not so irrational that it is inconsistent in law with good faith in dealing with a question of dismissal. Decisions elsewhere are not controlling. No decision of this court supports the contention of the petitioner (teacher).

Thus it is to be noted that this case supports the principle of freedom of contract between the teacher and the school board where the state laws are silent on the subject of marriage of the woman teacher as a cause for dismissal.

So far in this chapter we have considered only those cases in which the statutes, local regulations, and the teacher's contract contained no provisions relative to the marriage of

a woman teacher at the time the contract was made. We now turn to a new consideration: whether a provision existing in the contract or local school board regulations at the time such contract is entered into by the school board and the teacher providing for dismissal in the event of marriage is binding upon the teacher. On this issue the courts seem to be divided. Probably the outstanding case on this point⁵ arose under the Oregon Tenure Law. In this case the teacher was hired in 1911, while single. She was subsequently placed on the list of permanently hired teachers under the Oregon Tenure Law. In 1913 the school board notified the teacher that she had been reelected and advised her that the board had ruled that,

all women teachers who marry while in the service . . . thereby terminate their service . . . but such marriage shall not operate to bar them from reappointment should it be deemed by the board to be to the best interest of the school to retain their service . . . If you accept the position . . . as herein noted, please fill in the blanks on, and sign the enclosed accepted form.

The accepted form at the close of the letter read as follows: "I accept the position above named and defined on the conditions specified." The evidence showed the teacher signed this form. On January 5, 1915, she received oral notice that she was dismissed because she had married on the preceding day. The teacher was not granted the right of a

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Richards v. District School Board for School District No. 1 et al., 78 Ore. 321, 153 Pac. 482.

hearing nor were formal charges preferred against her, both of which were required by statute. The court, however, in this case, decided the case upon the broad ground of whether or not marriage constituted a cause for dismissal, rather than upon the fact that the Oregon statute had not been complied with in preferring charges and granting the teacher a hearing. The Oregon statute gives the school board the right to dismiss the teacher for certain stated causes, marriage not being listed among them. In its opinion the court said,

It is plain that the statute contemplates that the complaint or criticism or charge shall present some good cause or some reasonable cause for dismissal. If the board can dismiss for any cause, whether it be reasonable, capricious, or whimsical, then a hearing would be an idle ceremony.

. . . Marriage either does or does not furnish a reasonable cause. If it is not a reasonable cause then the board was utterly powerless to dismiss, because their authority is limited to the cases within the purview of the statute, and the law contemplates dismissal for reasonable cause only . . .

. . . If a teacher becomes inefficient or fails to perform a duty, or does some act which of itself impairs usefulness, then a good or reasonable cause for dismissal would exist. The act of marriage, however, does not, of itself, furnish a reasonable cause. That the marriage status does not necessarily impair the competency of all women teachers is conceded by the school authorities when they employ married women, as they are even now doing, to teach in the school of this district. The clerk of the board admitted that in some instances a woman becomes a better teacher after marriage than she was before. The reason advanced for the rule adopted by the board is that after marriage a woman may devote her time and attention to her home rather than to her school work. It would be just as reasonable to adopt a rule that if a woman teacher joined a church it would work an automatic dismissal from the schools on an imagined assumption that the church might engross her time, thought, and attention to the detriment

of the schools; but such a regulation as the one supposed would not even have the semblance of reason. It must be conceded that quite a different case is presented where the act ruled against is inherently wrong. The act to which the instant rule relates does not involve a single element of wrong, but, on the contrary, marriage is not only protected by both the written and unwritten law, but it is also fostered by a sound public policy. It is impossible to know in advance whether the efficiency of any person will become impaired because of marriage, and a rule which assumes that all persons do become less competent because of marriage is unreasonable because such a regulation is purely arbitrary. If a teacher is just as competent and efficient after marriage, a dismissal because of marriage would be capricious. If a teacher is neglectful, incompetent, and inefficient, she ought to be discharged whether she is married or single.

