

Opinion No. 33-574

April 14, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mary B. Lucero, County School Superintendent, Fort Sumner, New Mexico.

{*35} This letter has reference to the question presented by Mr. Keith Edwards as to whether or not the County Board of Education now in office can select teachers for the ensuing school year, so as to bind the new County Board of Education which is to be elected under the provisions of House Bill 172, passed by the Eleventh Legislature.

In this connection, I refer you to the following statements of the general law:

"Although it has been held in some cases that the contract of a county board may be valid and binding, even though performance of some part may be impossible until after the expiration of the term of the majority of the board as it then existed, yet the general rule is that contracts extending beyond the term of the existing board and the employment of agents or servants of the county for such a period, thus tying the hands of the succeeding board and depriving the latter of their proper powers, are void as contrary to public policy, at least in the absence of a showing of necessity of good faith and public interest." 15 C.J. 542.

"In the absence of a statutory provision limiting, either expressly or by implication, the time for which a contract for employment of a school-teacher may be made to a period within the contracting school board's or officers' term of office, such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office, or for the term of school succeeding the term of office of the board, or of one of its members, provided such contract is made in good faith, without fraud or collusion, and for a reasonable period of time." 56 C.J. 386.

Apparently these two statements are somewhat contradictory. Without attempting to reconcile them I shall take the view adopted in 56 C.J. 386. Besides being more in point with the present situation, it appears to me to be based on better reasoning. Our statutes give the County Board of Education the power to employ teachers for rural schools (Ch. 119, Laws of 1931). There is no limitation placed upon that power either in statutes now in effect or in House Bill 172, which goes into effect on next June 9th.

The citation from 15 C.J. 542 bases the rule on public policy. I cannot see where public policy is served by restricting the power of the present Board to hire teachers for the ensuing year. Upon this point the Supreme Court of Arkansas, in *Gates vs. School District*, 53 Ark. 468, makes the following statement:

"It is contended that the selection of superintendents during each year should be left to the exclusive control of the board for that year. As a matter of policy, an argument might

be made upon either side of that contention. There is nothing in the law to sustain the affirmative. Public interest might suffer from unwise contracts covering an extended term in future; they might suffer equally for want of power to make a contract when a good opportunity offered. But with the question of policy we have no concern, except in so far as it aids in ascertaining legislative intent. There is nothing in the act that implies that the legislature intended either more or less than it said."

I agree with the reasoning of the Arkansas Court, and, therefore, I am of the opinion that the present Board of Education has the power to employ teachers for a term of school succeeding its term of office, providing such contracts are made for a {*36} reasonable period of time and in good faith, without fraud or collusion.

By: QUINCY D. ADAMS,

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