CONTESTING THE VALIDITY OF TEACHERS' CONTRACTS

BY

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CHAPTER I

INTRODUCTION

This study is based on the premise that a need exists to clarify the importance of validity of teachers' contracts. Even though validity is not generally considered at the time a teacher signs a contract, hundreds of court cases attest to the fact that validity looms most important when teachers' contracts are subjected to litigation.

Very often when a teacher is dismissed before the expiration of his contract, he will seek recovery or reinstatement on the basis that he was not legally discharged. Because it is extremely difficult to prove that the dismissal was justified on the usual basis of incompetence, neglect of duty, or unfitness for the job, validity of the contract is usually examined. If, in the opinion of the governing board, there is evidence that the contract is not valid, they will attempt to dismiss the teacher on the basis of invalidity of the contract rather than for reasons more difficult to prove.

In this study the various bases on which validity has been contested will be discussed separately. Special effort will be made to show how the courts have established precedents and influenced procedures. The importance of court decisions
is readily apparent. This is reflected in the declining number of state supreme court cases concerned with validity. Most of the precedents have already been set. Therefore, the lower courts are rendering more of the final decisions.

Along with the increased clarification of validity by the courts should go increased security for teachers. When a contract is signed there should be no doubt about validity. Perhaps teachers themselves are responsible for doubt that often exists. Teachers should display more candor in their relations with contracts. Fewer invalid contracts might result if both school boards and teachers better understood the nature of validity.
CHAPTER II

PROVISIONS OF THE CONTRACT

Frequently the validity of teachers' contracts is contested on the basis of contract provisions. If this is the case, validity is questioned in one of several different areas. The contract may be alleged to contain illegal provisions; it may lack certain provisions; or a teacher may be accused of not living up to certain specific statements.

Chances for success in proving the invalidity of the contract are considerably enhanced when it can be shown that provisions of the contract were not complied with. This could put teachers at a considerable disadvantage when dealing with school board and district officers were it not for several factors. First, all states have statutes which limit to some extent provisions which may be included in a teacher's contract. Second, courts, by the nature of their decisions, indirectly influence state legislatures in their attitudes toward teachers' contracts. Third, teachers themselves are becoming ever more prone to refuse contracts which contain unfair and picayunish clauses.

The items to be discussed in this chapter are representative of the type of controversy which leads to contract
litigation. State supreme court cases used are those which seem to bring out the reasoning of the courts in the various areas of controversy.

**Lack of Specific Provisions**

Teachers' contracts, like all contracts, must contain certain provisions or run the risk of being declared invalid. The courts have also held that these provisions must be sufficiently definite to be enforceable. Even though certain provisions are necessary, courts are not prevented from reading into a contract provisions and regulations of the law if they relate in any way to the subject matter of the contract. Examples to be discussed are representative of provisions which may cause litigation when left out of the teachers' contract.

**Failure to Specify Salary**

Owing to the fact that teachers occasionally sign contracts which do not specify a definite salary, many states

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have enacted legislation requiring a specific statement of salary in the contract. Even in states with such statutes, the question has caused litigation. In cases of this kind, courts have generally found that a statement of salary is requisite to a valid contract. 1

A West Virginia case illustrates how courts usually justify their decision on the question. The plaintiff in this case was a teacher who was attempting to recover salary on the basis that her contract was legal without the statement of salary. The counsel for the school district, quoting Section 1, Article 7, Chapter 18 of the West Virginia School Code, charged that no recovery was due, because the contract made no mention of salary. The West Virginia School Code expressly stipulates that a statement of salary must be included in all teachers' contracts. The Supreme Court of West Virginia was consistent with the legislation when it decided as follows:

The petition of relator shows that on April 8, 1933, the then existing magisterial district board of education of Pleasant District of Barbour County, at a called meeting attended by all of its members, attempted to appoint or 'hire' the relator as a teacher in a graded school of said district, without fixing any salary or the term of employment; that on May 17th following, the board, through its president and relator signed a purported contract which also omitted any stipulation for salary or definite term of employment. One of the points of defense interposed by respondents is that because of such omission, neither

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the appointment nor the contract is valid. We must concur on this point. Under Section 1, Article 7, Chapter 18, Code 1932, upon which the relator relies as well as general law, such a stipulation was requisite to a completed appointment or contract.

An exception to the general rule that contracts must include a statement of salary has been made in a case where a salary schedule was in effect. This was the case of Lawless v. Scholl. Here the Supreme Court of Kentucky ruled that a statement of salary was not needed to complete the contract. Involved in this instance was a teacher who was denied payment of her salary on ground that her contract did not specify a salary. In holding that she was entitled to recover, the court reasoned:

We are informed by counsel for Miss Scholl that, when the contract was made, it was not known what the salary of Miss Scholl would be. It further appears that when the demand for payment was made and this suit brought, the county superintendent had in his possession the salary schedule for Russell County and this district and knew the exact amount that Miss Scholl was entitled to receive for teaching this school. Under these circumstances we hardly think the failure of the contract to specify, or the suit to name, the amount that Miss Scholl was entitled to, were material omissions.

This case seems to be unique among cases in the United States. It does not appear to have established precedent or to have altered the general opinion of the courts that a statement of salary must be a part of the contract.

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Length of School Year Not Included in Contract

Most states have a section in the school code stating the amount of time necessary for a school year. Also most states have laws to the effect that such rules and regulations are to be included as part of written teachers' contracts. It is because of such laws that the validity of a contract which does not state the time school is to be taught may be contested. Because of such laws, most contracts include a statement giving the number of teaching days, or the length of the school year. It may be assumed that one of these provisions is required to establish validity.

A representative case is that of Burkhead v. Independent School District of Independence. Here validity was contested on the basis that the actual number of teaching days must be stated. The court, however, did not agree with this contention and held that a regulation of the board indicating with reasonable certainty the days to be taught was sufficient. In awarding a decision for the plaintiff, the court reasoned:

The point is made that the contract is invalid because it did not state the time the school was to be taught, as required by Section 2778 of the code. The rules and regulations of the district fixed the time the school was to be open, and these are to be made a part of the contract. This determined the time with reasonable certainty.1

This ruling is in keeping with the principle that board regulations governing the employment of teachers may be construed as part of the contract.

In this same state, however, it has been held that the exact term of teaching need not be stated even though a statute requires a written contract stating the length of time school is to be taught. This same ruling applied despite the lack of a board regulation stipulating the teaching term. In so holding the court reasoned in part:

The contract is said to be violative of Section 4229 of the school code because such section requires the written contract to state the length of time the school is to be taught. It will be noted that this section is affirmatively mandatory rather than prohibitive. It requires that the contract, whatever it be, shall be in writing. It specifies certain specific subjects to be covered therein. It imposes no disability upon the contracting parties, except that the term of service shall not exceed one year. Subject to this single disability, the right of contract, as between the contracting parties, is in no matter abridged.¹

Contestable Provisions of Contract

Frequently school boards fail to consider legality of teachers' contracts in order to include certain provisions thought by them to be in the best interest of the district. Thus, when a board attempts to dismiss a teacher for failure to comply with one of these rules, court action may result.

Cancellation Clause in Contract

In the only two cases where validity of the contract was contested because of a cancellation clause, courts have upheld the validity of the contracts. In these cases, the courts differ as to reasoning.

