U. M.

THE UNIVERSITY OF MINNESOTA

GRADUATE SCHOOL

Report

of

Committee on Examination

This is to certify that we the undersigned, as a committee of the Graduate School, have given Albert Erick Pearson final oral examination for the degree of Master of Arts . We recommend that the degree of Master of Arts be conferred upon the candidate.

Minneapolis, Minnesota

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L D Coffman
Chairman

Albert M Rankin

THE UNIVERSITY OF MINNESOTA

GRADUATE SCHOOL

Report

of

Committee on Thesis

The undersigned, acting as a Committee of the Graduate School, have read the accompanying thesis submitted by Albert Erick Pearson for the degree of Master of Arts. They approve it as a thesis meeting the requirements of the Graduate School of the University of Minnesota, and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts.

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Preface.

In preparing this thesis, the Minnesota statutes relating to public school teachers have served as a starting point. In the interpretation of these statutes, the supreme court decisions of this state, as well as those of other jurisdictions have been consulted. In those legal controversies where no statutes cover the point in issue, the common law principles as laid down by the various courts have been given. As the statutes of this state make the rulings of the attorney general decisive until overruled by a court of competent jurisdiction,[1] these rulings, altho they should be accepted with caution, have found a place in this paper.

A digest of the State laws relating to public education has been compiled and issued by the Bureau of Education, Department of the Interior, 1915 Bulletin, No. 47. The various digests have proved valuable guides in the tracing of source material. The annotated cases in the L. R. A. series, well known to every lawyer, will prove accurate and scholarly. For further bibliography, see Vol. 35, Cyclopedia of Law and Procedure, under "Schools and School Districts", pages 801--1144, published by The American Law Book Co. in 1910. See also E. C. Voorhees' work, "The law of the public school system in the United States", published by Little Brown & Co. To those who may not be familiar with a law library, the various digests, such as the Century, Centenial, and American, as well as both series of the L. R. A. digests, under the head line, "Schools and School Districts", are valuable only as guides to the original reports; the notes in these digests are not unfrequently very inaccurate and inadequate.

The writer wishes to acknowledge his indebtedness for kind assistance and constant encouragement to Dean L. D. Coffman and Prof. A. M. Rankin. He is especially indebted to Prof. C. D. Allen for suggestions as to method and material.

Signed: Albert E. Pearson.

1. Hilton, May 31, 1915; Gen. St. of 1913, secs. 2775,106. (In this thesis, the name refers to the member of the attorney general's staff writing the opinion; the date refers to volumn containing the rulings for that year).

RIGHTS AND DUTIES OF PUBLIC SCHOOL TEACHERS WITH SPECIAL REFERENCE TO MINNESOTA STATUTES, RULINGS, AND DECISIONS

RIGHTS AND DUTIES OF PUBLIC SCHOOL TEACHERS

With

Special Reference to Minnesota Statutes, Rulings, and Decisions

I. The legal status of school teachers:

Introduction:

Before considering the legal status of a public school teacher, it might be well to consider the relation which a school district, or school district board, bears to the state.

To establish public schools is a matter of general state concern and rests with the state legislature. The power to maintain a system of public schools usually originates from the constitutions of the various states.[1] The safety of free public institutions depends upon the morals and intelligence of the people. The constitution of the state of Massachusetts well sets forth the purposes of the public school in the following words: "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university of Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agri-

culture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevelence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments, among the people.[2]

A common school district, as well as an Independent and Special school district in Minnesota, is a creation of the legislative will. Such districts are unanimously held, in the various states where the legal status of school districts has been tested before appellate courts, to be quasi corporations.[3] As such they are not bodies politic, nor have they full corporate powers. As quasi corporations, school districts have not the full powers of a municipality, but the most limited of corporate powers. Such districts are "involuntary political or civil divisions of the state, created by general laws to aid in the administration of government"; they possess no powers except those conferred by statute or those necessarily implied. Like a county, a school district is not liable to persons injured by the negligence of its agents on the theory that such agents are engaged in a governmental function.[4] Nor is a school house in this state subject to a mechanic's lien.[b]

In some states, such as Illinois, Indiana, and Iowa, a

1. Marshall v. Donovan, 10 Bush (Ky) 681
2. Chap.5, Sec.2.
3. School Dist. v. Thompson, 5 Minn. 280.
   Dillon on Munic.Corp.5th Ed., Sec.34.
4. Hilton, April 14,1913.
5. Attorney Gen. v. Vickers, 58 Ohio 330; Butler v. Regents, etc., 32 Wis.131; U.S. v. Germaine 99 U.S. 508.

a. Whitehead v. Detroit Board of Education 139, Mich. 490; Hathaway, Jan. 22, 1915.
b. Jordon v. Taylor's Falls Board of Education, 59 Minn. 296.

school board has been held to be a municipal corporation to some extent. The distinction between a municipal and a quasi corporation has been the object of much learned discussion. The courts seem to agree that a municipal corporation is created at the solicitation or consent of the people composing such municipality, while a quasi corporation, such as a county or school district, is created almost exclusively with a view to the policy of the state at large."

The following definition was laid down in First National Bank v. Whisenhunt 94 Ark. 583; "A school board is by the statutes of this state made a body corporate; but it is intended as an agency in the administration of public functions. It is a quasi corporation, and can exercise no powers beyond those expressly conferred by statute or which arise therefrom by necessary implication. The powers and duties of the directors of a school district are derived only from the legislative authority, and they can exercise no powers that are not thus expressly or by necessary implication granted by statute."

A. The teacher as employee of school board. It follows from the above definition of a school board that members of such boards are public officers; to them is delegated a portion of the duties of the state government; in them are vested certain governmental functions. The salary of an official is an incident of the office and cannot be withheld because of the temporary illness of the incumbent; the salary of an employee, however, rests upon a contractual relationship and is paid for services rendered: hence, a failure to render the services stipulated in the contract of employment permits a deduction from the stipulated salary.

6. Trustees v. Douglas, 17 Ill. 209; 211; Davis v. Steuben School Township, 19 Ind. 253. 611; 702.

The public school teacher whose position rests on a contract with the board is not a public officer, but an employee. In Murphy v. New York Board of Education, 87 N.Y. App. Div. 227 (84 N.Y. S. 300) the plaintiff had been a teacher in the public schools of the city of New York for 25 years. She became ill in March and did not report for duty until the following September. The board deducted from her salary the amount due her for the months she was absent and this amount she seeks to recover. The court denied recovery by reason of an old statute which allowed the board to adopt by-laws providing that a certain deduction could be made from a teacher's salary for each day that she was absent, even though such absence was caused by illness. The plaintiff's counsel sought recovery on the ground that the teacher is an officer and the salary an incident of the office. But the court said: "The teacher being an employee, and his relation to the appointing power contractual, nothing stands in the way of a revisal of his compensation by the authorities having powers to fix salary to be paid to the teacher at any time. The salary of an employee not being an incident of the office, but payment for services rendered, there certainly would be nothing illegal in a provision changing the condition under which the salary is paid, so that it is payable only for the period for which the services are actually rendered."

It has been ruled by the Attorney General in this state, citing O'Leary v. Board of Education, 93 N. Y. 1, that a district board has power to deduct from the salary of a teacher absent to a funeral, but that it is within the discretionary powers of the board to pay salary in full.[4]

(See Note 4 on Page 2)

B. The Superintendent as an employee of school board. A more difficult question arises in determining the legal status of a city school superintendent. The state superintendent of public instruction, as well as the county superintendent of schools, as elective officers clothed with authority by virtue of the legislative will, are clearly public officers. The city superintendent, however, whose position rests on a contract with the board of education lacks many of the earmarks of a public officer. On the one hand, as ex officio member of the board, he exercises functions closely allied to those of a public officer. In Webster v. San Francisco Board of Education, 140 Cal. 331, it was held that the superintendent of schools of the city of San Francisco, as ex officio member of the board of education, with "all rights and privileges excepting solely the right to vote" exercised in that capacity a distinct office, with duties legislative and quasi judicial that could not be delegated.

The prevailing rule seems to hold that the city superintendent of schools, appointed by the city board of education, is not an officer but a mere employee of such board.[5] In Baltimore v. Lyman, 92 Md. 591, a bill was filed by a tax payer of the city of Baltimore to enjoin the mayor and the city council from paying the superintendent's salary for the reason that, not being a registered voter of the city, he was not elegible for the position to which he had been appointed. The city charter provided that all "Municipal officials" must be residents. The plaintiff contended that the superintendent is an officer possessing all the essentials characteristic of a public officer, for the office had been created by law; that the duties of the office are described

(See Page 2 for Note 5)

by law and not by contract; that the office and duties are permanent and would continue though the incumbent be discharged; that the duties are executive and relate to the proper administration of the public school system; that the salary of the office is paid out of the public treasury; that the law creating the office denominated it such, and that the office and the duties thereof cannot be abolished or abrogated except by the creating-power, i.e., the legislature. The brief is formidable in precedent and rather convincing. But the court held in substance that a superintendent of public instruction who is appointed at the pleasure of the school board, and who takes no official oath and gives no official bond; who has no commission issued to him, and who has no fixed and definite tenure of office, is not a "municipal official" within the meaning of the charter requirement that such officials shall be registered voters of the city.

Not being apublic officer, the superintendent may have his salary increased or reduced during his term of office. In Ward v. Toledo Board of Education, 5 Ohio Cir. Ct. 638, the plaintiff was appointed to fill the remaining term of a suspended superintendent. For meritorious services the plaintiff's salary was raised from $1,800 to $2,500. He sued for the balance. It was held that the superintendent of schools is an employee of the board and not a public officer within the purview of the constitution forbidding a change in salary of public officers during their term of office. Hence, the raise was held valid, but unenforceable by the plaintiff, as founded on no consideration. It was further held that where after the passage of a law abolishing the super-

intendent's office and the superintendent accepted another position, he thereby voluntarily relinquished his former position and the emoluments thereof, and cannot recover for his salary under his original contract.

In this state the statutes provide that a teacher related to a member of the board cannot be appointed without the unanimous vote of the board. It has been ruled by the Attorney General that the appointment of the wife of the superintendent without the unanimous vote of the board is a valid appointment, as the superintendent is only an ex officio member of the school board.[6]

It has also been ruled that the "presidents, professors, and teachers of the normal schools of the state are not officers within the meaning of that term as generally used and accepted in this state as designating officers who are charged with the performance of public duties and invested with certain powers in respect therete. Such persons hold the relation of employe and agents of the normal school board which is charged under the law with the administration of the normal schools, so that the general rules of law with reference to the removal of public officers from office for cause do not apply.[7]

In this state, it seems that the superintendent of an independent district is not a public officer, nor does he enjoy the ordinary status of a public school teacher. By statute he "shall hold office during the pleasure of the board. He shall be ex officio a member of the board, but not entitled to vote therein", and he shall receive such compensation as may be fixed by the board.[8]

6. Hilton, Nov. 2, 1916.
7. Douglas, Aug. 13, 1900, citing Olmstead v. The Mayor, 42 N.Y. Sup. Rep. 481
8. C.S. '13; 2734; 2771.

