

Opinion No. [29-79]

March 21, 1929

TO: Office of the Attorney General of New Mexico

SCHOOLS -- Power of boards to contract.

OPINION

I have your letter of the 19th instant requesting an opinion touching the legality of a form of teacher's contract used by the former County Board of Education of San Juan County and a copy of which you enclose with a letter from Ora B. Douglass, superintendent of schools of San Juan County.

By section 804 of Chapter 148, Laws of 1923, it is provided among other things that the county board of education shall have supervision and control of all rural schools " * * * with the power to employ and discharge all teachers and all school employees of said schools **subject to the limitations herein otherwise provided.**"

The board of education in matters of contract has only such powers as have been delegated by the legislature and cannot by contract, upon its own initiative, enlarge or diminish such powers. The members of such board, in matters of contract, have not the same freedom in their official capacity that they possess individually. Schools are established by the state in the interests of the state and inhabitants, are supported by public taxation, and are under legislative control, except in so far as that control is delegated to boards. Questions of rights of boards and of teachers have in many instances been brought into the courts for adjudication. Among decisions handed down may be found principles expressed in such terms as: "Every contract made with a teacher includes by implication the statutory provisions for dismissal, and in the absence of statutory provisions includes the implied power of the board to dismiss for adequate cause." "But conversely the terms of the statute favorable to the teacher are likewise written into the contract and a school board will not be permitted to circumvent a statute providing for dismissal for cause, only, by including in the contract the power to dismiss arbitrarily without cause." "Proceedings for the dismissal of a teacher are frequently regulated by statute and consequently depend on the wording of the particular statute in force." "The procedure as to complaint, notice and hearing, provided by statute for the dismissal of a school teacher, must be followed to make a dismissal valid."

Section 1105, Chapter 148, Laws of 1923, as amended by Sec. 20, Chapter 73 of the Laws of 1925, is as follows:

"Sec. 1105. No board of education, county school superintendent or board of school directors, or any member of such boards, shall discharge a teacher without granting to such teacher full hearing and the right of appeal to the State Board of Education."

Turning now to the form of contract submitted, we find in the third paragraph, with other things, this language: "The said Teacher agrees * * * to preserve in good condition and order the school house, grounds, furniture, apparatus, library, and such other property as may come under the immediate supervision of said teacher." The idea intended to be covered by this provision was no doubt perfectly proper, but the language employed probably goes farther than the intention. It certainly is permissible to require the teacher to show proper interest in, and to put forth all due efforts for the preservation of school buildings, grounds and equipment. The language above quoted, however, seems to make the teacher an insurer, and to avoid that construction, should be modified.

In the last paragraph on page 1 of the contract form, we come to a more perplexing and more serious question, in that it is there stipulated, in effect, that the board may arbitrarily and without cause stated discharge a teacher on 30 days notice and the teacher is required to sign a waiver of notice of charges or hearing for appeal and furthermore, if notice of termination of contract be given by the teacher, she is fined an amount equal to one month's salary for the giving of such notice. These provisions, being in contravention of the powers conferred upon the board and in contravention of the rights and privileges secured to teachers by statute, as above shown, are improperly written into the contract.

It is recommended that the form of contract be revised in keeping with suggestions herein made.