In one case, a teacher was employed in the Detroit Public Schools under a contract calling for termination on thirty days' notice by either party. When the district issued a thirty days' notice as per terms of the contract, the teacher in question immediately sought to recover for the remainder of the school year. In rendering the contract valid, the court took cognizance of the special position of a large school district when it decided for the district in question:

The contract can be sustained only because the powers of the defendant board of education are greater than those of the ordinary district board. In other words, the effect of the opinion is that it is not competent in ordinary cases for the school district and the teacher to agree in writing that the contract may be terminated on thirty days' notice given by either.1

This case does not add support to cancellation clauses because the court indicated that it would ordinarily not declare such a contract valid. The Supreme Court of Michigan felt that the authority to cancel on short notice was best not granted. The court made an exception in this

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case partly because of the many similar contracts that would have been invalidated. The city of Detroit had also indicated it would omit cancellation clauses from future contracts.

The other case is similar to the extent that the inclusion of a cancellation clause did not invalidate the contract. ¹ According to the Supreme Court of Indiana, there is nothing in the law of contracts which prevents the inclusion of the privilege of cancellation or rescission if both parties to the contract enter in good faith.

It is evident that no general rule governs cancellation clauses in contracts. If a person is teaching in a state such as Indiana where the law of contracts does not prohibit such clauses, then he may encounter them. It may be assumed that the section of the country and laws governing contracts in general will largely determine whether cancellation clauses will be allowed.

Marriage Contrary to Terms of Contract

Perhaps no subject in the teaching field is more provocative of argument than that which deals with marriage and teaching. Discrimination against hiring married women teachers has for years been widespread in the United States. Only during times of teacher shortages has it been easy for

the average married female teacher to obtain a position in the public schools.

The most ardent defenders of the single teacher are to be found in the small communities where reform movements are always slow to take effect. In order to insure against the possibility of having to cope with married teachers, many contracts included clauses to the effect that marriage during the life of the contract would automatically render it void.

In a majority of cases courts have held that marriage does not constitute a good and just cause for the discharge of a teacher.\(^1\) Also it has been stated that marriage as an institution involves no element of wrong, but on the contrary is protected, encouraged, and fostered by sound public policy.\(^2\)

An Indiana case is representative of reasoning of the courts in litigation of this kind. Involved was a female teacher, apparently single, who had been hired to teach in the public schools of Lake County. Difficulty arose when the school board discovered that this particular teacher had been married prior to her employment. Immediately after this discovery she was notified that marriage was a breach of contract;

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this the board contended made dismissal mandatory. The state supreme court in holding for the plaintiff teacher related:

The reason for our holding in School City of Elwood v. State ex. rel. Griffin, supra, that marriage of a woman teacher is not legal cause for cancellation of her contract, is that her marriage bears no relation to her fitness or capacity to hold the position of teacher in the public schools and to discharge her duties thereof. For the same reason we conclude that a rule forbidding marriage of a woman teacher or declaring that her marriage must automatically terminate her services as a teacher is not a reasonable rule. Consequently appellee's refusal to obey the rule in question was not insubordination and did not constitute good and just cause for cancellation of her contract.¹

An exception to the general rule that marriage does not breach a contract is sometimes made when there is evidence that marriage will seriously impair the performance of the duties of a teacher. This was the general reasoning of the court in the case of Hendrix v. School District No. 4, Lane County, in which it was said:

It is unnecessary for us to determine, but we think that the school board, in a district like the defendant, is entitled, in the absence of a prohibitory statute, to act upon the theory that a woman who marries subsequent to entering into a teaching contract, will, in the very nature of things, be engrossed with her home duties to the disadvantage of the school. That was a matter particularly within the power of the school board to determine, and somewhat in the nature of a legislative question, and is not for the court. Strong argument can be made in favor of the beneficence of the rule adopted, and also much reasoning can be displayed in favor of a contrary view, and this, we think results that in the exercise of its discretion, the board of directors of a school

district may adopt and insert in a teacher's contract such a provision. A teacher is bound to take notice of all rules of the school board, which may affect the power to dismiss.\textsuperscript{1}

In addition to an occasional court holding that a contract may legally restrict marriage, there is a tendency of some courts to modify the general rule. It has been held that a contract which includes a clause forbidding marriage is not totally void, but only with respect to the marriage clause.\textsuperscript{2}

\textsuperscript{1}Hendrix v. School District No. 4, Lane County, 35 Pac. 2nd. 235, 148 Ore. 83, (1934).

CHAPTER III

TEACHER RESPONSIBILITY IN MAKING A VALID CONTRACT

Often, in case of contract litigation, the district or board charges the teacher with responsibility for invalidating the contract. In cases of this kind where a teacher might have been able to prevent his predicament, courts are not so lenient as in other types of cases. For example, when the validity of a contract is contested because of carelessness of the school board, courts are prone to render decisions based on broad interpretation of the law. That courts are able to do this is a credit to our judicial system. It recognizes that each case has individual aspects which should be treated with regard to personalities as well as laws and statutes.¹

Because teachers often fail to fulfill terms of contracts, one might believe that contracts are of little concern to them. Actually contracts are often vague and difficult to interpret. This places undue responsibility on inexperienced teachers and does little to increase security.

Most teachers new to the profession are too concerned with becoming a success as a teacher to investigate matters which appear unimportant at the moment.

**Failure to Possess Written Contract**

It is well established that when statutes do not expressly state to the contrary, oral contracts are valid in the absence of written contracts. ¹ When, however, there is a specific statute stating that contracts must be in writing, courts generally hold that an oral contract is invalid. ²

In the case of Grover v. Stovall, for example, a teacher became involved in contract litigation as a result of having entered the school building after dark in the company of three young women and another man. During the period of stay in the building the lights were not turned on and the entire affair was generally kept secret. Later, when certain facts became known, the teacher denied that any misconduct had taken place. Also he contended that the lights were not turned on because of a bright moon. When the case reached the Supreme Court of Kentucky, the decision was based on the necessity for a written contract. The court said in part:


The petition nowhere averred that the plaintiff's contract was in writing. He only alleged that he was employed by the defendant Grayson Graded Common School Board of Education as teacher and coach at the Richland High School in Grayson, Kentucky for a term of one year beginning at the beginning of the school term in September, 1928, and ending in June, 1929. In the case of County Superintendent v. Scholl, 186 Ky. 566, 217, S. W. 681 and others referred to in those opinions, it was held by this court that when a contract of employment of a teacher in the public schools is required by the statutes to be in writing, such requirement is mandatory and the contract is not enforceable unless it is in writing and substantially conforms to the requirements of the statute.1

This case furnishes evidence that school boards very often use the grounds of invalidity of the contract to dismiss a teacher even though the real reason for the dismissal is an entirely different matter.

Though a statute may exist requiring that teachers' contracts be in writing, courts sometimes hold that a contract may exist even though not in the form of a legal document. Letters, telegrams and even resolutions of school boards may constitute sufficient evidence of a valid contract.2

An example is the case of Edwards v. School District No. 73 of Christian County. In this instance the plaintiff, upon being notified she was not hired, sued for recovery on the basis of a legal contract even though no formal document had been signed. Counsel for the plaintiff charged that a


resolution of the board, entered in the official minutes, constituted sufficient evidence of a contract.