Interpreting this section of the school law, the Attorney General holds that the making of a contract by a school board of an independent district with a superintendent for a specified time is an ultra vires act and void. The opinion seems startling in view of the fact that the general practice throughout the state is to make such contracts. "The office", the ruling reads, "is held not by virtue of any contract but by virtue of the election thereto, and any agreement attempting to vest him with title to the office is ultra vires. The compensation is fixed by the board and so long as one elected to the office performs the duties thereof, he is entitled to the emoluments of the office, not by virtue of a contract but by virtue of his occupation of the office."

"I have not been able to find any statutory authority for the making of a contract by a school board with a superintendent and in the absence of such authority the school board would have no authority to make such contract----".[9]

9. Weeks, Feb. 10, 1908. But see Brown, Sept. 12, 1918, a recent opinion overruling the above ruling and holding that such a contract is enforceable, but not for a longer period than one year. The ruling is based on Faunce v. Searles, 122 Minn. 343.

II. The Qualifications of Teachers.

A. In General. If the safety of free public institutions depends upon the morals and intelligence of the people, it follows that the qualifications of the teachers of the public schools is a State concern. It becomes the duty of the State to provide for the special training of the teachers; also, to safeguard the people against unqualified teachers. The first duty is carried out in this State through a provision in the statutes which establishes the following instrumentalities of teachers' training: teachers' institutes, model schools, training schools, normal schools, and department of education, University of Minnesota.[1] The second duty is performed through the statute requirement that teachers must hold a certificate or license to teach.[2]

B. Certificates. A qualified teacher is by statute defined as follows: "A qualified teacher is one holding a certificate or license to teach, as hereinafter provided, in the school or grade for which he is employed. Contract for teaching can only be made with qualified teachers. Contracts made with persons before obtaining such certificates or licenses shall only be valid from the time of obtaining the proper certificate or license."[3]

Such licenses must be filed with the county superintendent in the county where the holder expects to teach.[4] It is also provided that "from and after August 1, 1915, all candidates for teachers' certificates by examination, renewal or endorsement of credentials, except those who have taught successfully at least eighteen months in the public schools prior to such date, or those receiving either a second grade or limited certificate, must

1. '13 G.S. 2961; 2962; 3051; 2968.
2. '13 G.S. Secs.28,29; 2830.
3. '13 G.S. 2829. 4. '13 G.S. 2830.

have completed such a course of professional training for teaching not exceeding thirty-six weeks, as may be prescribed by the state superintendent."[5] Training courses in other institutions, however, such as in normal schools and high schools, or private schools that are equivalent of those given in state schools, are accepted upon the approval of the state superintendent.[6]

In this state there are five grades of regular certificates: first grade, second grade, limited second grade; first grade and second grade professional.[7] In addition to these, there are professional permits, special certificates, advanced normal diplomas, normal school elementary diplomas, normal school certificates, university certificates and certificates approved by the state superintendent, though coming from other states.[8] The conditions under which these various certificates may be obtained, issued and accepted as state licenses to teach in the public schools of the state are fully prescribed by statute.

As the state through its system of licensing seeks to protect the public against unqualified teachers, it follows that a certificate may be regarded as <u>prima facie</u> evidence of the holder's qualifications to teach.[9] Thus a certificate which on its face purports to be a regular certificate has been held <u>prima facie</u> proof of the holder's right to teach although such holder did not prove the signature of the examiners but merely introduced the document in evidence.[10]

5. '13 G.S. 2864
6. '13 G.S. 2864
7. 13 G.S.2845;2853;2847;2846;2858;2859
8. 2860;2862;2849;2850;3851;2848;2843.
9. Neville v. School Directors. 36 Ill.71.
10. Fitzgerald v. Spokane School District, 5 Wash.112.

In Neville v. School directors, 36 Ill. 71, the plaintiff was engaged as principal for ten months but was dismissed after four months for alleged incompetency. He brought suit to recover salary for the remainder of the contractual period. The court said: "His certificate of qualifications obtained from the school commissioner, is prima facie evidence of that fact----- It devolves upon the directors to show a want of qualification, which they have failed to do.------ It may be that the evidence fails to show the highest possible qualifications, or a talent for his profession equal to the most eminent and successful teachers. But the law requires no such qualifications; it only requires average qualifications and ability, and the usual application to the discharge of the duties of a teacher to fulfill his contract."

The setting of standards is vested in the state superintendent of public instruction and the state high school board. Under a statute giving the state superintendent power to prescribe regulations for teacher's examinations, the state superintendent, according to a ruling by the attorney general, is authorized to "appoint such qualified examiners of county teachers papers as in his discretion are deemed necessary,[11] also that he may limit the first and second grade certificates in certain instances to one year.[12] By statute, "markings for the professional requirements shall be given by the county superintendent, who shall also be judge of skill in teaching and moral character of applicants."[13]

A large discretion is necessarily vested in such examiners. The question has arisen in other states with similar statutory

11. Douglass Aug. 4, 1899, 12. Douglass Aug. 24, 1899
13. G.S. '13 2839.

provisions in regard to the extent that such examiners can arbitrarily refuse to issue a teacher's certificate. In Keeler v. Hewitt, 109 Cal. 146, the plaintiff passed the necessary requirements and was awarded a percentage in all subjects and was found of good moral character. The Board of county examiners, however, arbitrarily refused to issue a certificate and mandamus was brought to compel its issue. It was held in substance that such a board possessed large discretionary powers and that it could prescribe rules and standards of efficiency. "But having established such rules and fixed such standards, and having examined an applicant under those rules and determined that they have been complied with--it was not intended that they should, nevertheless, have the arbitrary power to say that in such a case a certificate shall not issue--the limit of the board's discretionary functions in the premises has been reached, and a plain legal duty results." To the contention that mandamus does not lie to control mere discretion or judgment, the court held that the argument "is wholly beside the question, since the act here sought to be compelled is not a discretionary act, but a purely ministerial duty, resulting from the antecedent acts of the board."

These discretionary powers of examiners are analogous to judicial powers. The question arises whether an examining officer is liable in tort for damages in case he refuses from malicious motives to issue a certificate. It is the unanimous holding of courts that judicial officers are not liable under any circumstances for errors or malicious motives in their decisions.[14] In a certain sense the examiners of teachers are vested with judicial powers. In Elmore v. Overton, 104 Ind. 548, the plaintiff sued the county superintendant for damages on the alleged ground that he maliciously refused to issue a certificate to the plaintiff. The court said: "It is well settled, and hence conceded, that a judicial officer is not civilly liable for an erroneous

14. Cooley on Torts, page 411 - B. -9.

decision, however gross the error may have been, or however bad the motive was which inspired it--As we construe this section, it does not confer on the county superintendent either judicial or quasi judicial power in the matter of licensing persons to teach in the common schools; nor is such superintendent invested with any such power by any other provision of the statute-- The office belongs to the executive department of the State-- But we regard the discretion conferred upon the county superintendent on the subject of licensing teachers as being so far analogous to a judicial discretion that he is protected from any claim for damages on account of any mere mistake in his decision, or error in judgment."

It is unlawful and against public policy, obviously, for a school board to hire a teacher who does not possess the legal qualifications. For a clerk to draw an order upon the treasurer to pay the wages of a teacher known to him to hold no certificate has been held an unlawful diversion of the public school funds and renders such clerk liable to the district as per statute, for twice the amount of such order.[15] It has been ruled by the Attorney General, however, that the employment of a temporary assistant to a qualified teacher is allowable, if advantageous, tho no certificate is held by such assistant.[16] This ruling should be accepted with a great deal of caution until tested by a court decision. In Catlin v. Christie, 15 Cal. App. 291, the board of education agreed to pay one teacher an exhorbitant price with the understanding that she would pay part to an unlicensed teacher who was hired to teach in one of the school buildings of the district. In a suit by the county superintendent to restrain the board from employing such a substitute, the court held that the arrangement was an evasion of the law and the contract void. It was further held that altho the county superintendent had no statutory authority to enforce laws in respect to teachers' certificates, there was an implied power to maintain such suits. Mechem on

15. School Dis. v. Thelander, 31 Minn. 333. 16. Hilton, Jan. 25, 1915.

Public Officers, sec. 893, quoted in the above opinion, reads as follows: "Where the law has not created a prohibition, public officers have an implied authority to bring and maintain all suits, as incident of their office, which the proper and faithful discharge of the duties of the office requires."

It sometimes becomes convenient to contract for the services of a teacher before he obtains a certificate, with the understanding that he must possess one at the time he enters upon the services as a teacher. Similar statutes on this point have received different interpretations in different states. Under an old statute in this state providing that school boards "shall hire such teachers only as have certificates of qualifications", it has been held that a contract with a teacher who holds no such certificate is void and that a subsequent procurement of a license to teach will not render the contract valid.[17] The same view has been repeatedly expressed by the Attorney General, altho he questions the soundness of such a holding.[18] The better view, however, seems to be that it is not necessary to have a certificate at the time of the contract provided such license is obtained before the actual entering upon the duties of teaching. Thus in Crobb v. School Dist., 93 Mo. App. 254, a statute provided that "no teacher shall be employed-- until she has received a certificate of qualification". The court said: "We do not think--that a teacher must have a certificate of qualification at the time of making a contract to teach school in the future. The object of the statute is that the qualification may exist during the term of employment." In construing an identical statute, the court, in School Dist. v. Dilman, 22 Ohio State, 194, held that "the teacher is not 'employed' within the meaning and intent of this provision, until he engages in the discharge of his duties as teacher.

17. 12 Minn. 448(337) 27 Minn. 433.
18. Childs Aug. 26, 1897.

The mischief intended to be guarded against was the teaching of the school by an incompetent person, and not the making of the contract by an incompetent person. The Supreme Court of North Dakota found pretext for overruling a former decision because of a change in the statute. The old law of 1890 reads: "No person shall be employed as a teacher, or permitted to teach.. who is not, when so employed, or permitted to teach, the holder of a teachers certificate.." The statute of 1911 reads: "No person shall be permitted to teach who is not a holder of a teacher's certificate.." Commenting upon the change, the court said that altho it had no "intention of questioning the correctness of the Hosmer decision,[19] we think a wise public policy demanded such a change. There appears to us no good reason for such a drastic statute. The enforcement thereof operated, no doubt, to hamper and greatly interfer with school boards in the employment of teachers. It no doubt frequently happened that a teacher could not obtain from the board of examiners the necessary certificate or permit until a regular meeting of such board, and still it may have been desirable that definite arrangements by contract be made with such teacher in advance of such meetings".[20]

It is highly probable that the present Minnesota statute on this point would in a test case be construed in conformance with the betterview.[21] It reads: "Contracts for teaching can only be made with qualified teachers. Contracts made with persons before obtaining such certificates or licenses shall only be valid from the time of obtaining the proper certificates or license."[22]

A letter from a county superintendent showing that a teacher is entitled to a certificate is not sufficient or equivalent to having a certificate at the time of the contract, and action for wages is not

19. Hosmer v. Sheldon, School Dist. 4 N.D. 197 (255R.A.383)
20. Schafer v. Johns, (N.D.) 137 N. W. 481; 428 L.R.A. (N.S.)412
21. Defining "qualified" as those holding a certificate.
22. Gen. 1913 -- see 2829.

maintainable.[23]

At times a certificate expires before the end of the contractual period. This does not render the whole contract void. A teacher, however, who continues to teach after the expiration of her certificate, at the request of the school director, cannot recover for the services after such expiration.[23] Expiration of the certificate before the close of the contractual period usually releases the board from the obligations of an unexecuted contract. In O'Leary v. School Dist., 118 Mich. 469, 76 N.W. 1038, the plaintiff was hired for three months and a clause in the contract provided that she would be hired for an additional five months on condition she gave satisfaction. The board later refused to rehire her for the additional term of five months on the ground that her certificate expired two months before the close of said term. It was contended that she was entitled to a contract for the three months remaining during the life of her certificate, but the court held that "if the board was bound at all, it was to enter into a contract for five months. The plaintiff could not make such a contract, as she did not possess the necessary qualifications therefore. The board was therefore released from any obligations under this contract, even tho it could have been enforced if the plaintiff had been qualified to make it.."