Thus it is evident that marriage does not constitute a reasonable cause for dismissal wherever state statutes are silent on the subject. The court also followed the rule in this case that local school boards are without authority to enlarge upon the causes for dismissal where such causes are specifically set out by state law, unless such additional causes are founded upon reason. Furthermore, it was held in the above cited case that rules adopted by local school boards cannot control the provisions of state statutes and are immaterial in determining the rights of the teacher under the statutes.

6

A recent Wisconsin case tends to oppose the general line of reasoning followed in the Oregon case cited above. In April, 1925, a teacher, the plaintiff in this case and a single woman, was employed by the school board of Green Bay. Prior to her

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Ansorge v. City of Green Bay, 224 N.W. (Wis.) 119.

appointment the board had adopted an unwritten law against the hiring of married women as teachers. Inasmuch as the teacher's contemplation of marriage was known to the director of the board of industrial education in this case, he caused to have inserted in her contract the following clause:

It is agreed that the contemplated marriage of the party of the second part shall not be performed before the Christmas holidays. If performed at that time the party of the second part agrees to give thirty days' notice to that effect. If not performed at that time, the party of the second part agrees that she shall not be married until the close of the school year.

On January 30, 1928, the teacher married and on January 23 of the same year she was notified by the director that her services were no longer required. The school board sustained the director in this action. In this case the right of the school board to dismiss was sustained by the Supreme Court of Wisconsin. In its opinion the court said,

In the selection of teachers a board like the one herein of necessity must be and ordinarily is clothed with a broad power of discretion. It may be conceded that a married teacher can ordinarily perform her duties as satisfactorily as an unmarried one, but the board is charged with a duty which requires it to promote the public interests. On a policy such as is manifested in the instant case there may be a wide difference of opinion. Many circumstances may exist with reference to a particular school which might lead to the belief that a male teacher would be more suitable for employment than a female teacher. On the other hand, the same holds

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State ex rel. Thompson v. Board of School Directors of City of Milwaukee et al., 179 Wis. 234, 191 N.W. 746.

with respect to married and unmarried teachers. In the employment of teachers the board must be and ordinarily is, vested, as is heretofore said, with a wide discretion, and when such discretion is exercised in good faith and is not contrary to law, the exercise of such discretion should not be interfered with or controlled by the courts.

3

In a very recent case decided by the Indiana Supreme Court it was held that marriage in defiance of a school board regulation to the contrary did not constitute "insubordination" under the Indiana Tenure Law. In this case the teacher had previously acquired permanent tenure in the City of Crawfordsville. The school board of the city had a ruling which provided that, "no married woman shall be employed as a teacher and the marriage of the woman during her term of employment shall operate to automatically terminate her services as a teacher." After becoming a permanent teacher the plaintiff married in violation of this rule. She was dismissed and one of the reasons given by the board was that because of her marriage in defiance of the board's ruling her contract had been automatically terminated. The Indiana Supreme Court, in supporting the teacher in this decision, held that the rule of the school board that marriage automatically terminated the contract of the woman teacher was an unreasonable one and that, therefore, violation of such rule did not constitute "insubordination" under the Tenure Law. It is to be noted that in this case the teacher went a step further than

did the teacher in *School City of Elwood, et al. v. State ex rel. Griffin et al.* In the instant case the teacher married in open violation of an express ruling of the school board prohibiting marriage. This case seems to express the better rule of law with respect to clauses in the teacher's contract which tend to be in restraint of marriage. The courts are prone to hold such restrictive provisions void as against public policy.