The Appellate Court of Missouri, in holding that a contract did exist, reasoned:

Sections 11379 and 2164 of the school code both require that a teacher's contract be in writing and there be no conflict in the sections. Since Section 2164 is a part of the general law of contracts, it may be invoked in the construction of a teacher's contract. Neither section requires that a teacher's contract be in any particular form, nor does either section require that the parties to be bound all sign the same instrument. In construing section 2164, the Kansas City Court of Appeals in Platte City to use of Prior v. Paxton, 141 Mo. App. 175, 124 S. W. 531, held that, in an ordinance for street improvement, a written bid duly signed and a resolution accepting a bid, constituted a written contract and was a substantial compliance with the requirements of section 2164. To the same effect are Blades v. Hawkins, 133 Mo. App. 328, 112 S. W. 971 and City of California v. Telephone Co., 112 Mo. App. 772, 87 S. W. 604.1

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**Failure to Hold a Teacher's Certificate When Contract Was Signed**

The issue of whether or not a teacher must possess a teacher's certificate at the time a contract of employment is signed has formed the basis for much litigation. Because schools are in the habit of completing their teaching staff assignments as soon as possible for the following school year, a large proportion of teachers' contracts are signed by June first. For steadily employed teachers and those with sufficient education, this practice is a satisfactory one. However,

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for teachers needing education courses to renew a certificate, or for future teachers planning to complete their education in the summer, considerable difficulty may result.

When permanent contracts are signed without the possession of a certificate, a gentleman's agreement is usually in effect; e.g., the certificate will be in the teacher's possession before the start of the teaching year. In the normal course of events, nothing more is thought of the matter. This is not true, however, when the validity of a contract is being contested. Then, every discrepancy will be under consideration.

Generally it may be stated that, if the law requires that a teacher have a certificate at the time of signing a contract or before beginning to teach, subsequent possession of a certificate will not be deemed sufficient for a valid contract.¹

In a Texas case, the court reasoned as follows on the question.

The original contract was void, because repugnant to the statute, and it could not have been ratified and certainly cannot be vitalized by obtaining a certificate and endeavoring to have it read as though of date anterior to the execution of the contract. It would not matter how competent and well fitted he was to teach, nor that he may have been entitled to a first-class

¹Butler v. Haines, 79 Ind. 575, (1904); Richards v. Richardson, 168 S. W. Tex. 50, (1915); Jenness v. School District No. 31, 12 Minn. 337, (1899).
certificate; he did not have it when he entered into
the contract; and that instrument, being null and void
at its inception, could not be vitalized and purified
by any subsequent events, but it is so nugatory and
infected that nothing can cure it.¹

Similarly, in a Colorado case the need for a certifi-
cate was expressed by the appellate court. This case involved
a teacher who was contracted for, even though a certificate
was not held. This lack of a certificate became an important
point of law when it formed the basis for her discharge. Upon
being dismissed, she immediately sued for recovery, and was
awarded recovery by the lower court. The district forthwith
appealed the decision to the appellate court. That court, in
reversing the decision, based its reasoning on the grounds
that receiving the certificate subsequent to her dismissal
was not sufficient grounds for an implied contract.²

An exception to the general rule on the need for a
certificate may occur in case a teacher is allowed to teach
after obtaining a certificate. In this case courts have held
that an implied contract will arise even though the original
contract is void.³

The case of Hotz v. School District No. 9 is typical.

¹Richards v. Richardson, 168 S. W. Tex., 50, (1919).
²School District No. 76, Weld County v. Kirby, 149 Pac.
³Scott v. School District No. 2, 46 Vt. 452, (1902);
Hotz v. School District No. 2, 1 Colo. App. 40, 27 Pac. 15,
(1898).
spring of the year, even though a certificate was lacking. Admittedly the school board knew that no certificate was held but understood that one would be acquired in the summer. During the summer the certificate was acquired as planned, but the school board, in seeking a basis for removal of the teacher during the fall term, charged that obtaining a certificate after signing a contract was contrary to the law. The court felt differently when it reasoned:

Should it be contended that the board entered into a contract in August which was void under the statute and unenforceable by the teacher, it may well be held that a valid implied contract arose, as between the board and Miss Hotz, when, as a duly qualified teacher, she entered upon the discharge of her duties on the 6th of September, and continued therein for the ensuing five months. If it be said that it is impossible to ascertain what the terms of this implied contract are, it is replied that the express contract may be looked at to ascertain the terms of the implied one, which the teacher performed until she was discharged. The commencement of the school by the teacher, with the knowledge and consent of the board, after she had secured a certificate of qualification, was equivalent to the making of a new contract upon the terms of the one into which they attempted to enter at their meeting held in August. ¹

Delay in Accepting Contract

Many states have laws specifically stating that excessive delay in accepting a contract will render the contract invalid. When applied to schools, this reasoning is understandable largely because it gives some assurance that contracts will be returned promptly. This is especially important when

the contract is rejected and another teacher must be contracted. Often it is not enough that the contract was merely "returned." Courts hold that there is a time beyond which delay is unreasonable.¹

The case of Ward v. Board of Education of Harrison Township Rural School District is a good example of a teacher's delaying the return of a contract beyond a reasonable length of time. The teacher in question was mailed a contract which, according to a special resolution of the board, had to be signed and returned by July first, 1929; however, the plaintiff did not return the contract until July fifth of the same year. In the meantime, the board hired another teacher. The plaintiff, upon learning that another teacher had been hired, appealed for recovery. In upholding the decision of the lower court, which denied recovery, the supreme court reasoned:

The evidence shows that the plaintiff knew at the time she returned her contract to the board that the board had taken such action and that another teacher had been hired in her place. It is true that, when an offer is made by mail in the absence of notice of revocation, the writer continues willing to contract down to the time that the other party may with due diligence accept the contract. This rule does not, however, permit the accepting party to sign a contract at his pleasure. It does not give him the unqualified right to hold the contract as the plaintiff did in this case for 17 days.²


Even though delay in accepting a contract often renders it invalid, under certain conditions the contract may still be valid.¹ For example, in a Colorado case a teacher gave the board every reason to believe that he wanted the job and would accept if elected. This, according to the court, constituted sufficient acceptance. The reasoning of the court was in part:

One having applied to a school board for a position as teacher, and his application having been accepted and he being elected by the board, it is not necessary to a completed contract that the board notify him of his election, or that he notify it of his acceptance.²

Failure to File Written Application

It is difficult to successfully contest the validity of a contract on the basis that application for a teaching position was not made in writing. There are several reasons, however, why written applications might well be a requirement. First, written applications aid in selecting a teacher on the basis of qualifications instead of personality. Second, written applications give a continuing insight concerning teachers who may be employed in the future. The board may well have a rule requiring all applications to be in writing, but, when a board unanimously elects a teacher, it cannot later contest


the contract on the basis that no written application was made. This type of reasoning was responsible for the statement of the court in a Tennessee case:

While we are of the opinion that the school board had the power and authority to adopt and enforce these rules, the provision requiring applications to be made in writing is one which we think might well be, and which in this instance was in fact waived by the unanimous election by the board of the complainant as a teacher.

Failure to Report for Teaching Duties on Time

In only one instance has a case reached a state supreme court in which validity of the contract was contested on the basis of failure to report for teaching duties on time. This was a Kentucky case, Turner v. Hampton.

Involved was a teacher who reported for teaching duties two days late and found that her prospective job had been given to another. The board charged that reporting late automatically invalidated the contract and made it legal to hire another teacher in her place. The lower court upheld the contention of the board, but this decision was appealed by the teacher, at which time the State Supreme Court of Kentucky reasoned that because an honest attempt had been


3 Turner v. Hampton, 975 S. W. 761, 30 Ky. 179, (1906).
made to arrive at work as arranged, and it was only due to a flood of unusual severity that the teacher was unable to do so, the contract should be upheld.

From this case it may be construed that courts recognize that circumstances may prevent a teacher being present at the specifically appointed hour, notwithstanding statements of the contract.