There is some authority, however, to the effect that the statutory prohibition against hiring unlicensed teachers affects the board only, and not the teacher so as to make her compensation for services rendered unenforceable. In School District v. Estes, 13 Neb. 52, the defendant was hired to teach for nine months. Her certificate expired shortly after the making of the contract and three months elapsed before it was renewed. She was permitted to teach the whole contractual period but the wages of the

23. Devoe v. School Dist. 77 Mich. 610; People v. Bd of Ed. 67 N.Y.S. 836

last month was withheld to offset the wages received during the three months she possessed no certificate. The court said: "It is now claimed on behalf of the school district that the payments for these three months were unauthorized.. It is true that the statute prohibits the school board from paying from the school fund any but qualified teachers.. The prohibition on the statute is, however, upon the district board, and not upon the teacher. It was the duty of the board to see to it that the teacher possessed the requisite evidence of qualification before making payment; but not having done so, we do not think they should be permitted to recover the money for the district."

Similarly, under a statute providing that "any contract for teaching shall be null and void, if the teacher shall fail to obtain a certificate of qualification.. before the commencement of the school" has been construed to permit recovery of wages for six weeks taught after the expiration of the certificate.[24]

C. Revocation of License.

A teacher's certificate may be revoked or suspended under certain prescribed conditions.[1] The power of suspension is vested by statute in the county superintendent, who may upon his own authority, or upon the written complaint of any school board in his county and after due notice and hearing, suspend the certificate of a faulting teacher. The teacher so suspended may appeal to the state superintendent who "may either confirm, modify, or reverse" such suspension. The board may also appeal in like manner against the decision of the county superintendent. Such county superintendent shall file with the state superintendent and with the complaining board a statement of his decision and his reasons therefore. The statutory grounds for the revocation of a teacher's certificate are as follows:[2]

24. Holman v. School Dist. 34 Vt. 229
1. G.S. '13 -- 2855
2. G.S. '13 -- 2855

a. Immoral character, or conduct unbecoming a teacher.
b. Failure without justifiable excuse, to teach for the term of his contract, without first securing a written release of the school board.
c. Inefficiency in teaching or in the management of a school.
d. Affliction with active tuberculosis or some communicable disease.

A license by the state is not a contract between the state and the individual. Hence, the revocation of a license does not run the gauntlet of the constitutional prohibition against acts impairing the obligations of contractual rights. As was said by the Supreme of the United States in Doyle v. Continental Insurance Co., 94 U.S. 535: "The correlative power to revoke or recall a permission is a necessary consequence of the mere power. A mere license by the state is always revocable." In Stone v. Fritts, (Ind.) 82 N.E. 792; 15 L. R. A. (N.S.) 1147, the county superintendent of schools acting under a statute similar to that in Minnesota notified a teacher of four charges held against her and set time for a hearing, after which he revoked the license. Injunction was brought to enjoin the county superintendent from revoking the license. It was contended that the county superintendent was biased; also that the power granted him by statute was unconstitutional. A demurrer was sustained to the complaint on the ground that the action was not reviewable in court. In regard to the constitutionality of the act of revocation the court held that a "a license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed."

Whether the action of the superintendent is reviewable in court is qualifiedly answered in the negative. "Giving appellee's rights under his license the widest effect allowable," the opinion reads, "the utmost he could ask or exact of the state is that proceedings to revoke such license be made to conform to the law authorizing such revocation." And further: "Judicial officers, however wise, should not hastily usurp their prerogatives.. and seek

to substitute their opinion for the opinion and judgments of men held accountable for results in educational affairs." And again: "Jurisdiction of the county superintendent having been shown, the allegations with respect to his bias and want of judicial capacity are without force. He must answer to the body responsible for his election for the manner in which he discharges his duties so long as he keeps within the legitimate sphere."

D. Eligibility.

1. Residence:

As a rule the school law establishes no residence qualifications for teachers. Unforeseen difficulties may arise as in the case of city charters providing that all employees must be residents of the city. Thus it was ruled by Corporation Counsel O. H. O'Neill that five substitute teachers and one dentist living outside of the city limits of St. Paul, Minnesota, and employed by the city school board could not recover their salaries for services rendered. As the case at this writing has not gone to court, no great weight can be attached to the ruling; it does, however, seem sound in principle.[1]

A teacher sometimes may need to know whether he loses his residence by going to another state to teach. The question is entirely one of fact. The intention of the party as gathered from surrounding circumstances will at all times govern. Generally it may be said that teaching in another state with no intention of becoming a resident thereof, and returning to the native state during vacations, does not forfeit the residence in the native state. If from the circumstances it can be ascertained that the teacher intended to make the new state her residence, his domicile in the former state would be lost.[2] In State v. Hays, 105 Minn. 399, 117 N.W. 615, a county superintendent of schools left LeSuer county to superintend a

1. Dispatch, Tuesday Feb. - 1919.
2. Dignam v. Straff, 22 L.R.A. (N.S.) 996; 51 Wash. 412

school at Mountain Lake with the prospect of resigning his former position on the event of securing a contract for another year. The court said: "Something is attempted to be made out of the fact that Hays carried certain personal effects with him to Mountain Lake... It is clear to us that the respondent did not go to Mountain Lake, with the intention of, at the time, abandoning his home in Le Suer county, and an absence of an intention to abandon a residence is equivalent to an intention to retain the existing one."[3]

2. Sex.

By statutes of this state, as in most states, the women may vote for "School officers and members of the library boards, and shall be eligible to hold any office pertaining to the management of schools or libraries". The question has sometime occured whether or not a school board has authority to limit certain teaching positions to male teachers. A leading case in point is that of Commissioners V. Board of Education, 187 Pa. State 70, in which the school board made a by-law providing that certain classes of grammar schools should have men principals. The constitution provided that "women 21 years of age and upwards shall be eligible to any office of control or management under the school laws of this state." It was held in substance that while the duty of the board of education to appoint a properly qualified teacher was ministerial and imperative, yet the statute gave such board the power to prescribe the qualifications of different classes of teachers; that the position of principal was not an "office of control and management", within the meaning of the constitution. The opinion reads, that "apart from the legal point involved, sex is a most important element to be considered in the selection of teachers.. To set men over kindergartens of children.. or to teaching small girls to sew or larger ones to cook, would in the present state of the world's social organization

3. Redfern v. Hines, 123 Ga. 391;
Denver v. Sherrit, 60 U.S. Ap. 104; 88 Fed. 226 .

seem incongruous, altho there are men cooks and men tailors. So on the other hand women in charge of a night school of mechanics, or a school of half-grown and intractable youth, could hardly be expected to have a successful administration."

Similarly in Commissioners v. Jenks, 154 Pa. St. 368, in a case with like facts, the court said: "The question of eligibility is one thing. The selection among a class of eligibles is quite another. Sex ought not to affect the first, it may help under some circumstances to determin the last." And further: "Her eligibility does not take away or limit the discretionary powers of the board in determining who shall be appointed...there may be good reasons growing out of personal habits or peculiarities, out of the state of health, the temperament, the skill and success in the government of pupils..for a choice so made they are not bound to give reason to disappointed applicants; and if one of them is a woman it by no means follows that her sex is the ground for her failure."

3. Marriage; relationship to school board:

Marriage itself does not render a female teacher ineligible. Where neither the statutes nor the contract make marriage a cause for removal, a teacher cannot be removed because of her marriage.[4] In the case of a teacher who married three months after her employment by a school board the Attorney General ruled that such teacher was not disqualified because of marriage; that if otherwise competent, nothing in the school law could compel her to resign.[5] Absence from school, however, because of maternity, may disqualify a teacher.[6]

4. People v. Board, etc. 144 N.Y.S. 87
5. Hilton, Oct. 13, 1914. Smith, October 9, 1914.
6. People v. Board, etc. 160 N.Y. App. Div. 557

By statute in this state, "no teacher related by blood or marriage to a trustee shall be employed, except by the unanimous vote of the full board.[7] This has been construed to mean that all members of the board must cast a unanimous vote; that the failure of one member to vote will make void the contract.[8] In the case of a member of the board who had a sister married to a brother of a certain teacher elected with one negative vote, the Attorney General ruled that the contract was valid; "related by blood or marriage" was defined as a relationship arising directly out of the marriage of the trustee in question, and not out of a collateral marriage as in this case.[9]

7. G. S. - 13 - 2832
8. Young - September 8, 1908.
9. Hilton, April 16, 1909.

III. Hiring of Teachers.

A. In General:

We have seen that a school district is a quasi corporation, a creation of the legislative will, endowed with very limited powers. To the members of the school board, as directors of the school corporation, is delegated the power and duty to hire teachers. These powers are sometimes restricted by the charter in some large cities as will be seen later. The statutes of the various states are usually very explicit in regard to the mode of appointment of teachers and the method of procedure in the execution of the contracts of employment. If the school board exercises "functions not conferred upon them", said the court in Adams v. State, 82 Ill. 132, "the statutes has made them responsible for losses that may ensue." The provisions of the statute must at all times be observed. Thus it has been held that a contract made in pursuance of a vote taken on a different day than the one fixed by statute is void[1]; that no legal liability is created unless the provisions of the statute is followed in the forming of a contract.[2] A teacher may make a contract of employment in all good faith, perhaps perform services by virtue of it, and later find herself without a legal remedy, due to the overlooking of a statutory requirement.

B. Teacher's Contract:

The Minnesota statute relative to the hiring of teachers has in its application and interpretation been fruitful of much legal controversy. It reads: "School boards shall hire teachers at meetings called for that purpose. No teacher related by blood or marriage to a trustee shall be employed, except by a unanimous vote of the full board. The employment shall be by written contract, signed by the teacher, and,

1. Fluty v. School Dist. 49 Ark. 94.
2. Caskade v. Lewis, 43 Ia. St. 318.

in common districts, by at least two of the trustees; in special and independent districts, by the chairman and clerk. Such a contract shall specify the time of employment, and the wages per month."[1]

As much of the controversy centers around the formal execution of a written contract, it might be well to discuss the mode of executing such contract:

The prevailing rule is that contracts must on their face clearly indicate that the school officers signing are acting in their official, not in their private capacity. In the case of Sandborn v. Neal, 4 Minn. 126, three school trustees executed a note as follows:

"$1,146.66

"One year after date, we, as trustees of school district No. 10, in Rice County, Minnesota, promise to pay to John Sandborn, or bearer, the sum of one thousand, one hundred and forty-six dollars and sixty-six cents, with interest at 4% per month until paid, for value received. Date.."

"William Neal"
"William Sandborn"
"John Bailor."