9

A case recently arose in New Jersey relative to the effect of resignation at the end of the three year probationary period upon the status of the married woman teacher. The teacher in this case had taught three years in the New Jersey schools, the last being in the school year 1930-31. The school board adopted a ruling on April 29, 1931, that from that date henceforward no married woman teacher should be allowed to acquire permanent tenure. The plaintiff in this case, a married woman, was desirous of continuing in her teaching position and, when notified that she would not be reemployed, stated that she would waive her right to permanent tenure. On May 20, 1931, she sent in her resignation to take effect June 18, 1931. There was an understanding between her and the school board that after her continuous three year service was thus broken, she would be reemployed. Subsequently she was reemployed and taught one more year. In June, 1932, she was notified that her

services were no longer needed. She then brought an action against the school board to be reinstated on the ground that her four years of continuous teaching had conferred on her the status of a permanent teacher. The Supreme Court of New Jersey refused to support the contention of the teacher in this case, holding that, by her own act of resignation, she had terminated the services before she had become entitled to permanent tenure rights. It was within the right of either party to the teaching contract to terminate the service before the rights of permanent tenure had been acquired. This the teacher did by her resignation, in the opinion of the court. Obviously, the statutory rights of permanent tenure never having been acquired, she could not assert a claim to the retention of something she had never possessed and her contention was not sustained.

In addition to the decisions of the various courts cited above several opinions of certain legal and educational authorities have been expressed within recent years with reference to the subject of married women teachers and permanent teacher tenure laws. While these opinions do not have the weight of court decisions they do indicate the trend of legal and educational belief with regard to the subject. Under date of March 20, 1929, the attorney general of Indiana wrote to the state superintendent of public instruction of that state as follows:

I have before me your letter of March 13, 1929,

asking four specific questions with reference to the teacher tenure law, approved March 6, 1937 (acts of 1937, chapter 87) Your third question is as follows:

"Would a regulation by a school board or township trustee not to employ married ladies as teachers, or that a teacher should not marry while she is teaching be interpreted as reasonable rule?"

Replying specifically to the above question, it is my opinion that such a rule would be unreasonable as applied to teachers who had acquired rights under the teacher tenure statute.

In December 1931, the Maryland State Department of Education ruled that a woman teacher in the public schools of that State could not be dismissed from her position on account of marriage. This ruling also declared that a clause in a teachers' contract reading "If a female teacher married in any school year she will be expected to resign at the close of the school year" was in conflict with the state school law which provides no ground for discrimination on account of sex, nor does it differentiate between married and single teachers.

In 1922, the commissioner of education of New Jersey held that a school board ruling providing for the elimination of female teachers on account of marriage was inoperative by reason of the teacher tenure law of that state. Below are excerpts from the decision of that state commissioner of education:

The teachers' tenure law very definitely prohibits the dismissal of any teacher under tenures except for "inefficiency, incapacity, conduct unbecoming a teacher, or other just cause". No rule of a board of education

can be effective if in contravention of a statute (sec. 120, art. VII, School Law) and it is therefore very obvious that in order for appellant's violation of respondent's rules to legally justify her dismissal, such violation must constitute the offenses described in the tenure law as justifying dismissal of a teacher.

Plainly the violation by appellant of respondent's rule regarding marriage cannot in itself be considered inefficiency, incapacity, or conduct unbecoming a teacher, and cannot therefore be sufficient cause under the tenure law to justify her dismissal (Clara Planer Nommensen v. Hoboken Board of Education, New Jersey School Law Decisions of the Commissioner of Education and State Board of Education, 1938, p. 166).

In 1916, the New York State Commissioner of Education upheld a school board ruling providing for the dismissal of married women teachers, not upon the reasonableness of the ruling, but upon the authority of a municipality to set up regulations in addition to those prescribed by the statute.

Subsequent to the above ruling of the New York State Commissioner of Education the legislature enacted a teacher-tenure statute of State-wide application. In 1935, the State commissioner of education of New York was again called upon to rule on the subject of dismissal on account of marriage. He then said:

It seems clear to me, however, that to declare (by) either a legislative act or an administrative rule that the marriage of a teacher unfits her for the public-school service would be opposed to existing public policy and would be an unfair discrimination against married women. If a married woman possesses the required qualifications and performs her duties with the same degree of competency and efficiency as an unmarried woman it would not only be unjust but I think illegal to discriminate against her because of her marriage (33

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State Department Reports 18, 1935).