_Insufficient Number of Days Taught_

Question has sometimes arisen over the number of days which must be taught in order to establish an adequate teaching month. Although it is generally assumed that twenty days constitute a teaching month, courts are inclined to take a liberal view. For example, in the case of Sherrod _v._ Lawrenceburg School City, a teacher whose salary was reduced on the basis that he was not entitled to a full teacher's pay inasmuch as he only taught alternate days, sued for recovery, claiming that the contract made such reduction illegal. The district, in determining a course of action, contended that suit could not be brought against an invalid contract. The Indiana Supreme Court, deciding in favor of the teacher, stated in part:

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1_Benson v. District Tp. of Silver Lake, 69 N. W. 419, 100, Iowa, 328, (1896); Sherrod _v._ Lawrenceburg School City, 12 N. E. 2nd 944, 213 Ind. 392, (1938)._
The law does not require that teachers shall teach every day, or every hour of every day. Such subjects as art or music may require fewer hours of teaching. A contract otherwise conforming to the statute, and in which the month shall consist of less than 20 school days, is not prohibited, and no reason is seen why such a contract is not valid and sufficient to establish tenure rights.¹

Fraud in Connection with Making of the Contract

To determine whether fraud has actually taken place requires a very candid type of reasoning. Often the only evidence of fraud is certain infractions of rules which appear as ordinary evidence. Usually if fraud is proved and affirmed by judges, the person or persons accused are shown by tangible evidence to have made false statements, or to have been aware that the act entered into was contrary to existing rules and statutes.

School districts have charged fraud on a number of bases, such as falsely stating that a teaching certificate was possessed, misrepresenting marital status, or awareness that contracting for a teaching position was in some way contrary to law. Of course, these charges are not always substantiated; however, in cases where fraud is shown to have taken place, recovery of any part of the contract is

¹Sherrod v. Lawrenceburg School City, 12 N. E. 2nd 944, 213 Ind. 392, (1938).
always denied.¹

A Missouri case, Taggart v. School District No. 52, Carrol County, involved a teacher who signed a contract containing a clause to the effect that marriage on her part would invalidate the contract. Later, when it became evident to officers of the district that the teacher in question was married, she was immediately discharged. In appealing for recovery, the plaintiff based her case on the right of a person to marry irrespective of rules and regulations. Her appeal met with success in the district court and payment under terms of the contract was ordered.

It was on the basis of new findings that the case was appealed and reversed. The state supreme court reasoned as follows:

Under the contract one of the conditions exacted of the plaintiff was that the plaintiff was not married. The contract expressly stated that the plaintiff was not married, although at the time said contract became equally binding on the parties thereto, plaintiff was married, which fact plaintiff concealed from defendant and executed the contract in her maiden name. It is a familiar doctrine that no valid contract can arise out of fraud, and that any action brought upon a supposed contract which is shown to have arisen from fraud, may be successfully resisted.²


²Taggart v. School District No. 52, Carrol County, 88 S. W. 2nd 447, (1936).
A Nevada case, *Spence v. School District No. 3 of Arthur County*, further clarifies the position of the courts in litigation involving fraud. The findings were similar to those in the preceding case:

We are of the opinion that the school district was prejudiced and injured in this case, in that they contracted with a teacher who represented himself to be qualified to teach the entire term, when as a matter of fact he was not. The board had a discretion as to whether or not they would hire a man under the circumstances, and they were deprived of the free exercise of that discretion by the misrepresentations and fraud of the plaintiff.  

Even though it may be contended that a fraud was perpetrated, lack of specific evidence usually means that courts will not sustain the charges. An example is the case of *Dolan v. Joint School District*, where fraud was charged on the grounds that a teacher knowingly signed a contract prepared by a school officer who was a close relative of the teacher. A decision by the Supreme Court of Wisconsin contended that sufficient evidence of fraud did not exist; also, the law of contracts for the state of Wisconsin does not forbid contracting with one's own relatives.


Neglect of Certain Teaching Duties

To a layman unversed in the ways of school litigation neglect of teaching duties would seem to be a common grounds for court action. However, the difficulty of proving neglect is generally understood in legal circles. Courts will not consider unsupported allegations and, by their very nature, charges of neglect are difficult to substantiate. Several court cases to be discussed will illustrate this conclusion.

In *Horval v. Jenkens Township School District, 10 A.*, a principal was given a three-year contract. After teaching under it for one year, he was discharged on grounds that he had violated a section of the Pennsylvania School Code which states that each teacher or principal must be furnished a true copy of the standing of each pupil. The court reasoned that the charges against the teacher were trivial and technical; also it contended that the charges were set up as a mere pretext to get rid of the teacher.

The case of *State v. McQuade* was based on the contention that a teacher cannot adequately function in two teaching locations during the same term. Although it was


evident that McQuade only taught part-time in each school, it was charged by the district instigating the appeal that both parties agreed no other school was to be taught. The actual neglect charged had to do with issuing diplomas to the high school seniors. The district pointed out that McQuade had in his possession standard school diplomas and yet ordered diplomas of a different kind unsuited for use. When the court reached a decision, it decided, as in the case of Horval v. Jenkins Township School, that a trivial point was being elaborated. Thus sufficient evidence for neglect did not exist. The court also found that the law in the state of Washington does not limit a teacher as to the number of schools in which he may teach.

The cases reviewed clearly show that to contest the validity of a teacher's contract successfully on the basis of neglect, it must be proved that neglect was in strong enough evidence to void the contract. Courts reason that some kind of neglect could be proved against any teacher. It was apparent in these cases that courts do not consider ordinary human frailties as adequate evidence that a teacher is incompetent to the extent that his contract should be invalidated. The courts do not expect perfection in performance.
Failure to Give Oath of Allegiance

In states with statutes requiring that teachers recite the Oath of Allegiance before a teacher's contract is considered valid, fulfillment of this requirement may be considered mandatory. 1

An example is the case of Sander v. District Board of School District No. 10, Royal Oak Township, Oakland County, where a teacher was hired under a contract which failed to include an Oath of Allegiance clause. In due course the contract was declared invalid and a new contract was submitted, containing, in addition to the allegiance clause, a thirty-day cancellation clause. This the plaintiff refused to sign and immediate dismissal was the result. In upholding the right of the district to declare the original contract invalid, the Supreme Court of Michigan stated in part:

The law of Michigan, Act. No. 19, Public Acts, reads: 'At the time of signing of said contract and any renewal thereof, each teacher shall make and subscribe to the Oath of Allegiance.' The statute quoted was designed as a protection to the youth of the state and being so, its provisions are mandatory and the teachers not having complied with its requirements, their contracts are void ab initio. 2


An exception to the general rule may exist in a state such as Oklahoma where statutes provide for administering the Oath in cases where it was at first neglected.

In the case of *Frost v. School District No. 98, Payne County*, the court stated as follows:

Section 10368 of the School Code, which requires the oath was amended by House Bill No. 72, c, 150, which carries the following provision: 'Should a teacher by oversight or inadvertance fail to make or file the oath, he should be entitled to collect his or her salary upon filing with the county superintendent of the county, a duly executed form of the oath.' The record in this case shows that the plaintiff filed such an oath.\(^1\)

\(^1\)Frost v. School District No. 98, Payne County, 246 P 432, 118 Okl. 157, (1926).
CHAPTER IV

DISTRICT RESPONSIBILITY IN MAKING A VALID CONTRACT

The school district is in a favorable position in its relation to the teacher contract. Because the contract is usually a product of the district, teachers too often find that they are at a definite disadvantage during times of litigation. Naturally it is to be expected that the party making the contract will attempt to insure its own position. However, a one-sided contract must result in insecurity for one of the contracting parties.