The officers were sued individually, and the counsel for the defense contended, that there could be no individual liability by the school officers signing. The court, after pointing out the conflicting opinions on the subject in the various jurisdictions held in substance that public officials, such as school directors, who contract with parties having full knowledge of the extent of their authority, or "who have equal means or knowledge with themselves," do not become individually liable, unless it can be shown that they intend, at the time of the contract, to become personally liable, altho, in ignorance of law, they should have exceeded

1. 1913 Gen. St. See 2832

their authority; that a person known to be a public officer is presumed to act in his official capacity only, altho the terms of the contract do not allude to the nature of his capacity to act, unless he is guilty of fraud or misrepresentation; that in this respect his liability has not the same scope as that of a private person, because persons dealing with a private agent are not supposed to know the extent of the agent's authority. But the extent of the powers of a public agent is "presumed to be as well known to all with whom he contracts as to himself". The verdict was given in favor of the defendant board. The court pointed out the square conflict on this subject in the following words: "The decision of the courts of the various States, upon the question here involved, have been so conflicting and discordant, that authorities are not wanting to sustain either side of the question." Thus in the case of Sharp v. Smith, 215 L.R.A. 671, the following order, signed by a majority of the school board, was sued upon:

> "We, the undersigned, hereby order shipped to us... Yaggy's Anatomical Studies..provided a majority of said board sign this agreement."

It was signed as in the Minnesota case above. The board members were held individually liable. This case, however, may be reconciled with that of Sandborn v. Neal above, as in the latter it was shown that both parties were aware that there might be a lack of authority on the part of the board to give the note, and that an intention clearly appeared on the negotiations not to bind the members of the board individually.

In contracts of employment between school boards and teachers the statutory provisions must be followed. "Ignorance of law is no excuse." If the statutes requires a contract to be in writing, a teacher cannot

recover the reasonable value for services rendered under an oral agreement.[2] And there is no recovery for services rendered under an oral agreement entered into after the expiration of a written contract.[3] It has been ruled by the Attorney General that a written contract signed by only one member of the board and the teacher is not sufficient;[4] also, that a board may pay a higher salary than the one it was instructed to pay by the electors at the annual meeting.[5]

The statutory provisions in regard to the proceedings of the board must be adhered to. A teacher shall be hired at a meeting "called for that purpose". Does this mean that a board must sign a contract at a meeting formally convened? The decisions on this point vary, but the weight of authority seems to favor the holding that a teacher's contract need not be signed by the board members simultaneously while formally convened; such a contract, valid upon its face, actually carried out with the consent of the board members, cannot be repudiated subsequently.[6] In Hull v. School District, 10 L. R. A. (Ia.) 273, the president was authorized by the board to employ a teacher with the consent of the board. Such a teacher was employed and began her duties August 29th with full knowledge of the board. On September 24th the board refused to approve of the contract; it seems that the president had employed a second-grade teacher whereas he had instructions to employ a first grade. It was held that the board by its silence had impliedly given its consent to the employment. "It must be taken for granted," the court said, "that the intention was that the consent necessary to make the contract of the president valid should be that of the members separately, and hence, that it should not be of record.."

2. Leland v. School Dist., 77 Minn. 469; City School etc. v. Heckman, 47 Ind. App. 500.
   Lee v. York, 163 Ind. app. 339
3. Hutchinson v. School Dist., 128 Mich. 177; Hilton, Jan 2, 1913.
4. Jelly, August 21, 1907. 5. Jelly, Aug. 21, 1907.
6. Halloway v. School Dist. 62 Mich. 153; Jelly, June 6, 1906.

"The written contract was in the possession of the president... and presumably its contents were known to its members;..it is difficult to imagine a department of business in which consent would not be presumed against parties thus dealing with one another."

Tho the superintendent of an independent district is by statute ex officio member of the board and tho he is entitled, with the other members of the board, to notice of a board meeting, it has been ruled in this state that the proceedings at such a meeting are not void because such notice was not given him; the absence of any other member, however, due to the omission of such notice, would invalidate the actions taken.[7] The reason is that when several persons are vested with certain public duties, the law contemplates that they shall act in a body; that they shall have the benefit of advice from each other; that they shall hear the minority as well as the majority views.[8] It is clear that every member is entitled to notice of such a meeting and to know the purposes for which it is called. No mere majority can act except at a valid meeting. "While it is true that a majority of the board will govern in the absence of a provision by statute.."said the court in Burington v. Liston, 47 Iowa 11, "yet their determination is valid only after the minority have had an opportunity to be hard.. The determination of the members individually is not the determination of the board." In Ryan v. Humphries, 150 Pac. 1106, 1915 F. L.R.A. (Okl) 1047, two members of the board without the knowledge of the third hired a teacher for six months. Later the contract was authorized at a meeting of the full board at which the third member cast a negative vote. It was held that altho the first contract was void, this subsequent action of the board

7. Douglas, June 9, 1899; Nov. 21, 1902.
8. School Dist. v. Boser, 98 Wis. 22; 73 N.W. 448.

duly called ratified the contract. The court said that "the question of the power of municipal and quasi municipal corporations to ratify unauthorized contracts is one of the generally recognized controversies of the court and bar. The authorities are absolutely irreconcilable; and after careful study of the proposition the writer hereof acknowledges himself at sea;.. but we gather from the weight of the authorities that where the corporation had the power to enter into the contract under the consideration, and the manner of making it being the only question involved, such contract may, as a rule, be ratified by an acceptance of the benefits of the contract by the corporation, and by a subsequent recognition and substantial performance of the acts and conditions required by law in the execution of the legal contract, or by acquiescence in the conditions and benefits obtained by virtue of the contract".

There is some authority to the effect that there need not be a formal meeting called for the purpose of ratifying an unauthorized contract. Thus in Crane v. School District, 61 Mich. 299, 28 N.W. 105, it was held that the cashing of a school order without objection by a member who objected to sign a teacher's contract was sufficient ratification. "It was not necessary", said the court, "that there should be a direct proceeding with an express intent to ratify". And further: "If the assessor had refused payment of the first order drawn, the case might have come within the ruling of Hagen v. Lereke, 47 Mich. 626, 11 N. W. 413, But here the agreement was acted upon by everybody until other controversies arose, and then it was too late to make exception to the want of formalities in engaging the teacher."[9]

It has been ruled by the Attorney General that if all members are present, altho not called for the purpose of electing a teacher, and they unanimously agree to take up the question of electing a teacher; or if all

9. See Davis v.School Dist. 81 Mich 214; 45 N.W. 989. No formal meeting needed, see Russel v. State, 13 Neb. 68; 12 N.W.826

have been notified of the meeting and its purpose, and some are absent, the action of a majority of the board is binding; that the members cannot act as individuals, even if they constitute a majority.[10]

Sometimes teachers are selected by the old board before the annual election of trustees. It seems to be the general holding that a board may employ a teacher whose term commences after a new trustee has been elected.[11] The opportunity of securing good teachers would at times be lost if action had to be postponed till after the annual meeting. And it has been ruled in this state that the contracts made with an old board are valid even if subsequently the doctors vote to change from a common to an independent district, provided such teachers are otherwise qualified;[12] also, that if the board is authorized to employ teachers for only a term of five months, the employment by such a board for a longer term is valid if ratified at the annual meeting.[13] A superintendent of an independent district, according to a recent ruling of the attorney general, cannot be elected for a longer period than one year. "If the period of employment is not so limited, then the members of a school board might employ a superintendent for a number of years; tie the hands of their successors in office, and wrest from the control of the people the schools which they are required to support". But it is ruled that such superintendent may be elected before the annual organization meeting of a board composed of newly elected trustees.[14] It is well known that superintendents in several of our independent school districts are employed under contracts for a period exceeding one year. As by statute the opinion of the attorney general rendered to the state superintendent is valid law until overruled by a court of competent jurisdiction, the contracts referred to are only valid

10. Hilton, Dec.14,1912,Citing Bank v.Town of Goodland 109 Minn.23
(Hilton) (May 31,'12) (U.S. 18, sec. 106) School Dist. 58 Ark. 468
11. Banbult v. Noblesville School Town, 106 Ind. 470 Bates v.Ft.Smith
12. Hilton,Mar.26,1908; 18, Jelly, June 6,1906; Hilton July 6,1910
14. Brown, Sept. 12,1910 Citing Pamise v.Searles 122 Minn. 345 Hilton May 6, 1911.

for one year from date.[15]

C. Compensation:

1. Miscellaneous rulings and decisions:

The mode of paying a teacher's salary is prescribed by statute. Unless bills and accounts against the district, the monthly salary of a teacher need not be allowed by a meeting of the board. The clerk is by law authorized to draw an order upon the treasurer for the amount specified in the contract. This order the treasurer must honor at the end of each month and it has been ruled that such payment can not be delayed two weeks after such salary is due.[1] It has been held that the issuance of such an order for the payment of a teacher's salary known to the clerk as not possessing the proper license to teach renders such clerk liable for twice the value of such order as per statute.[2] If the treasurer refuses payment to a teacher on an order properly drawn, such teacher may maintain an action against the district on her contract, altho mandamus might lie against the treasurer;[3] nor need an action upon such an order allege consideration.[4] If an order is not paid, it draws interest from the day it is due.[5] Payment of less than statutory minimum wage has been held a crime punishable under an Iowa statute making such an act unlawful.[6] The board may allow a teacher his full salary for a reasonable time during his absence because of illness, but he cannot recover for extra work done during school hours.[7][8] If the electors at an annual meeting vote to limit a teacher's salary, the board is not bound by such a vote but may pay a higher salary provided there is money in the treasury.[9]

1. Smith, Oct. 5, 1909.
2. School Dist. v. Thelander, 31 Minn. 333; 17 N.W. R. 848
3. Martin v. Elwood, 35 Minn. 309
4. Brown v. Fitcher, 91 Minn. 41
5. Childs, Nov. 29, 1893.
6. Happ v. Clark, 147 N.W. (Ia.) 172; 32 S.B.A. 427
7. Dist. of Columb. v. Dean, 38 App. Div. D.C. 182; 38 L.R.A.N.S.
8. Jelly, Nov. 30, 1908. 9. Hilton, 1910.

2. When performance is inexpedient or impossible.

Sometimes fortuitous circumstances such as epidemics, storms, fires, etc., render performance on the part of the teacher inexpedient or impossible. The question whether such teacher is entitled to full pay under these conditions has caused much litigation. There is a wellknown principle in law which excuses one of two contracting parties from the performance of his part of the contract in the event of an "act of God", or public enemy, or the interdiction of the law, rendering such performance impossible. What constitutes an "impossibility" is perhaps one of the most controversial points of common law. Suffice it to say, that an act of God may be an unprecedented flood washing away an embankment so as to render the performance by a common carrier impossible. In Jones v. United States, 96 U.S. 29, 24 L. ed. 646, the supreme court of the United States lays down the following definition: "Impossible conditions cannot be performed, and, if a person contracts to do what at the time is absolutely impossible, the contract will not bind him...; but where the contract is to do a thing which is possible in itself, the performance is not excused by the occurrence of an inevitable accident or other contingency, altho it was not foreseen by the party, nor was within his control. Chitty, Contr. 663; Jervis v. Tomkinson, 1 Hurlst N. 208."

Conditions will occasionally arise, such as an epidemic, which will make it necessary to close a public school. In suits by the teachers for wages during such a closure, school boards have at times invoked the doctrine of impossibility of performance. The almost unanimous holdings on this point seem to be in favor of a recovery by the teacher.