It is therefore evident that the most recent trend in both legal and educational thought is toward the liberalization of contract with regard to the married woman teacher. This trend is evidenced by the reluctance of the courts to support those provisions in the teaching contract or those rulings of local school boards which tend to operate in restraint of marriage and the growing tendency to view her eligibility as a teacher upon the bases of competency and efficiency rather than upon her status as a married or single woman. Perhaps Lewis best expresses the conclusions which seem to find common agreement among both jurists and educators at the present time. He says:

It all depends upon the woman. Individual merit, and merit only, should determine the status of married women teachers . . . The tendency seems to be away from the hackneyed arguments of confining a married woman's activities to her home, and to base her employment or dismissal on personal efficiency rather than on extra professional duties or pleasures which she may follow. Obviously, no general rule will cover all the cases . . . There is no way to catalog women solely on their marital condition. Efficiency depends on many factors. The school board should give to the pupil the best teachers possible. 11

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Ward W. Keesecker, The Legal Status Of Married Women Teachers. Pamphlet No. 47. 1934. U. S. Office of Education, pp. 16 - 18.

11

E.E. Lewis, Personnel Problems of the Teaching Staff. p. 173. New York: The Century Co., 1935.

Summary.

In this chapter we have examined the court decisions in some of the states having permanent tenure laws in which the question of the effect which marriage has upon the status of the woman teacher was in litigation. In the absence of statutory provision to the contrary there seems to be general agreement among the courts that marriage of the woman teacher is not a sufficient cause for her dismissal if she has acquired permanent tenure. Moreover, it has been held that where the woman teacher marries in violation of a local school board ruling or a provision in the teaching contract, it does not constitute insubordination sufficient to warrant dismissal. On this point, however, some division of judicial opinion seems to exist inasmuch as it has been held otherwise in some states. The weight of authority seems to support the rule that where state law specifies causes for dismissal, local school units are lacking in authority to enlarge upon the causes for dismissal or to change the manner in which dismissal can be brought about. Reasonable rules of local boards of education are always read into the teacher's contract but it has been held that a rule prohibiting marriage of the woman teacher was unreasonable and, therefore, unenforceable in a court of law. As a general rule, the courts are still prone to regard all contracts in restraint of

marriage as against public policy and, therefore, void.

The trend of recent court decisions and opinions of modern educators seem to find common agreement in the conclusion that the eligibility of the woman teacher should rest upon her competency and efficiency rather than upon the question of whether she is married or single. This view has influenced the decisions of the courts in those cases in which the rights of the woman teacher with respect to the permanent tenure laws have been in litigation.

CHAPTER X

MISCELLANEOUS TENURE LAW DECISIONS

In this chapter it has been found necessary to group a number of court decisions that have been written concerning various provisions of the tenure laws and which, because of their varied nature, defy classification within the other chapters of this study. They are deemed sufficiently important to the thoroughness of this study, however, to warrant citation at this point. They present judicial interpretation of divers provisions of the tenure laws as litigation has brought them before the courts. Obviously, the subject matter of this chapter cannot lend itself to logical development and these miscellaneous cases will merely be discussed in order of the writer's pleasure.

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A case recently decided in Indiana presented two issues of major importance with respect to the operation of the law in that state. In this case the plaintiff, the teacher, had acquired permanent tenure rights under the Tenure Law of that

¹
State ex rel Black v. Board of School Commissioners of the City of Indianapolis, 187 N.E. (Ind.) 393.

state and while teaching in the schools of the City of Indianapolis. Some three years after she had been placed on permanent tenure she signed a contract with the Indianapolis School Commissioners which contained, among other things, some provisions relating to the following year's employment. At the end of that year she was dismissed without notice. The first contention of the defendant school board, upon an action by the teacher for reinstatement, was that she had forfeited her right to permanent tenure by signing a contract which contained certain provisions relating to only the one, ensuing year. The board contended that by this act she became a permanent teacher with a definite contract for only one year and that her contractual rights terminated with the expiration of that year. In other words, it was argued that her definite contract with the board supplanted her indefinite contract under the tenure law. Naturally, this contention, if supported by the court, would drastically affect the teacher's rights under the law and might conceivably operate to nullify the original intent of the law. The higher court in this instance refused to sustain the contention of the school board. An excerpt from its decision is quoted.