If district officers realized the true nature of their status, contracts would no doubt improve. In furnishing teachers for a community, school district officers are actually agents of the state, elected by the people and commissioned to help maintain the best school possible for the welfare of the particular school district. Many teachers' contracts would lead one to believe that teachers are employees of the contracting district rather than employees of the state.¹

In many of the cases to be discussed in this chapter, courts take the position that the burden of validity rests with

the party constructing the contract. Courts interpreting liberally point out that teachers should not be penalized because of actions other than their own. On the other hand, courts will not generally penalize the taxpayer either, particularly, if undue hardship might result.

No Authority to Employ

Legal authority to employ a teacher generally rests with any authorized school board complying with the statutes of the state, as well as those general principles established by common law.

Because of the difficulty of proving that authority to employ did not exist, school boards are not generally successful when contesting the validity of a contract on this basis. ¹

For example, in Costello v. School District of Hazel Township, a teacher was given a three-year contract but at the end of the first year was discharged without cause. Another teacher was subsequently hired to take his place. The district, charging that Costello could not recover, argued that the school board knew before offering the contract in question that the president of the board would not sign. Thus, no authority to employ would have existed.

In refusing to abide by this reasoning the majority opinion of the court was as follows:

The board had power under the act of June 25, 1885 (P. L. 175), to elect the plaintiff for a term of three years. Burke v. School District 28, Pa. Super, C 8, 16. The minutes of the board show that the plaintiff was elected by the affirmative votes of the whole number of directors, and the names of the members voting for and against him are duly entered in the minutes as required.

The case of State v. Groce is another example of difficulty encountered in this kind of litigation. The plaintiff was a justice of the peace who signed a contract to teach. After one month, however, he was refused payment by the county superintendent on the grounds that no authority existed to hire an officer of the county for a teaching position.

In reaching a decision for the plaintiff, the Supreme Court of Tennessee ruled:

We are unable to see how a county can be injured or imposed upon, where the board of education employs a person to teach in its schools who is competent and otherwise qualified, simply because he happens to be a justice of the peace of the county.

In our opinion the trial court was in error in holding the contract unlawful, and his decree will be reversed.\(^1\)

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**Failure to Furnish Teacher Copy of Contract**

In contesting the validity of a teacher's contract on this basis, a school board or district is asking hardship for


a teacher due to its own negligence. The following case shows that supreme court judges hesitate to condone hardship upon such grounds.

In litigation involving Lee v. Mitchell, it was contended by the school board that a copy of the signed contract was not made available to the teacher who brought the action. This, the board contended, rendered the contract invalid and voided any chance of recovery. In upholding the validity of the contract the court related:

The terms of the agreement between the parties are included in the written contract signed by them, and when it was reduced to writing and signed by the parties, it became effective and binding under the law, and the fact that a director or an officer of the school board refused thereafter to do his duty and execute duplicate copies of the contract that the teacher might sign in order that the law might be complied with relative there-to, could not release the district from the performance of the contract entered into.

Contract Not Properly Signed

Because of the difficulty of proving that a contract was not properly signed, courts usually uphold the validity of the contract when this question arises in court.

A Missouri case is typical of the reasoning followed.

In this instance, the president of the board had failed to

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sign the contract, but the court rendered the contract valid when it held:

Every requirement of the contract was met except the president of the board did not sign the contract. Was the president's signature absolutely necessary in order to bind the district? We think not. Section 11138, R. S. 1919, provides that the contract mentioned in Section 11137 shall be construed under the general law of contracts, Section 2164, R. S. 1919, provides that: 'No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or expressly authorized by law.'

Even statutes requiring certain signatures do not always deter judges from holding the contract valid. As for example, in Fennell v. Lannon, the Supreme Court of Oklahoma upheld validity of the contract, even though the Oklahoma School Code required signature of both parties on teacher contracts to make them legal. The decision reads in part:

If a teacher enters into her duties as a teacher and fulfills her obligations, a treasurer of a school board cannot contest the validity of the contract merely because he did not sign the contract. It is not the ministerial act of signing that makes the contract. The writing is but the evidence of the agreement.

That a contract may be valid without the signature of the secretary is illustrated by a West Virginia case. This issue was clarified when the Virginia Supreme Court said:


2Fennell v. Lannon, 149 Pac. 144, 46 Okl. 519, (1915).
We do not think that the refusal or failure of the secretary to sign a teacher's contract would invalidate the contract. He has no power or discretion in the employment of teachers. That is a power resting solely with the board.¹

That a qualified third party may sometimes sign a contract in case of need was established by the case of Turner v. Hampton, when the school board contested validity on this basis. The Supreme Court of Kentucky, in awarding for the plaintiff, recognized that failure to sign a contract may be justifiable:

The fact that Mattie Hampton did not sign her contract in person did not invalidate it as her name was signed to it by her authority. Her failure to begin the school on July 18 did not terminate the contract. Her failure to be present was due to a floor which interrupted railway traffic. She was liable to the trustees for any damages they sustained by reason of her breach of contract, but they had no authority to terminate the contract and give the school to another because she was a day or two late in getting home. The chairman of the trustees states that he made a minute on the books of the meeting. The meeting was regularly called for the purpose of employing a teacher, and all the trustees were present. The contract thus made bound the corporation.²

An exception to the general reasoning was furnished by a Kentucky case, when the contract was held invalid because of the lack of certain signatures. The plaintiff in the case, who was discharged after five months on the basis of an invalid contract, sought recovery, which was awarded.

¹State v. Board of Education of Clark District, 120 S. E. 183, 95 W. Va. 57, (1923).

by the lower court. The State Supreme Court, in reversing
the decision, reasoned as follows:

The court adjudged the plaintiff to be qualified to
receive a continuing teacher's contract and that as the
superintendent had recommended it, and four-fifths of
the board did not protest the recommendation of the
superintendent, the court finds that from that time for-
ward she had a continuing contract as teacher in said
school, but that the chairman and then secretary of
said board did not sign the contract as required by law.
Therefore, the contract cannot be valid.1

Improper Notice of Board Meeting

Because the statutes of many states provide that
proper notice must be given of board meetings, failure to
notify is often used as a basis for contesting the validity
of contracts. Courts are inclined to hold that proper notice
is incidental and irrelevant if all board members were present
at the signing of the contract.2

A good example of this reasoning is that of the court
in Franklin County v. Gattis:

Now it has been many times decided that for a valid
contract to be made in the name of a school district,
there must be a meeting attended by all directors or of
which all had notice. We think this simply means that
information must be given in a time and manner sufficient

1Lone Jack Graded School District v. Henderson, 200
S. W. 2nd 763, 304 Ky. 317, (1947).

2Ryan v. Mineral County High School District, 146 Pac.
792, 27, Colo. App. 63, (1915); Rivers v. School District No.
51, Noble County, 172 Pac. 778, 860 Okl. 141, (1918); School
District No. 86 v. Allen, 104 S. W. 172, 83 Ark. 491, (1907);
Hibbard v. Smith, 116 S. W. 487, 135 Mo. App. 721, (1909);
McCullough v. School District Board No. 37, in Bryan County,
246 Pac. 462, 118 Okl. 59, (1924).
to afford reasonable opportunity to attend. It is not essential that notice be served in the manner required for service of notices under the code.\textsuperscript{1}

Similarly, in the case of \textit{School District No. 42 v. Bennett}, a teacher was elected at a board meeting during which only two of the three board members were present. All, however, had notice of the meeting. The Supreme Court of Arkansas, holding the contract valid, stated:

Two directors may bind the district, by a contract made at a meeting at which the third was present or of which he had notice, but no contract may be made, except at a meeting unless the absent member had notice.\textsuperscript{2}

It is another matter when proper notice was not given and one or more board members was not present. Such was the case of \textit{Freeland v. School District No. 2, Monguagon Township, Wayne County}. The plaintiff in this court action was hired as a superintendent for three years, but after teaching one year, several new board members were elected who proceeded to declare the plaintiff's contract illegal. They contend one of the board members was absent and had not been notified in writing of the board meeting. The lower court held for the plaintiff, but the Supreme Court of Michigan, in reversing, decided:

\textsuperscript{1}\textit{School District No. 39, Franklin County v. Gattie}, 79 S. W. 2nd 73, 190 Ark. 362, (1935).