In Dewey v. Union School Dist., 43 Mich. 480, 5 N.W. 646, the school board closed the schools because of an epidemic of small pox. In a suit to recover salary during the closure, the jury in trial court found for the district, evidently on the ground that the closing was necessary in order to save human life. The decision was reversed on appeal on the ground that the impossibility was not caused by an act of God. "Beyond controversy", the court said, "the closing of the schools was a wise and timely expedient; but the defense cannot rest on that. It must appear that observance of the contract by the district was caused....to be impossible by an act of God. It is not enough that great difficulties were encountered, or that there existed urgent and satisfactory reasons for stopping the schools..there is no rule of justice which will entitle the district to visit its own misfortune upon the plaintiff. He was not at fault..It was the misfortune of the district, and the district, and not the plaintiff, ought to bear it."

In Mackey v. Barnett, 50 L.R.A. (Utha) 371, the plaintiff was hired to teach for a period of nine months and to be paid a specified salary "for the time actually occupied in school". The schools were closed because of an epidemic. It was held that the words in the contract, "actually occupied", must be construed to mean that plaintiff was not to be paid during vacations and for time during which he would be unable to discharge his duties as teacher, but not to apply in case he was prevented by the action of the board to perform his duties. "Where the contract is to do acts which can be performed, nothing but the act of God or a public enemy or the interdiction of the law as a direct and sole cause of the failure will excuse performance..while the closing of the schools may have been wise or prudent, the closing was not due to any

cause which made it impossible for the school to keep open."

As to whether the school board may reserve the right in the written contract to discontinue school without paying wages for the full contractual period, the decisions are conflicting. Thus in Goodyear v. School Dist., 15 Or. 517, 21 Pac. 664, the contract read that plaintiff "is to teach in a public school of said district for the term of nine months unless discontinued By order of the directors". The school was closed because of diphteria. It was held that if a clause reserves the right to discontinue school the teachers cannot recover wages for the period such school is closed. But in Tripp v. School District, 50 Wis. 651, 7 N.W. 840, the court took a different stand. It was held that the clause, "We reserve the right to close the school at any time if not satisfactory to us", was unauthorized. The board dismissed school before the end of the term for the reason that it was "dissatisfied with the school". There were express powers in the statutes to discharge a teacher for cause. The court said: "It may be admitted.. as between persons not acting in an official capacity, a reservation in the contract of hiring of the power to terminate the contract when either party should be dissatisfied with the other would be a valid reservation..such admission is not conclusive of the rights of the parties in the case at bar. The school district board, in making a contract with a teacher, acts officially and on behalf of the district; their powers as a district board are limited by statute, and they can only exercise such as are expressly conferred by statute, or as are fairly implied from the nature of the duties..required by law from them.. Certainly no such power is expressly conferred..and we do not think that the good order, efficiency, or usefulness of the

common schools of the state would be promoted by holding that such powers were conferred upon them by implication or by a liberal construction of the statutes in their favor."

In the case of the destruction of a school building by fire, the district is not exonerated from paying the teacher's salary because of impossibility; another building could possibly be rented.[10] Thus in the case of a school house burning down near the end of a term of school the teacher can recover full wages for the whole term and need not look for another employment as no position is available that time of the season.[11] Ordinarily, however, one wrongfully discharged by the other contracting party is obliged to use due diligence in seeking another position of similar grade; and the same rule would no doubt apply in the case of a teacher being thrown out of his employment for the whole year at the beginning of the term by reason of the destruction of the school building. If the board declares a recess, such as a two-week Thanksgiving vacation, and this recess is objected to by the teachers unless they are paid during such recess, it has been held that they are entitled to recover.[12]

There are several rulings by the Attorney General in this state on this point. Thus it has been ruled that a teacher need not make up a day lost because the school house was used for voting;[13] nor for time lost because a blizzard made the keeping of school impracticable;[14] nor for two days allowed by statute for taking a teacher's examination;[15] nor for time lost by reason of an epidemic provided the teacher is at all times ready and willing to perform.[16] If the teacher is unable to perform by reason

10. School Directors v. Drews; 22 Ill App 307.
11. Smith v. School Dist., 59 Mich. 589; 27 N.W. 847
12. Board of Ed. v. State, 7 Kan. 430; 52 Pac. 466.
    Central Board of Ed. v. Stephenson, 16 S. E. R. 124
13. Milton, April 17, 1914; also, March 23, 1912.
14. Milton, April 20, 1914; also March 8, 1909.
15. Milton, March, 1912; Gen. St. of 1906, Sec. 1249.
16. Milton, May 21, 1912.

of being quaranteened at the closure of the school during an epidemic, no recovery is possible on the ground that she was not ready and able to perfo m;[17] nor can a teacher recover wages for a holiday beginning a vacation, or occuring during the vacation period, altho he may recover for holidays occuring during the term hired.[18]

D. Appointments on the nomination of the superintendent:

Sometimes the city charter imposes certain limitations upon the school board's power to hire teachers. In most progressive school districts, the board usually never elects a teacher who is not first nominated by the superintendent. Principals of high schools in large city school systems usually nominate their new teachers, tho nominally this is done by the superintendent. Sometimes the power to nominate teachers is expressly given the superintendent thru a provision in the city charter, and the board of education has power only to elect teachers so nominated. In Wilmore v. St. Louis Board of Education, 86 Mo. App. 362, a teacher brought action to recover a year's salary. She had been reappointed by the board, but not upon the nomination of the superintendent, by reason of which the board consequently refused to allow her to perform her contract. It was held that under the charter the board of education had power to appoint teachers only on the nomination of the superintendent; her name not appearing on the superintendent's report, the board had no power to reappoint her, altho it had power to ratify or reject nominations made by the superintendent of schools.

E. Appointment without limitation as to time; teacher's tenure:

It has been ruled in this state that a teacher cannot make a valid contract for a longer period than a year.[1] It is generally

17. Hilton Jan. 6, 1909.
18. Hilton, Jan 25, 1909; also March 12, 1909.
1. Hilton, April 20, 1915; Brown, Sept. 12, 1918.

admitted, however, that a teacher's tenure should be made longer and more secure. Good teachers should be relieved of the burden of interviewing the superintendent or canvassing the board for re-election. The burden of showing why a teacher should not be retained from year to year should be shifted upon the board and superintendent. Four states have adopted general laws on the subject of teachers' tenure;[2] in certain special charters of large cities usually some provision is made towards making a teacher's tenure more permanent, or the by-laws of the board of education have so provided. The laws of the four states referred to, except those of California, generally provide for a probationary period of two or three years after which a teacher cannot be dismissed without cause, due notice, and the opportunity for a fair hearing before the board. In Oregon a similar provision applies to cities of a population of 20,000 or more. In New Orleans a new teacher is elected annually for three years and thereupon his tenure becomes permanent upon the recommendation of the superintendent.

The interpretation of these various provisions have been fruitful of much legal controversy. In Kennedy v. San Francisco Board of Education, 82 Cal. 483, a teacher brough action for a writ of mandate to compel the Board of education of the city and county of San Francisco to admit her as principal teacher of a certain school from which she had been excluded and given an inferior position with a reduction in salary from 175 dollars per month to 100 dollars. A section in the statute provides as follows: "The holders of city certificates are eligible to teach in cities in which such licenses were granted, of schools corresponding to the grades in such certificates, and when elected, shall be dismissed only for violation of

2. California, Massachusetts, New Jersey and Oregon. See School Administration in smaller cities, page 90, Bulletin 1915, No. 44, Bureau of Education, Washington, D.C.

the rules of the board of education, or for incompetency, unprofessional, or immoral conduct. The holders of such city certificates are eligible to teach the special studies mentioned in their certificates, in all the schools in the city in which such certificates were granted".

It was held in substance that "a teacher elected by a city board of education without limitation as to time, is entitled to hold the position while competent and faithful and can only be dismissed for violation of the rules of the board of education, or for incompetency, or for unprofessional or immoral conduct; nor can such teacher be transferred against his will to a school of a lower grade without contravention of law. A statute does not forbid a transfer of a teacher by the board of education from one school to another of the same grade, but merely guarantees the right of a teacher to continue in the grade to which he was elected under the city certificate. Removal from the grade in which the certificate and which the statute conferred the right to teach is as much a violation of the statute as if the teacher were dismissed without cause, and not given another position."

It was further held that the rules adopted by the board of education cannot control the provision of the statute, and are immaterial in determining the statutory rights of a teacher; that the fact that another teacher has been placed in the position of the ejected teacher, cannot affect the right of the unlawfully removed teacher to a mandamus. The position was held to be "not in the nature of an office, within the rule that mandamus cannot be used to regain an office claimed by or in possession of another".

As a rule an employee has no right to a reinstatement into a position, but simply a right of action for damages. But on page 491, the court said: "The object being to restore her to a right given her by law, mandamus is the proper remedy. And as her term of service is uncertain,

and depends upon the action of the board of education, based upon the causes named in the statute, her damages could not be ascertained with certainty, and an action for such damages would not be an adequate remedy."

Commenting upon the effect of such a holding the court said on page 490: "It is said, with an apparent fear of the disastrous consequences to our free institutions, that such a construction confers upon the teachers of our public schools life positions. But it does not confer life positions. It gives the teacher a right to hold a position so long as he is <u>competent</u> and <u>faithful</u>. When he ceases to be either, he is easily removed, the means by which it may be accomplished is amply provided for, and the board of education has the matter fully within its control. Are any serious consequences likely to result from such a <u>status</u>? Why should the length of service of a competent and faithful teacher in our public schools be left to the arbitrary will of the board of education, and subject to the varying personal, and it may be political, interests of its changing members? In our judgment there is none. We think the clause in this section of the statute was intended to prevent just such results and their consequences, and that it should not be construed out of existence because of a fear that the positions held by teachers may be made perpetual."

The above decision was rendered by a bare majority of the court, and, according to a later decision by the same court, "goes quite far enough."

In matter of Brooklyn Teacher's Association v. N. Y. Board of Education, 85 N. Y. App. Div. 47, a peremptory writ of <u>mandamus</u> was sought to compel the New York board of Education and the city superintendent to place those teachers in Brooklyn having grade A licenses

upon a special list of these eligible for promotion. The revised New York Charter directed that such licenses in the former city of Brooklyn "be recognized by the city superintendent of schools and board of examiners as in full force, and shall entitle the teachers holding those certificates to appointment or promotion to any position to which they were respectively eligible by the possession of such licenses or certificates." The board of education had adopted two by-laws by which applicants for promotion to any position in the four upper grades were required to pass certain examinations, in addition to holding licenses grade A. The court held in substance that the right of promotion cannot be affected by any by-laws of the board of education of the city of New York, and that the petitioners were entitled to a mandamus; that the duty imposed upon the board of education of placing the names of holders of grade A licenses upon the special list is "neither judicial nor discretionary, but is ministerial", and that the right of all holders of grade A licenses to have their name thus placed upon the special list is not affected by the fact that their percentage ratings have not been preserved. "The fact", the court said, "that no ratings of the standing of the various holders of license grade A have been preserved can not be the fault of the teachers, but rather of the school authorities, who should not be permitted to take advantage of their own neglect or omission.... In the case at bar, the petitioners are seeking to control any discretion now vested in the board of education...The court held (People rel. Godey v. Maxwell, 65 N. Y. App. Div. 245) that the test of eligibility was the fact that the person named has received a license..."