We do not think that it was the intention of the Legislature . . . to lose to both the state (school corporation) and to the teacher the rights and advantages obtained by them under the statute, by reason of the fact that the proper school officers and the teacher entered into a new contract for the further services of the said teacher, unless the new contract clearly indicated that such was their intention.

Thus, the court upheld the teacher's right to enter into a supplementary contract with the school board relative to a single year's employment without jeopardizing her rights to permanent tenure. It is to be noted in connection with the attitude of the court on this point that a distinction was made between the rights of the teacher as bestowed by contract with the board and those bestowed by statutory authority. There has been a tendency by the courts to regard these statutory rights as superceding the rights under the private contract unless the contract clearly indicated the contrary intention of the parties.

The defendant school board's second contention in this case was that the Indiana Teacher Tenure Law of 1927 had been repealed insofar as it related to the school city of Indianapolis by the Indianapolis School Codification Act of 1931 which provided that,

The superintendent of schools of such school city shall have the power to appoint and discharge all principals, supervisors, assistants, teachers, and other employees in the educational department, authorized by the board, subject to the limitations in this act stated.

Again the Indiana Supreme Court refused to support the position of the Indianapolis School Board. It pointed out that the Indianapolis Codification Act contained no repealing clause and that, in such case, if it can be reasonably done, it should be construed in conjunction with the Teacher Tenure Law so that both might stand, as the repeal of a statute by implication

is not favored. It is only where the earlier and later acts are in irreconcilable conflict that the earlier statute is repealed. The court reasoned that it was possible to construe the Indianapolis Codification Act as applying only to teachers that are not on permanent tenure and thus any apparent conflict between the two acts is eliminated. Inferentially, we see in this decision the reluctance of the court to bestow upon a school city the power to nullify the intent of the state statute by local school board regulations.

²
A case involving an issue similar to the latter point of controversy in the Indiana case cited above arose under the California statute. In this case a conflict between the necessary time of notice prior to dismissal between the state statute and a provision of the City of Vallejo brought into legal controversy this question: were the rights of the parties to be governed by the California Tenure Act or by the provisions of the charter of the City of Vallejo? The California Supreme Court followed a line of reasoning similar to that adopted by the Indiana Supreme Court. It held that the government of schools and the employment and discharge of teachers are not municipal affairs and are not governed by the provisions of a city charter and the state law controls wherever a conflict arises between the two.

²
Vallejo High School District v. White, 185.Pac. (Cal.) 302.

The necessity for the signature of both parties to the contract of employment to be affixed to such contract has been ruled upon by the Minnesota Supreme Court. In this case the contract had been signed by the teacher but had never been signed by the school board. The teacher was later dismissed and brought an action to recover part of her salary. The court held there that before the passage of the tenure law it was necessary to have a written contract of employment signed by both parties in order for the teacher to recover for services rendered but that the enactment of the Teachers Tenure Act of 1927 rendered this requirement no longer necessary. Admitting that a contract signed by both parties was desirable the court ruled that it was no longer requisite in order to create a lawful and valid employment.

The classification of the teacher as a permanent teacher has been held to operate automatically whether the school board formally makes such classification or not in a California case.⁴ The teacher in this case had been employed by a school district from 1932 to 1936. Immediately prior to the school year of 1936-7 she signed a contract with the school board to teach the ensuing year. At the end of that school year she was informed by the board of trustees that her services

³ Oxnam v. Independent School District of Duluth, 227 N.W. (Minn.) 351.