The meeting held on April 19th was not a legal one insofar as only four members were present and the fifth had not been notified in writing. It was at this meeting that the terms of service and manner of payment were fixed.\textsuperscript{1}

\textbf{Lack of Funds}

Courts generally reason that lack of funds does not in itself render a contract invalid.\textsuperscript{2} It has been held that the employment of teachers by trustees of common school districts is a duty imposed upon them by law, and the cost thereof is an ordinary and necessary expense authorized by the general laws of the states.\textsuperscript{3}

Usually the courts show that money could legally have been acquired to pay the teacher the contract salary. For instance, in an Oklahoma case it was shown that funds, though not appropriated, and existing merely as uncollected taxes, may form the legal bases for hiring a teacher. The plaintiff, Hettie Wright, sued for recovery on the grounds that she was entitled to four months' pay, that being the time left to teach under terms of her contract when she was discharged. In the lower court she was awarded recovery for

\textsuperscript{1}Freeland v. School District No. 2, Monguagon Township, Wayne County, 249 N. W. 829, 264 Mich. 212, (1933).

\textsuperscript{2}School District No. 25, v. Wright, 42 S. W. 2d 555, 184 Ark. 405, (1931); Hampton v. Board of Education of New Hanover Co., 141 S. W. 744, 195 N. C. 213, (1928); Corum v. Common School District No. 21, 47 Pac. 2nd 889, 55 Idaho 725, (1935).

\textsuperscript{3}Corum v. Common School District No. 21, 47 Pac. 2nd 889, 55 Idaho 725, (1935).
the remaining four months, this decision being affirmed later by the State Supreme Court of Arkansas, which adjudged as follows:

Even though there was not money to pay the teacher, the reasonable assumption that uncollected taxes would make up the difference, makes it legal to hire on anticipation of monies.

It sometimes happens that general funds exist but not enough has been specifically appropriated for the schools. According to a North Carolina case, funds may legally be applied to make up the deficit. A number of teachers were concerned with this litigation which involved bad but not criminal handling of funds voted for school purposes. Somehow, not enough money was left to pay all of the teachers' salaries concerned. The teachers, deprived of their income, immediately sued for recovery. The district contended that the contracts were not valid because they failed to comply with Statute 3 C. S., Section 5572 of the North Carolina School Code, which states that the adopted budget must include funds for payment on contracts. Upon review, the lower court awarded recovery and the State Supreme Court of North Carolina, in confirming, said:

If the contention of the board of commissioners should be correct, no teacher could afford to sign a contract until the budget was made and approved by

1School District No. 25 v. Wright, 42 S. W. 2nd 555, 184 Ark. 405, (1931).
the county commissioners. It appears that the total amount of teachers' salaries for the year 1926-1927 set up in the May budget was $307,468.50 and that contracts were actually made aggregating $333,870.30. The contracts so made were within the amount set forth in the May budget, because the May budget set forth the amount of $423,350. Even though the amount of money required may exceed that allotted under a particular item, nothing says that each individual item must be approved by the county commissioners.\footnote{1}

In deciding a case of this kind, the court is avoiding hardship for both parties. Since money was available, no special assessment was needed. Also the teachers had contracted to furnish services and were legally entitled to be paid.

Although courts usually show cause for allowing the legal payment of salaries, in the absence of any appropriation whatsoever, recovery is usually denied.\footnote{2} \textit{School District No. 10 of Woodward County v. Drake} is typical of an attempt to recover under these conditions. In this instance, the excise board neglected to include teachers' salaries as part of the annual letting of funds. When certain teachers were not allowed to teach during the fall term, it was claimed by the district officers that funds did not exist for their salaries. Not satisfied with this explanation, suit was brought for

\footnote{1}{\textit{Hampton v. Board of Education of New Hanover County}, 141 S. E. 744, 195 N. C. 213, (1928).}

\footnote{2}{\textit{Lacy v. Board of Education of School District A, City of Anadarko}, 224 Pac. 712, 98 Okl. 237, (1918); \textit{School District No. 10 of Woodward County v. Drake}, 30 Pac. 2nd 903, 167 Okl. 510, (1934).}
recovery on terms of the contract. Award was made by the district court. Later the Supreme Court of Oklahoma, in reversing the earlier decision, ruled:

Was the contract binding upon the defendant school district, in the absence of an appropriation for the purpose? That question must be answered in the negative, under the authority of Section 10367, S. O. S. 192, the statutes in force relative to employing teachers in district schools at the time the contract was executed. Section 10367, S. O. S. 1921, which requires an annual school appropriation, was in force and effect when the teacher's contract was executed. Section 26, Article 10, of the Constitution of Oklahoma; Lacy et. al. v. Board of Education, 98 Okl. 237, 224 p. 712. Confirm.

Failure to Meet and Approve Contract

It is well settled that a school board must act in its corporate capacity when hiring a teacher. Courts generally hold that approval and agreement reached separately are not sufficient to establish a legal contract. It has been determined that persons meeting in a group often arrive at a different conclusion than if they meet separately. The usual interpretation is well expressed by a decision of the Superior Court of Delaware. Litigation ensued when a teacher attempted recovery after being discharged on the basis of an invalid contract:

1School District No. 10 of Woodward County v. Drake, 30 Pac. 2nd 903, 167 Okl. 510, (1934).

The statute contemplates the school committee as a body, acting together as such, in an official capacity; and not acting separate from each other individually. In the employment of teachers, therefore, the contract to be valid, should either be made at a meeting of the committee in the first instance, or else be ratified at such a meeting of the committee, of which meeting all the committee should have notice, and the opportunity to attend; and at which a majority must be present and act. Such contract may not rest in agreements made upon solicitation or otherwise, with the individual members of the committee apart from each other; but only upon united action at a meeting duly convened.¹

Although a board must act in its corporate capacity, a board meeting need not entail any formality, nor need the board meet in a so-called "regular" session.² In Barnhardt v. Gray, the school board contended that no regular meeting had been held; consequently, the contract was invalid. The court, in disagreeing with this contention, held:

We find no section of the school code requiring any formality of the proceedings after the board has assembled, but the code does require that the board must act as a board and not as individual members.³

That a representative of the board may sometimes hire a teacher even in the absence of the corporate capacity of the board was demonstrated in the case of Hull v. Independent


School District of Appleton. The plaintiff in the case sued for recovery of salary on the premise that he was illegally discharged. In rebuttal, officers for the district charged that the plaintiff had been illegally hired inasmuch as the president of the board acted independently of the board. The State Supreme Court of Iowa, in holding the contract valid, declared the president acted as an agent of the board with its consent and approval.