IV. Removal of teachers.

a. In general:

A school board sometimes finds it necessary to discharge a teacher before the end of the contractual period. What will constitute sufficient cause for such a discharge, so as to relieve the district from liability, is not always an easy matter to ascertain. In general it may be said that any of the statutory causes that are sufficient for revoking a teacher's certificate are sufficient for discharging a teacher. "Immoral character or conduct unbecoming a teacher",.. "inefficiency in teaching or in the management of a school", "affliction with active tuberculosis or some communicable disease.." are all causes justifying a teacher's removal. What acts, commissions and omissions constitute unbecoming conduct, immorality, or inefficiency is not, however, a simple matter to prove.

The right to discharge must not be confused with the power to discharge. Ordinarily the school board cannot be compelled to continue a teacher in its employment; conversely, a teacher cannot be compelled to serve for the full contractual term. The remedy available for a wrongly discharged teacher is not a mandamus praying for re-instatement by the board; her only remedy is an action on the contract calling for damages.[1] Thus the board has the power to discharge a teacher wrongfully, but not the legal right to do so. Similarly a teacher has the pwer to break his contract with the board, but he may be made liable in damages. That no person can be compelled against his will to accept the personal services of another is almost an axiom in common law; the remedy for damages as an action on the contract is considered adequate. The rule

1. Swartwood v. Walbridge, 57 Ham. 33.

that obtains in the case of the city teacher who has been given by law a permanent tenure has already been discussed.[2]

It has been ruled by the Attorney General that a school board has the power of summary dismissal; that it need not wait for the action of the county superintendent who is charged with the power of revoking teachers' certificates.[3] It has also been ruled that if in the discretion of the school board it finds that indulging in certain passtimes outside of school hours is detrimental to the conduct of the school, the board has the power to make a rule forbidding such indulgence. The breaking of such a rule, if reasonable, would constitute cause for removal. The reasonability of such a rule, however, might ultimately have to be passed upon by the court.[4]

Not only a good character, but also a good reputation must be acquired by the teacher. Thus the indictment against a superintendent for adultery and a verdict of guilty, altho later set aside, is cause for dismissal.[5]

By a Wisconsin statute, the regent body of the state normal schools may remove teachers at its discretion, and the action is not reviewable by the courts.[6] It has been held that no by-law, or contract can bargain away this statutory right to dismiss teachers, as the contract impliedly includes the statutory provision.[6] A reservation in the contract, however, giving the board the power to annul the contract every fourth month has been held not to empower the board to remove a teacher without cause as set forth by statute.[7] Ordinarily teachers cannot be removed by any other method than that prescribed by statute.[8]

2. Kennedy v. Sanfrancisco Bd of Education 86 Cal. 483.
3. Childs, Sept. 21, 1896, Citing Boys v. State, 6 Neb. 167; Swartwood v. Walbridge, 57 Hun.33, Fisk v. Board 169 Mun.212
4 Simpson, Nov. 4, 1909. Trip v. School Board, 7 N.W. 840
5. Freeman v. Burns, 170 Mass.289; 39 L.R.A. 510
6. Gilman v. Regents of Normal Schools, 88 Wis. 7; 27 L.R.A. 336
7. Thompson v. Gibbs, 97 Tenn. 489p 34 L.R.A. 548
8. Pull v. Indep. School Dist., 82 Ia. 686, 10 L.R.A. 275 Hilton 2-6-B.

B. Reduction of classes; retirement of unnecessary teachers.

Sometimes a change in the conduct of the school renders the services of a teacher unnecessary. In such an event, the school board, acting fairly, has power, in the interest of economy, to reduce classes and retire unnecessary teachers. In Bates v. San Francisco Board of Education, 139 Cal. 145, a writ of Mandamus to compel the San Francisco Board of Education to restore the plaintiff to the position as teacher lost by reason of a consolidation of classes. The plaintiff's counsel admitted that the board of education "has power to consolidate classes when in its judgment such a step is necessary," also when "for any cause a position has ceased to exist, the teachers** affected *** have no right to further employment or salary." The plaintiff relied on a section in the code by which "the holders of city certificates are eligible to teach in cities in which such certificates were granted, in schools of grades corresponding to the grade of such certificates, and when elected, shall be dismissed only for insubordination." But the court said: "In the case at bar the appellant was not dismissed as a teacher in the department, nor was his certificate revoked, but his services were merely dispensed with for the time being, as no longer necessary." Commenting upon the Kennedy Case (82 Cal. 483) referred to above, the court said: "That case was by a majority of the court and, as said in Marion v. Board of Education, 97 Cal. 608, 'that case goes quite far enough'. There is nothing, however, in the Kennedy Case nor in any other decision of this court, which holds that the board of education, in the interest of economy, or for any other good 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 ....

Similarly it was held in Cusack v. New York Board of Education, 174 N. Y. 136, (reversing 78 N. Y. App. Div. 470) that "where a principal has been discharged, where a change in the conduct of the school has rendered his services unnecessary, he is not entitled to a writ of mandamus to compel his reinstatement."

C. A Fair Hearing.

Except where a provision in the contract or a statute reserves the right on the part of a board to remove a teacher upon the pleasure of such board, a teacher can not be removed without having charges preferred and upon a fair hearing. In Steinson v. New York Board of Education, 165 N. Y. 431, the plaintiff had a license to teach from the state superintendent of Public Instruction of the state of New York, and also a provisional license from the superintendent of schools of the city of New York. This license had been renewed every six months by ex parte entries of the city superintendents in his own books. The Ward Trustees reduced the plaintiff's position as permanent assistant teacher with a salary $1,728 per annum to one of a lower grade. He appealed to the board of education and its committee on teachers restored him to his former position. Later he was summarily served with notice that his provinsional license would not be renewed, and when he tendered his services he was physically ejected by the principal by the order of the superintendent. An appeal was taken to the State Superintendent, who ruled that the plaintiff can only be removed after trial with notice, in accordance with the Consolidation Act. The court held in substance that the plaintiff was an employee, not an officer, and hence

no mandamus would lie against the board of education, reinstating him to his former position; but that he had a right of action for damages and for his salary, inasmuch as he had a State license to teach and had been dismissed without cause. "His State certificate," the court said, "was conclusive evidence of his qualifications to teach, and hence, his employment .... was authorized. .... The plaintiff's appointment was subject to no other limit of time than the power of removal for cause, vested in the defendant and its officers, and the power of the State Superintendent to revoke his State license. The plaintiff was discharged without right or cause and is entitled to recover."

Similarly in People v. New York Board of Education, 78 N.Y. App. Div. 501 (174 N. Y. 169) the plaintiff was transferred from the fourth grammar grade and appointed in the sixth grammar grade with a reduction of her salary to the amount of $156 a year. No charges were preferred and no trial had. The court held in substance that the charter provisions relating to the public schools makes good conduct and good work the basis "of tenure as to all teachers holding permanent license; the object is to get the best work from all such teachers by assuring them of safety and protection, without resort to outside influence, so long as they maintain a high standard of conduct and efficiency and, authorizing their removal if they fall below it;" that the reassignment of such teachers from a higher to a lower grade is not a mere transfere under the statute but is practically a removal from a higher position to a lower and "cannot be made except for cause, i. e. for gross misconduct, insubordination, neglect of duty, or general inefficiency." Hence, the plaintiff was granted the writ reinstating her in her former position.

It has been held that where the city charter provides for the removal of a teacher only upon charges preferred and after trial, a by-law of the board declaring a vacancy to exist as the result of the marriage of a teacher (female) is invalid.[1]

Where a teacher is wrongfully discharged, he may recover his salary for the time after such removal less any sum he may have earned in the meantime. In Bogert v. New York Board of Education, 89 N. Y. S. 737, (affirmed in 106 App. Div. 56), the plaintiff was summarily removed without cause and without a trial. It was held that he could recover his salary for the time after such removal less any sum he may have earned as a substitute during such time, i. e. from July 1st 1898 to December 26th 1901, when this action was commenced. And it has been held that if a teacher is wrongfully discharged he need not accept a position of a lower grade nor is he required to accept the position offering terms not in accordance with the original contract .

D. Privileged communications:

The question sometimes arises whether a person who has knowledge derogatory of the character of a person applying for a teacher's certificate can communicate this knowledge to the proper authorities without exposing the communicant to a suit in slander or libel. The general rule is that such communications are privileged to a certain extent; they must be made to persons only upon whom rests the duty of revoking a teacher's license, they must not be actuated by a malicious motive, they must , in general, be made by persons in their course of duty. The leading case on this point is that of Tanner. v. Stevenson, 128 S.W. (KY.) 878, 138 Ky. 578, 30 L.R.A. (N.S.) 200. The plaintiff sued a county superintendent on the alleged ground that he

1. Matter of Murphy, 79 N. Y. S. 174 (See page

sent a letter to the State Superintendent containing matters defamatory of the plaintiff's character and with a view towards preventing the issuance of a certificate to the plaintiff. There was a verdict of $5000 which was upheld on appeal. The court held in substance that such communications were privileged if made without malice and in the course of duty; that "it is of the highest importance to the youth of the state who attend the public schools that their teachers shall be persons of good moral character. A person not of good moral character, holding the close and confidential relations to children that teachers do, has opportunities without number to poison the mind of the child at its most impressionable age..."

It was contended that the defendant came under the absolute privilege rule that apply to certain classes of judicial, legislative, and military proceedings, but the court ruled differently. Cooley on Torts, page 210 lays down the following rule: "In these cases there is no penalty attached to motive or falsehood. The utmost liberty is deemed allowable...But the cases to which this immunity...applies are confined to judicial and legislative proceedings, matters involving military affairs, and communications made in discharge of duty under express authority of the law, by, or to the heads of executive departments of state."

The court said: "But in our opinion the law of absolute privilege cannot be invoked to protect Tannerfrom the consequences of this letter....It would have been dangerous thing to license people to write and speak without any restraint. There are many evil-minded and recklessly disposed persons who would shelter themselves if they could under

the protection afforded by absolute privilege, and give free bridle to tongue and pen to injure or destroy an enemy... The law holds good character in high esteem, and has made it a serious offense to wantonly assault it; but there are few instances in which the interest of the public is esteemed more important than that of the individual and occasions in which private rights must yield to public good."

It was further held that the letter to the state superintendent was not an act done in the line of duty but that defendant was in the same position as a private citizen making such a report to the state superintendent. Usually a communication made in line of duty as by a superintendent to the board of school visitors is considered privileged.[1] But a report to a school board accusing a teacher of the want of chastity is not privileged when known to be false.[2] Such communications must be made to a public officer whose duty it is to remove, supervise, or inquire into the misconduct of the accused, or the power to redress the grievance.[3]

It has been ruled that if the opinion of a school board, as based upon actual results, the board determines that attendance at public dances is injurious to the best interest of the school, a rule prohibiting such attendance may be adopted provided such rule is reasonable after taking into the consideration all the circumstances.[4]

1. Barry v. McCallom, 81 Conn. 293; 129 St. Rep. 215.
2. Bodwell v. Osgood, 3 Peck 379 (15 Am. Sec. 228)
3. Logan v. Hadger, 146 N.C. 38 (See Blogg v. Stuart, 10 Q.B. 899)
4. Simpson April 21, 1909.