⁴ La Shells v. Hench et al., 278 Pac. (Cal.) 377.

were no longer needed. The board had never classified the teacher as a permanent teacher although she had fulfilled the requirements of the Teacher Tenure Law. She brought an action to be restored to her teaching position, contending that she was a permanent teacher.

The court sustained the teacher's contention in this case, holding that the failure of the board to classify the teacher as a permanent teacher when she has fulfilled the requirements of the tenure law does not prevent the operation of the law in making such classification automatically. Inasmuch as she was entitled to such classification she was so considered by the court. It will be noted that this case presents an issue similar to the one raised in the Indiana case of Black v. Board of School Commissioners of Indianapolis in that the board in this case had entered into a contract with the teacher purporting to limit the employment to one year. It is also significant that the courts of both states followed substantially the same rule of law, holding that the teacher's yearly contract did not supplant the teacher's permanent contract which she had acquired under the tenure law.

The remedy of the permanent teacher in case of illegal dismissal has been the subject of considerable litigation and cases arising therefrom reveal the courts to be in general concurrence on a well-established rule. That rule is this: a teacher who holds a position under a permanent tenure act

subject to dismissal only for stated cause may, when illegally dismissed, be restored to his position by mandamus. This is a writ issued by a court of equity mandating the school board to allow the teacher to resume his duties. This rule has been followed in a number of cases. The courts unanimously have reasoned that, under such circumstances, the teacher has no adequate remedy at law because it is impossible to determine the measure of his damages, inasmuch as the term of his employment extends for an indefinite time. Were this not true it would be possible for the illegally dismissed teacher to institute a suit in damages for the breach of contract. The indefinite tenure of the permanent teacher, however, precludes a definite ascertainment of the measure of his damages and compels courts of equity to step in and prescribe the remedy. This rule has been followed by the higher courts of the States of California, Wisconsin, New York, and Indiana. It is to be noted in this connection that the permanent tenure law lends an entirely different aspect to the contract of the teacher on permanent tenure and the contract of the teacher who is hired from year to year. Mandamus would not lie to restore the teacher hired on a yearly contract to his position if illegally discharged, but it does lie to restore the permanent teacher if illegally discharged because of the legal reason asserting that

the permanent teacher no longer holds his position by virtue of his contract with the school board but holds his position by statutory authority. His remedy, therefore, lies through an act in mandamus in a court of equity rather than in a suit for damages in a court of law.

The constitutionality of permanent teacher tenure laws has been attacked in a number of cases, and, without exception, they have been construed by the higher courts to be constitutional. In 1926, the Wisconsin law was attacked in a case involving its constitutionality. Among other things, it was contended by the school board in this case that the Wisconsin Tenure Law was discriminatory because it applied only to cities of the first class. The higher court refused to sustain this contention, holding that there was a good and substantial basis for the classification and that any attack upon its constitutionality for this reason could not be supported.

The constitutionality of the California law was first assailed in 1927 but for different reasons than the one just cited in Wisconsin. It was the contention of the defendant school board in this case that the act of the California

⁶ State ex rel. Nyberg v. Board of School Directors of City of Milwaukee et al., 309 N.W. (Wis.) 683.

⁷ Grigsby v. King et al., 260 Pac. (Cal.) 739.

legislature was unconstitutional because of discriminatory class legislation. Under the California statute, the board may employ as teachers "only persons holding legal teaching certificates then on file with the county superintendent." It was urged in this case that this provision constituted class legislation and an extension of privilege to only those having such certificates on file. On this point, the court construed this provision of the California act as a limitation upon the board to employ and not an extension of a privilege to a certain few teachers. The court reasoned that such provision did not constitute class legislation because there is an opportunity for all the teachers to avail themselves of the protection of the law, and, in no sense, was this privilege denied to any person.