Contract Extends Beyond Term of Officers
Making Contract

In the absence of statutes to the contrary, a school board may usually contract for the superintendent and teachers for a period extending beyond the term of office of part or even all of its own members. Courts reason that a school board is a separate entity in itself and not dependent upon terms of officers for legality. The findings of the Court in a West Virginia case are typical of reasoning in cases of this kind:

They claim it is unfair to the new president and the new member that they should be required to carry out contracts which they did not help make; but the contracts made are corporate in character, not the contracts of the individuals who then constituted the

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board. The board by statute is a corporation; it is a continuing corporate body. Its members may change, but the corporation does not change. The corporation in July is the same corporation that it was in the preceding June.¹

If a school board has the power to contract beyond the term of its members, it seems only natural that a succeeding board would be required to approve appointments made by the earlier members of the board. This is illustrated in the case of State ex. rel. Altman v. Arnold. Involved was a school principal elected and allowed to teach, but whose contract was not confirmed by members of the succeeding board. The new members stated that their power of appointment was unsurpassed by the preceding board members. The Court did not agree with the new board members and decided favorably for the plaintiff, reasoning:

It is the settled law of Florida that the power to nominate teachers is vested in the Board of Trustees of the special tax school districts and when made it becomes the duty of the board of public instruction to appoint those so nominated, provided those nominated are legally, morally and professionally qualified and no legal cause is shown for their rejection.²

The general rule that a board may extend a contract beyond the term of its officers does not mean that they may do so fraudulently. In an Arkansas case, although no fraud


²State ex. rel. Altman v. Arnold, 191 So. 71, 140 Fla. 80, (1939).
was in evidence, the court stated what its position in regard to fraud would be:

That personnel of the board of directors of a school district may change during the life of a superintendent's contract does not render the terms thereof unreasonable. Also that a contract employing a superintendent for a period of two years was entered into just before a change in the personnel of the employing board, does not warrant an inference of fraud. If fraud were in evidence, the contract under no circumstances could be valid.1

Hiring Before Beginning of School Year

It is generally concluded that a teacher may be legally contracted before the beginning of the teaching year.2 This is understandable considering that in many states the teaching year begins July first. In these states it would be highly inconvenient to wait until that date to begin hiring teachers. Also, teaching positions are traditionally competitive and teachers expect to be notified as soon as possible if their continued services are desired.

The case of State v. Board of Education of Loudon District, Kanawha County is an example of litigation based on the question being discussed. Involved was a teacher who petitioned for a writ of mandamus in order to recover his

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salary. The teacher contended that he had been legally hired by a fully authorized board of education only to be discharged by the succeeding board.

Officers of the district contended that contracting for teachers before the beginning of the school year rendered the contract invalid. The board charged that it has been the practice of the school to contract for teachers after the new board members took office on July first of each year, and it was in disregard of the practice that the teacher in question was hired. The case was tried in the District Court and recovery of salary was granted. Appeal to the Supreme Court failed to change the decision. The Supreme Court, in upholding the earlier decision, related:

The single point in question is, can a contract be valid though construed before July 1st, the start of the teaching year. The law only states that teachers and principals shall be hired on or before the third Monday of July if practicable. This in no way prevents hiring teachers before July 1st.1

Contract Lacks Approval of County Superintendent

It is well established that certain teachers' contracts may be valid only if the signature of the County Superintendent is contained therein.2 Contracts that require

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1State v. Board of Education of Loudon District, Kenawha County, 113 S. E. 877, 94 W. Va. 4081, (1917).

2Vanlandingham v. Hill, 47 S. W. 2nd 641, (1932); Board of Education of School District No. 16 of Coal County v. Barrow, 281 P. 218, 139 Okl. 109, (1929); Board of Education of Escambia County v. Watts, 95 So. 498, 19 Ala. App. 7, (1922).
approval of the county superintendent are usually those of rural teachers who often teach under more or less direct supervision of the county superintendent.

In an Oklahoma case, the holding of the court is typical. Seeking recovery was a teacher who entered into a contract of employment but who in the fall was denied the right to teach. The school board contended that the contract was not signed by the County Superintendent and was, therefore, invalid. When the question arose as to whether or not the teacher was entitled to compensation, the board asked a writ of injunction against any such payment. Upon being denied this writ, an appeal was made to the State Supreme Court. There the writ was issued. In supporting its action, the Court stated:

When the statute or charter prescribes a particular mode for the execution of such contracts, that mode is exclusive and must be pursued or the contract will not be valid.¹

The court also referred to Section 10376, C. O. S. 1929 of the Code of Oklahoma which states that no district board of education shall have authority to pay any money or issue any warrant for the payment of money for services rendered as teacher or instructor except for services performed

¹Board of Education of School District No. 16 of Coal County v. Barrow, 281 P. 218, 139 Okl. 109, (1929).
under a valid written contract approved by such county superintend- 
intendent existing between the district board and the teachers 
to be paid.

In a Kansas case, the need for the signature of the 
county superintendent, in order to establish validity, was 
also stressed. Dissension arose when the county superintendent 
refused to sign several teachers' contracts. When the treasur-
er of the school board refused to issue salary warrants because 
of the lack of approval, recovery was sought for the salaries. 
In denying payment, the court related that because Article 2693 
of the School Code requires that all vouchers legally drawn 
against the public schools of the state must have the approval 
of the county superintendent, the contracts in question were 
not valid and no recovery could be granted.¹

**Failure to Use Proper Contract Form**

Failure to use a proper contract form does not general-
ly constitute reasonable cause for contesting the validity of 
a contract.² The form is likely to be considered incidental 
if other stipulations are met. This was the opinion of the 
court in the case of Lawless v. Scholl.


²*Lawless v. Scholl*, 217 S. W. 681, 186 Ky. 566, (1920); 
*Mingo v. Trustees, Colored School District A of Garrard County*, 
The plaintiff in the case was elected to teach and proceeded to do so at the beginning of the fall term. When the time came for payment of salary, she was not paid. The board merely notified her that her services were no longer desired and that an invalid contract made any payment illegal. The contract was alleged to be invalid because the wrong contract form was used. When the case was reviewed by the Supreme Court of Kentucky, validity was upheld on the basis that statutes do not specify any particular kind of form for teachers' contracts.

We do not find in the statutes, nor have we been referred to any statutes prescribing the form of contracts signed by teachers. It should be understood by those concerned that contracts for the service of all teachers shall be in writing, signed in duplicate by the teacher and by the chairman and secretary of the division board of the division in which the teacher is employed. Each of these requirements was met.1

De Facto Director Assisted in Making Contract

Courts are in general agreement that de facto officers may legally participate in the making of contracts.2 There are a number of questions, however, which lead to litigation in the field of de facto and de jure officers.


First, the question is often raised as to what constitutes a de facto officer. To be de facto, conditions must exist which could also make a de jure officer. If it could be determined in a court that an officer failed to qualify as de facto, then the contract in question would undoubtedly be declared void. Second, a school board or district may feel the right to hold office on the part of one or more of its officers is so much in doubt that no contract could possibly be valid. Third, in dealing with a question as open for debate and as broad as that of de facto officers, legal questions of a different nature may come to light which will have a bearing on the case.

School District No. 45 v. McClain contains reasoning which helps clarify the issue. The State Supreme Court of Arkansas, deciding in favor of the teacher plaintiff, made the following ruling:

We are of the opinion, however, that Carns was a de facto director, if not de jure, and that appellee was not required to inquire into his authority to act, in order to preserve the validity of her contract.1

Analysis of this case clearly shows it was the intent of the court to remove the burden of proof from the teacher. The court felt it was the duty of the defendant school district to prove that neither de facto nor de jure conditions existed. The teacher should not be required to prove otherwise.

1School District No. 45 v. McClain, 48 S. W. 2nd 841, 185 Ark. 858, (1932).
The authority of de facto officers to act in legal capacity is well established in the case of School Town of Milford v. Zeigler. The school district in this instance contended that the contract with the plaintiff, Zeigler, was not valid because officers making the contract was de facto instead of de jure. Again a state supreme court defended the action of de facto officers when it stated:

The law is well settled that the acts and doings of officers de facto are valid so far as the rights of the public and third persons who have an interest in the acts done are concerned.  