V. School Rules and Regulations.

A. Powers of teachers derived from school board:

It has been pointed out that public school teachers, principals, and city superintendents are not public officers, but mere employees of the school corporation. The power vested in the school directors to establish and control the public schools of the district, necessarily includes the power to adopt appropriate rules and regulations for the government of the schools. Just as the officers of any private corporation owe their appointment and powers thru the action of the board of directors, so the teachers and supervisory officers of a public school owe their appointment and powers thru the action of the school board. Ordinarily the rules and regulations necessary for the proper conduct of a school are made by the superintendent and assistants and teachers; such rules and regulations are matters that should be left to the experts hired to conduct the school and the members of the school board should not intermeddle. It has been ruled that the authority of the trustees over the internal government of the school is only advisory in character.[A.] Nor is it necessary that these rules should be a matter of record thru a formal vote of the school board. In meeting every emergency no express rules are adequate; teachers must at all times rely upon their implied powers. Nor need there be any prohibitive rule to justify the punishment of a pupil guilty of flagrant offenses. Regulations for the discipline and management of a public school, such as rules for the proper deportment and prompt attendance of pupils, may be adopted.[1] Courts will not interfere unless such regulations are prohibited by statute, or are unreasonable per se or if reasonable, are unreasonably enforced.[2]

A. Cornell, page 265.
1. School Trustees v. People, 87 Ill. 303, Gen. St. 1913, secs.2803,2804
2. Favorite v. Chicago Board of Education, 235 Ill. 314.
Gen. St. 1913, secs. 2802; 2803; section 8634 permits corporal punishment.

B. Validity of rules:

The question of the validity of rules has been fruitful of much legal controversy. Parents and guardians are prone to resent any apparent or real injustice done to those over whom they exercise parental authority. The teacher, standing by law in loco parentis, is in a position of authority, a position that often clashes with that of the parent.

The principles of law applicable to the validity of a school regulation are comparatively few and easy to formulate in words; the application of these principles, however, is the difficult thing. These principles are well stated in the case of Wilson v. Chicago Board of Education, 233 Ill. 464 (Aff. in 137 Ill. App. 187), where four minors, enrolled in the Hyde Park High School, sought to restrain the Chicago Board of Education from enforcing a rule which denied students belonging to any secret fraternity or sorority the right to represent the school in any literary or athletic contest. The court said: "It was the judgment of the superintendent of schools of the city of Chicago, as well as of the Board of Education, that membership in secret societies, known as Greek letter fraternities or sororities, was detrimental to the best interest of the schools. Whether this judgment was sound or well founded is not subject to review by the courts. The only question is whether the rule adopted to prevent or remedy the supposed evil was a reasonable exercise of the power and discretion of the board." After reviewing several cases bearing on the question that have arisen in other states, the court laid down the rule on page 470 as follows: "The power of the board of education to control and manage the schools and to adopt rules and

regulations necessary for that purpose is ample and full. The rules and by-laws necessary to a proper conduct and management of the schools are, and must necessarily be, left to the discretion of the board, and its acts will not be interfered with nor set aside by the courts unless there is a clear abuse of the power and discretion conferred. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order and discipline of the schools, and the rules required to produce these conditions." Continuing on page 474 the court said: "Assuming, as we must, that the adoption of the rule was not an abuse of the power or discretion conferred by law upon the board, courts cannot, and should not, interfere with its enforcement."

It has been held to be a reasonable rule, one which requires a parent or guardian to sign and return to the teacher a report of the teacher in regard to a pupil's standing, grade, attendance, and department.[1] Rules inflicting a penalty for the absence from school without proper excuse such as death in the family, physical disability, violent storms, etc., have always been held reasonable;[2] also rules requiring a pupil to prepare at stated times a rhetorical exercise under penalty of suspension,[3] or the suspension of a pupil for a willful refusal to take part in a dialogue in annual commencement exercises, when such refusal amounted to insubordination,[4] or for refusal to write English compositions, or to enter into debates.[5] Rules forbidding a pupil to play football under the auspices of the school, even tho played on a holiday and away from the school grounds have been held valid,[6] also a rule that

1. Burns v. State, 35 Neb. 1
2. Fertich v. Michener, 111 Ind. 472
3. State v. Board, 63 Wis. 234
4. Cross v. Board, 33 Ky. L. Rep. 472.
5. Guernsey v. Pilkin, 32 Vt.224; Samuel Benedict School v. Bradford, 111. Ga.801
6. Kinner v. Directors, 129 Ia. 441.

"any pupil absent six half days in four consecutive weeks, without satisfactory excuse shall be suspended from the school"[7] and also a rule requiring pupils to go directly home from school.[8]

It has been ruled by the attorney general in this state that a regulation which will suspend a pupil until he shall have paid a fine for damage to books or property belonging to the district is unreasonable and therefor void. "School boards", reads the opinion, "under the law, have authority to adopt such reasonable rules and regulations as they deem necessary for the proper control and managment of the schools, and in the absence of such rules and regulations the teacher by virtue of his position has the inherent right to make all necessary and proper rules and regulations for the good conduct and order of the schools. It is his duty to see that they are obeyed and his action is binding until the board direct otherwise... But all rules and regulations, whether made by the board or made by the teacher and afterward sanctioned, ratified and approved by the board must be reasonable, and the courts have held that a rule is reasonable under which a pupil may be suspended or expelled if he willfully injures or destroys school property, for such expulsion or suspension would be a punishment for breach of discipline. But it is held that a rule which causes a pupil to stay suspended or expelled until he makes payment for injury caused by him to school property, or to pay a fine which may be assessed against him for such injury, is unreasonable and void, because in such a case he would be suspended or expelled not because of the injury caused by him, but because he did not pay the damages or fine."[9]

7. King v. Jefferson, 71 Mo. 628.
8. Jones v. Cody, 132 Mich. 15.
9. Jelly, May 27, 1908. See similar holding, Holmen v. Avon School District, 77 Mich. 605.

It has been ruled that a child may be excluded if the mental condition (feeble mindedness) works injury to other pupils;[10] that pupils injured by careless drivers of school busses cannot recover damages against the district; that such drivers are by statute, section 4, chapter 445, Laws of 1907, obliged to give a bond guaranteeing a faithful discharge of their duties but that there can be no reimbursement because of such bonds for damages to injured pupils;[11] that it is the duty of a district to admit non-resident grade pupils provided proper arrangments are made for the payment of tuition charges and provided that there is room in the school;[12] that by statute a high school district must furnish free tuition to non-resident high school students altho it is the duty of such a district first to care for its resident high school pupils;[13] but that if there is a high school giving the same course in the home district of a resident high school student, such student is not entitled to free tuition;[14] that the right to compel vaccination as a condition precedent to the reception of a child in the public schools does not exist with the state board of health except in the case of an epidemic;[15] that a child may be sent home for carrying on his person for medicinal purposes offensive drugs, such as a sack of asafetida suspended by a cord from the neck;[16] that a teacher may exclude a filthy pupil whose condition causes an offensive odor thruout the room and that such suspension does not relieve the parent from liability under the compulsory school law;[17] that a rule is valid "forbidding the use of profane, vulgar, and obscene language by the scholars

10. Hilton, Aug. 3, 1914.
11. Nethaway, Jan. 22, 1914.
12. Hilton, Dec. 8, 1913.
13. Hilton, Feb. 9, 1914.
14. Hilton, Oct. 1, 1915.
15. Douglas, Sept. 12,1899, citing State ex rel Adams v. Berge, 70 N.W. Rep. 357 (Wis.)
16. Hilton, April 20, 1915.
17. Hilton, Oct. 26, 1916.

and forbidding quarreling and fighting among them, either at school, upon the school grounds, or on their way from or to school, for such a rule is promotive of good order and proper discipline in the school, and scholars may be punished for disobedience of such a rule."[18]

It is generally held that a rule which will expel a pupil for breach of discipline, such as an offense against good morals, is not unreasonable;[19] but a rule which requires that each pupil returning after recess shall bring a stick of wood for the fire has been held unreasonable. "Such a rule", the court held in State v. Fond Du Lac Board of Education, 63 Wis. 234, "is not needful for the government, good order, and efficiency of the schools." Altho a pupil is innocent, yet he may be expelled, if parent enters school during school hours and in the presence of the pupils calls into question the teacher's discipline, using abusive language.[20] For immorality, infectious disease, and insubordination[21] the board may ordinarily expel a pupil.

C. The mode of enforcement; teachers liability in tort.

The enforcement of a school rule must also be reasonable. In the case of Fertich v. Michner, 111 Ind. 472, an action was brought by a minor, thru her father, against the superintendent of schools for adopting a rule which required tardy pupils to remain in the hall of the school house, which was provided with heat, or in the principal's office, until the close of the opening exercises. The plaintiff alleges that she found the school room door locked and was compelled to return to her home in inclument weather which resulted in her having both feet frozen. The court held in substance,

10. Hilton, Aug. 3, 1914.
11. Nethaway, Jan. 22, 1914.
12. Hilton, Dec. 8, 1913.
13. Hilton, Feb. 9, 1914.
14. Hilton, Oct. 1, 1915.
15. Douglas, Sept. 12, 1899, citing State ex rel. Adams v. Berge, 70 N.W. Rep. 357 (Wis)
16. Hilton, April 20, 1916.
17. Hilton, Oct. 26, 1916.

that the rule was not unreasonable, but if the weather is unusually severe, and proper steps not taken, the method by which the rule was enforced by the teacher in charge was unreasonable and improper. On page 483 the court said: "In the enforcement of all rules for the government of a school, due regard must be had, to the health, comfort, age and mental as well as physical condition of the pupil, and to the circumstances attending each particular emergency.... Pupils known to have some mental or physical infirmity may require some relaxation in the strict enforcement of such rules.... A school regulation must, therefore, be not only reasonable in itself, but its enforcement must also be reasonable".

A teacher in charge, however, acting upon the superintendent's order was held not liable for a mere mistake of judgment. "The recognized doctrine now is," the decision reads, "that a school officer is not personally liable for a mere mistake of judgment in the government of the school. To make him liable, it must be shown that he acted in the matter complained of wantonly, willfully or maliciously."

In determining whether the mode of enforcement is reasonable, the court will take into consideration the nature of the offense, the age, size, strength, and apparent power of endurance on the part of the pupil, the previous good or bad conduct, and the mode and degree of the punishment.[1] If the punishment meted out is mild in degree, but springs from a malicious motive, it is an assault and battery in civil law.[2] In a case where the teacher struck sixty-six blows with the hand and the pupil remained insubordinate until sixty three blows had been struck, it was held not a moderate degree of punishment under the statute permitting corporal punishment that is

1. State v. Ward, 1 Kan. L.J. 370.
2. Haycraft v. Grigsby, 88 Mo. App. 354.

reasonable and moderate.[3] Ordinarily the chastisement of a pupil for breaking an unreasonable rule renders the teacher liable for assault and battery.[4] The pupil's conduct at time of punishment should be taken into consideration. Thus it has been held that thirty three blows with switches may be a reasonable degree of punishment under certain circumstances.[5]

Unually a teacher is not liable for a mistake in judgement, nor for any injury that may result as a remote consequence of an unauthorized chastisement. If the act itself is not injurious to life, limb, or health, its legality depends entirely on the motive with which it was administered.[6] If a permanent injury could be foreseen by an ordinary prudent man as a natural and probable consequence of the act, the teacher is liable. In Drum v. Miller 135 N.C. 204, 65 L.R.A. 890, the defendant teacher threw a pencil at the pupil to call his attention to the recitation. The pencil hit the eye and resulted in permanent partial blindness. The case on appeal was ordered to be re-tried in the district court. "If...the jury find that the defendant acted maliciously", said the court, "he will, of course, be liable to the plaintiff for the consequent injury and damage... but, if he inflicted a permanent injury in attempting to enforce the discipline of his school, and in so doing failed to exercise ordinary care, he will stillbe liable to the plaintiff if the jury further find that the injury was the natural and probable result of his negligence, and that the defendant, in the light of the attendant circumstances, and in the exercise

3. Whitley v. State, 3 Tex. Crim. Rep. 172. Several States including Minnesota and New York permit corporal punishment.
4. State V. Vanderbilt, 116 Ind. 11; Marrow v. Wood, 35 Wis. 59.
5. Stevens v. State, 44 Tex Crim. Rep. 67.
6. Com. v. Leed, 5 Clark (Pa.) 78; State v. Pendergrass, 19 N.C. 365.

of ordinary care, ought reasonably to have foreseen that a permanent injury would be the natural and probable consequences of his act."