In 1932, the constitutionality of the California act was again brought into question. In this case the method of classification of the California school districts was attacked. Again, the higher court refused to support the argument that such classification rendered the act unconstitutional, holding that the act of 1931 which based classification of the districts upon the average attendance of 850 pupils was within the power of the California legislature to impose, if it so desired to do.

An attack upon the constitutionality of the Indiana law

was made from a new angle in 1935. In this case the defendant school board contended that the law violates both state and federal constitutions in that it interferes with the right of freedom of contract which carries with it the right to terminate the contract. On this point, the Indiana Supreme Court said:

It is true that the above statute (the Teacher Tenure Act) places restrictions upon the power of the school corporation to cancel a permanent teacher's contract, but such limitations upon the plenary power of the agents of the state to end the contract does not within itself violate the constitutional provision as to freedom of contract We can see no reason why such limitations are not valid. The General Assembly of this state ... is under an imperative duty to provide by law a general and uniform system of schools, and such system thus established as a state institution and the subdivision thereof are instrumentalities of government exercising only the authority given by the state. If the General Assembly sees fit to impose restrictions upon its otherwise plenary powers to cancel a contract entered into by and between itself and a teacher, we think the exercise of such power is not prohibited by the above section of our state and federal constitutions.

It was further urged in this case that the Teacher Tenure Law was void as against public policy. The court upheld the law on this point, saying,

The state is a source of power under our constitution in public school matters, to be exercised by the legislative body and when they . . . see fit to limit powers which the state has . . . we cannot say such limitations within themselves render the statute void as against public policy.

The Indiana law withstood another attack upon its constitutionality in the same year. In this case it was argued by

the defendant school board that the tenure law was unconstitutional because it violates the provision of the Constitution which guarantees that:

The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

The higher court again rendered an opinion favorable to the act and held the defendant's position untenable because there is no clause in the tenure act excluding any citizen the right to qualify as a tenure teacher and it cannot, therefore, be construed as discriminatory class legislation.

Examination of the above cited cases discloses the fact that the constitutionality of the permanent tenure law has been consistently upheld, as evidenced by the decisions involving this issue in the state Supreme Courts of Indiana, Wisconsin, and California. Nowhere has it been found otherwise. Inasmuch as these constitutional victories for permanent tenure acts have occurred in different states and have come as the result of attacks from various angles, it is reasonable to presume that the constitutionality of these laws, so far as their fundamental principles are concerned, will continue to be upheld by those courts and probably by the supreme courts of other states possessing similar laws.

Summary

In this chapter an examination was made of certain court

decisions that have been rendered concerning various phases of the permanent tenure laws which cannot be logically classified in any of the other chapters of the study. Such analysis discloses a decision by the Indiana Supreme Court that upholds the right of the permanent teacher to enter into a contract for one year without jeopardizing her permanent status. This decision has been supported by one in California involving a similar issue. It was also held in the same Indiana case that local school board rulings without repealing clauses cannot repeal a state statute by implication. Wherever possible, the local ruling should be construed so that both acts may stand. In a similar case, the California Supreme Court held that the state law should control wherever a conflict existed between it and a provision of a city charter.

Where the teacher is under permanent contract, a Minnesota case has held her signature to the contract of employment to be desirable but unnecessary. It has been decided in a California case that the tenure law automatically classifies the teacher as a permanent teacher whether the school board formally does so or not.

It is well established that the permanent teacher's remedy in case of illegal dismissal is a restoration to the teaching position by mandamus. This is so because the indefinite character of the permanent contract renders definite ascertainment of the measure of damages impossible.

The constitutionality of permanent tenure laws has been upheld by the state Supreme Courts in Indiana, Wisconsin, and California. In no state has it been found to be unconstitutional. In Indiana it has been held not void as against public policy.