Teacher Related to Employing Officer

Even though a teacher may be related to his employing officer, or someone else directly connected with the contract, in the absence of statutes to the contrary, validity of the contract is usually upheld. For example, in the case of Thompson v. District Board of School District No. 17, Moorland Township, the husband of the teacher in question held the office of assessor of the school district. Although the service of the teacher was entirely satisfactory, suit was brought to keep the district from employing the plaintiff as

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a teacher. It was alleged that it was contrary to law for an officer of the school district to have any personal interest in any of the parties involved in contracts of employment. An example of broad interpretation of the law was evidenced by the decision which stated in part:

Notwithstanding, the provisions of the school law broadly provide that a school officer shall not be personally interested in any way whatsoever, either directly or indirectly in the contract with the district. We think it is not applicable in the case here presented. Mr. Spoelman clearly has no financial interest in this contract. Any wages which may be paid Mrs. Spoelman as a teacher will be her individual property the same as though she were a total stranger to Mr. Spoelman.¹

In Dolan v. Joint School District, suit was also brought to restrain the hiring of a teacher on grounds that certain relatives were board members. It was also charged these relatives constituted the entire contracting party and thus avoid any legally functioning board. That the Supreme Court of Wisconsin felt otherwise is revealed in an excerpt from its decision:

The fact that the three district officers signed the contract in question raises the presumption in the absence of proofs to the contrary that the contract was authorized by a vote of the board at a meeting thereof and casts upon the district the burden of proving to the contrary.²


²Dolan v. Joint School District No. 12, 80 Wis. 115, 49 N. W. 960, (1871).
An example of litigation when a state has regulating statutes is presented by an Arkansas case. Involved was a teacher who was related to a board member. In cases of this sort, Arkansas law requires that two-thirds of the voters of the district must confirm the appointment. To comply with the statute, a vote was held and the appellee was allowed to teach one year. She was not rehired, however, for the next school year. It was at this time that mandamus was requested. Charges were made that a three-year contract was lawfully signed but not complied with. Recovery was denied by the State Supreme Court on the basis that a new vote was not taken before the start of the second year. The court further stated that, because citizenship continually changes, it might well be that less than two-thirds of the voters would approve of the teacher the second time.

An exception to the general rule is the case of Nielson v. Richards. The controversy arose when a county superintendent employed his wife as a rural supervisory teacher. When the county auditor refused to grant warrant of payment, the superintendent appealed on behalf of his wife. The State Appellate Court of California turned down recovery when it stated:

1School District No. 107 v. Perrymore, 219 S. W. 316, (1920).
Because the contract was contrary to law it was not valid. The rule has long been recognized that any contract with an officer which interferes with the unbiased discharge of his office is against public policy and is void. Acting upon the principle that no person can, at one and the same time, faithfully serve two masters representing diverse and inconsistent interests with respect to the service to be performed, the legislature has prohibited the making of such contracts.¹

Contract Completed Before Consolidation

The effect of consolidation on the validity of pre-existing teachers' contract is the same as that on pre-existing assets, debts, and liabilities. ² Many legislatures have attempted to provide for the various complications relative to consolidation. Litigation, however, is still common in this area. Some states have constitutional provisions requiring that electors of a newly consolidated district must be consulted before acquired obligations can be met. If case obligations are outstanding and electors do not approve payment, it readily becomes apparent that trouble will result.

Because teachers' contracts have full legal status with other contracts entered into by the school district, the following excerpt from The Law and Public Education is pertinent:


²School District 2060 of Ellis County v. Crabtree, 294 Pac. 171, 1460 Okl. 197, (1930); Board of Education of Town of Terral v. Challey, 5 Pac. 2nd 747, 1530 Okl. (1931).
The universally conceded right of the legislature to create, alter or destroy districts as it may deem to the best educational interests of the state, is subject to the limitation that such legislative action must not conflict with any provision in the state or United States Constitution. Section 10 of Article 1 of the United States Constitution provides that no state shall enact any law which impairs the obligation of contracts. The question arises, then, as to how this provision may effect the power of the legislature in the matter of changing district boundaries. The question arises most frequently in cases in which bondholders of the original district find that, as a result of a change in district boundaries, the amount of property upon which a tax may be levied to meet the bond obligation is lessened. The situation is well illustrated by a case which arose in Michigan. The statute provided that where territory of a school district is annexed to another district, the remaining portion shall remain liable for bonds issued for lands and buildings located in the remaining portion. The act was held unconstitutional as impairing the obligation of contracts of the bondholders in that it relieved a considerable part of the territory which was in the district when the bonds were issued from payment without making any provision for payment from any other source.1

The case of School District 2060 of Ellis County v. Crabtree contains reasoning which is in accord with Section 10, Article 1, of the United States Constitution as previously mentioned. The case concerns a teacher holding a contract construed before consolidation. After the district was consolidated, the teacher was notified that all teachers' contracts entered into before consolidation were invalid. Upon bringing suit for recovery, the teacher plaintiff was awarded

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recovery by the district court. The Supreme Court of Oklahoma, confirming it, declared:

When Consolidated School District No. 3 took over the territory theretofore comprising School District No. 60, it acquired the right to include the territory thereto comprising School District No. 60 in its valuation for taxation purposes, but it acquired that right accompanied by a liability under the existing valid contracts of School District No. 60, among which was the contract with the plaintiff.¹

¹School District 2060 of Ellis County v. Crabtree, 294 Pac. 171, 1460 Okl. 197, (1930).
CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

As a result of studying the various bases for contesting the validity of teachers' contracts, it has become evident that a general ignorance of school law exists. This ignorance has resulted in much useless court action. For example, recovery of salary is sometimes sought even though the contract in question fails to meet statute requirements.

A clearly defined concept of a teacher's legal contract would prevent much of this confusion. It would not be necessary for a teacher to acquaint himself with all phases of contract law if such a concept existed.

In spite of the need for a universally legal contract, such a document cannot be accomplished overnight. It will come slowly, by means of certain recommendations as follow:

First, establish definite criteria to follow in making contracts. These criteria should be widely published and copies should be in the hands of all school boards and county superintendents. It should become a matter of course to check for validity when making teachers' contracts.

Second, teachers also should be trained to accept
responsibility for validity. It should be stressed in educa-
tion courses that contracts are more than mere documents with
signatures.

Third, improving a contract may also be accomplished
by improving relationships between contracting parties. For
example, if a congenial situation exists the contract is less
likely to become a question at law. Relations may be improved
by exposing issues before the contract is signed. Pretension
from either party will generally be exposed in the course of
a school year.

Fourth, an attempt to improve community relations
should be the aim of any school administrator. Better rela-
tionships will mean higher caliber board members. These board
members in turn will be more conscious of problems.

Fifth, additional legislation is needed in many states.
This legislation will be enacted only when widespread interest
is shown in the need for it.

Sixth, reorganization on the part of certain ineffi-
cient districts is badly needed. This is particularly true
in states where such reform is lagging. Larger districts
mean more interest directed on one activity. Larger adminis-
trative units are much more likely to include efficient and
professionally trained administrators.

One need only compare cases to see that litigation is
more prevalent in small districts. Small districts often are forced to hire unqualified teachers and others who have failed in better positions. This results in increased dissatisfaction and subsequent trouble.

In seeking ways to improve teachers' contracts, we are at the same time searching for methods to improve our schools in general. A broad program which follows these basic recommendations would be an excellent approach to this goal.
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Books


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