CHAPTER XI

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

In order that the reader's memory may be freshened with respect to the more significant facts disclosed in this study a summary of the most important are recalled as follows:

1. Twelve states and the District of Columbia have laws of various types providing for permanent tenure of teachers.
2. Three states and the District of Columbia have tenure laws of state-wide application and two states provide permanent tenure for all educational employees.
3. The principal features which seem to be most common to the tenure laws are: a period of probation, specific causes for dismissal, reasonable notice of hearing on the charges, hearing before the employing board with right to summon witnesses and have legal counsel, and the right of appeal from the decision of the local board.
4. Specific causes for the dismissal of the teacher on permanent tenure are set out in the laws of all the states within the scope of this study with the exception of Colorado.

The general trend of these causes seems to follow the recommendation of the Committee of One Hundred on the Problem of Tenure in 1934.

5. The most common causes for the removal of the teacher are: incompetence, insubordination, immoral and unprofessional conduct, neglect of duty, and the promotion of the efficiency of the service.

6. Tenure laws in all the states prescribe the extent of their application so far as administrative jurisdiction is concerned.

7. The teacher on permanent tenure always has an appeal to a court of law upon a question of law but his right to an appeal to a court of law upon a question of fact is limited.

8. The constitutionality of permanent tenure laws has been upheld in all cases where it has been in issue.

9. The power to remove the teacher lies with the employing board in all states having permanent tenure laws.

10. The teacher is an employee of the school corporation and not an officer.

11. All states possessing tenure laws prescribe the procedure for removal and removal by any other method than that prescribed is illegal.

Conclusions

The data examined in the foregoing pages justify the following conclusions:

1. The problem of tenure is one of increasing concern to the teaching profession.
2. Recent tenure legislation indicates a departure from the guarantee of life tenure following a period of probation to that type of tenure based upon a continuing contract during efficient service.
3. The welfare of the teacher in the classroom has been the paramount consideration of the proponents of the tenure movement.
4. The intent of the advocates of permanent tenure seems to have been the setting up of machinery whereby the teacher can be discharged only on professional grounds.
5. Where the statute enumerates the causes for which a teacher may be dismissed, this list of causes is deemed to be exhaustive and the teacher can be dismissed for no other cause.
6. There is little agreement among the laws of the various states with respect to their application to types of educational employees.
7. The period of probation is looked upon by both educational and legal authorities as a period of apprenticeship which the teacher must satisfactorily serve before she is

eligible for permanent tenure.

8. "Removal for cause" is interpreted by the courts to mean "removal for cause sufficient in law".

9. The hearing before the board need not be conducted with the formality of court procedure in order for it to be legal.

10. The teacher on permanent tenure may be dismissed without a hearing before the board if she is guilty of a breach of the teaching contract.

11. The teacher on permanent tenure is required to obey all reasonable rules and regulations of the employing board.

12. The right of those charged with administration of the schools to take whatever action efficient administration demands has been supported by the courts.

13. Marriage of the woman teacher, in and of itself, does not constitute a legal cause for her dismissal after she has acquired permanent tenure rights.

14. Mandamus lies to restore the permanent teacher to her position after she has been illegally discharged.

15. Permanent tenure rights will not accrue to an irregularly appointed teacher.

16. Wherever possible, local regulations are construed in conjunction with state statutes in such a way that both may stand.

Recommendations

In view of the conclusions given above the following recommendations with respect to the subject matter of this dissertation are suggested:

1. That some form of legislation insuring tenure protection to the teacher be extended to those states where such legislation does not now exist.
2. That no tenure law allow the dismissal of a teacher upon other than professional grounds.
3. That more uniformity should prevail among the laws of the states with respect to their application to types of educational employees.
4. That the period of probation should be at least three years in length in order to minimize the risk of granting permanent tenure to incompetent teachers.
5. That reemployment at the end of the probationary period should be granted only after the opinion of some educational authority familiar with the work of the teacher is considered.
6. That the eligibility of the woman teacher for permanent tenure should rest upon her professional ability rather than upon her marital status.
7. That all questions of educational character concerning teacher tenure laws should be decided by educational authorities and all questions of legal character reserved to legal authorities.

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