D. Conduct outside the school.

Ordinarily a school board or a teacher has no power to control a pupil's conduct after he has returned to his home, or to punish him for acts committed while under the control of the parent. In Dritt v. Snodgrass, 66 Mo. 286, a rule prohibiting pupils during the school term from attending social parties was violated by a pupil, with the permission of the parent. It was held that a school board had no power to follow a pupil home and govern his conduct while under the parental eye; but there being no malice shown on the part of the board members, they were not personally held liable in damages. "It could not have been the design of the legislature," the court said, "to take from the parents the control of a child while not at school, and invest it in a board of directors or a teacher of a school. If they can prescribe a rule which denies the parent the right to allow a child to attend a social gathering except upon pain of expulsion from a school which the law gives him the right to attend, may they not prescribe a rule which would forbid the parent from allowing the child to attend a particular church or any church at all, and thus step in loco parentis and supercede entirely parental authority?"

But in State ex rel. Dresser v. District Board, 135 Wis. 619, where two high school students were suspended from school until they would apologize for causing the publication in a local newspaper of a poem tending to ridicule the regulations of the school, the court said: "This court therefore holds that the school authorities have the power to suspend a pupil for an offense committed outside of

school hours and not in the presence of the teacher which has a direct and immediate tendency to influence the conduct of other pupils while in the school room, to set at naught the proper discipline of the school, to impair the authority of the teachers and to bring them into ridicule and contempt. Such power is essential to the preservation of decency, decorum, order and good government in the public schools". This case seems to conflict with one in Murphy v. Marenzo Independent District Directors, 30 Ia. 429, where it was held in substance that the school board has no power to dismiss or suspend a pupil for conduct out of school, which, "altho having a tendency to incite ridicule of the directors and insubordination in the school, are not immoral or prohibited by any rule or regulation."

It has been held that the teacher has the power to require a pupil to do an act pertaining to the school room, such as preparing an arithmatic lesson, after he has returned home, and the failure of the pupil to comply with such a regulation justifies a reasonable punishment.[1]

Ordinarily a teacher's authority extends equally with that of the parent over a pupil coming and returning from school;[2] and it has been held that a reasonable chastisement by a teacher of a pupil for the violation of a rule, altho the violation appeared outside of a school house and not during school hours to be justifiable.[3] A rule requiring pupils to go directly home from school has been held valid under the general statutory provisions which give the school board the power to adopt rules to advance the interest of the school.[4]

1. Bolding v. State 23 Texas App. 172
2. Deskine v. Go so, 85 Mo. 485
3. Hutton v. State, 23 Tex App. 386.
4. Jones v. Cody 132 Mich. 13, 62 L.R.A. 160

A regulation which expels a pupil from the public school on being convicted of smoking on the streets or in public places, in the opinion of the attorney general is reasonable.[a.]

It is clear that any regulation which prohibits those things which have been made illegal by statute is reasonable. The school above all institutions should inculcate a respect for law; it is looked upon as in institution which stands for the highest of American ideals. It may not be necessary for the school authorities, or advisable, to bring violators of the law before a judicial court; yet it might be well for every school teacher in this state to become familiar with the statutes relative to the use of tobacco, the visiting of pool rooms, and gaming in general. Substantially those statutes provide as follows:

All persons under twenty one years of age are prohibited from smoking cigarettes; a fine of ten dollars for every offense is attached.[5] The sale, exchange, barter, or gift of cigarettes, cigarette paper, or cigarette wrappers is made a misdemeanor with a fine not less than fifty dollars nor more than one hundred dollars, or the imprisonment in the county jail for not less than fifteen nor more than sixty days.[6] All minors enrolled in a school, college, or university, or all persons under eighteen not so enrolled, is prohibited from using tobacco in any form in any public place, road, alley, or place of business;[7] and all the above named persons "are prohibited from playing pool, billiards, or ten pins of bowling" in any public place unless accompanied by a parent or guardian;[8] and all persons under twenty one are prohibited from playing "pool or billiards or cards" in any place where liquor is sold, or in any restaurant or confectionary store where tobacco,

a. Simpson Dec. 8, 1909.
5. Gen. Statutes 1913 sec. 8671
6. Gen. Statutes 1913 secs. 3201; 3202.
7. Gen. Statutes 1913 secs.8674; 8676.
8. Gen. Statutes 1913 sec. 8672.

confectionary, or drinks of any kind are disposed of.[9]

E. Religious teaching:

It will not come within the province of this thesis to deal fully with the mass of conflicting decisions that bear upon the teaching of religion in our public schools. Unlike countries of the Old World, this country has been wedded to the policy of a separation between church and state, between religious matters and public matters, until any intimation of connecting the public schools with religious instruction is usually frowned upon.

The Constitution of Minnesota, as well as that of most states, has two provisions bearing on the subject of religion: Article 8, section 3, prohibits any appropriation of public moneys for the support of sectarian schools. Article 1, section 16, guarantees freedom of conscience and provides that no person shall "be compelled to attend, erect, or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent". On the question of whether certain exercises such as the reading of the Bible without comment, or certain portions thereof, or repeating the Lord's Prayer, come within the constitutional prohibition against the support of "any place of worship" has not, as far as the writer is able to ascertain, been ruled upon by the supreme court of this state. In the states where the question has come up for judicial determination, there seems to be a square conflict, with perhaps a majority view favoring the holding that reading of certain passages in the Bible, without comment, or the committing to memory of the Ten Commandments, or twenty third Psalm or other non-sectarian passages, or the singing of certain devotional songs does not come within the above constitutional

9. Gen. Statutes 1913 Sec. 8671.

prohibition. The wearing of a distinctive religious garb, such as that worn by the members of certain religious orders, has not been passed upon by our supreme court; in other states the holdings are not in harmony. It has been ruled by the attorney general in this state that the wearing of a religious garb by a teacher in the public schools is illegal.[1] The State of Wisconsin has an express provision in its Constitution, Article 10, section 3, prohibiting "sectarian instruction". The supreme court of that state, in ruling upon this provision, is usually quoted as the leading authority supporting the view that the reading of the Bible at the morning exercises in a public school is illegal. An examination of this case follows:

In State ex rel. Weiss v. Edgerton School Board, 76 Wis. 177, 44 N. W. 967, 7 L. R. A. 330, certain members of the Roman Catholic church brought an injunction to restrain the board from permitting the reading of King James' version of the Bible in the public schools of the city of Edgerton. The answer to the complaint denied the authority of the board "to interfere with the practice, and alleging that the practice is legal and proper, and that the Bible is a duly authorized and selected text book for use in said schools". There was demurrer to this answer. On appeal, the demurrer was sustained. It was held that the use of the Bible as a text book and the reading of passages therefrom is "sectarian instruction" within the meaning of Article 10, section 3, of the constitution; that the fact that attendance is not compulsory does not remove the ground for complaint; that such reading does render the public school a "place of worship" and a "religious seminary" within the meaning of article 1, section 18, prohibiting the

1. Hilton, May 31, 1915, following a previous ruling.

use of public moneys for the support of a place of worship. The court said in part: "The question therefore seems to narrow down to this: Is the reading of the Bible in the schools -- not merely selected passages therefrom, but the whole of it -- sectarian instruction of the pupils. In view of the fact already mentioned, that the Bible contains numerous doctrinal passages upon some of which the peculiar creed of almost every religious sects is based, and that such passages may reasonably be understood to inculcate the doctrines predicated upon them, an affirmative answer to the question seems unavoidable... There is much in the Bible which cannot justly be characterized as sectarian. There can be no valid objection to the use of such matter in the secular instructions of the pupils. Much of it has great historical and literary value which may be utilized without violating the constitutional prohibition. It may also be used to inculcate good morals -- that is, our duties to each other -- which may and ought to be inculcated... No more complete code of morals exist than is contained in the New Testament which affirms and emphasizes the moral obligations laid down by the Ten Commandments, concerning the fundamental principles of moral ethics, the religious sects do not agree,"

From the above opinion, it does not appear that the reading of any passage from the Bible is "sectarian instruction", but that the reading from "the whole of it" indiscriminately is illegal. Hence, in some measure the case can be reconciled with the mass of other cases which hold that certain devotional exercises do not come within the constitutional prohibition against compelling a person to support any place of worship. The special provision in the Wisconsin Constitution should also be taken into consideration in interpreting the Edgerton case.

A leading case that very fully sets forth what seems to be the majority view is that of Church v. Bullock, 104 Tex. 1, 109 S.W. 115, 16 L.R.A. (N.S.) 860, Certain Jews, Roman Catholics, and one professing not to believe in the inspiration of the Bible brought an injunction to restrain the school board of the City of Corsicana from encouraging certain exercises in the public schools that were alleged to be sectarian. It appears that "The most of the teachers (but not all of them) read every morning from the Bible to their classes, and the pupils in almost every room are invited to join the recital of the Lord's Prayer, and in all the rooms songs are sung by the pupils, usually patriotic songs, such as 'America'...." These exercises were prescribed by the superintendent in pursuance of a resolution of the school board permitting such exercises. No pupils were excused from these exercises. The passages read were from the "Psalms, Proverbs, and some of the old familiar stories from the Old Testament. The selections read from the New Testament are usually the 'Sermon on the Mount' and passages in like tenor." King James version was used and the "reading by the several teachers has been without explanation, comment, or attempt at interpretation whatever." Teachers were warned by the Superintendent "not to read anything that would be objectionable from the New Testament." The children were not compelled to join in the repetition of the Lord's Prayer but were required to be present during the exercises. The court held that the exercises did not convert the school into "a sect, religious society, or theological or religious seminary" within the statutory prohibition against appropriating public moneys for sectarian schools, or within the constitutional prohibition against compelling anyone to join or support any place of worship. In a lengthy opinion the court said in part:

"However improper the exercises may have been, there is nothing in the evidence to show that they were in the interest of, or forwarding, the views of any one denomination of people. It was the purpose of the Constitution to forbid the use of public funds for the support of any particular denomination or religious people whether they be christians or other religions." And further: "To hold that the offering of prayers, either by the repetition of the Lord's Prayer or otherwise, the singing of songs, whether devotional or not, and the reading of the Bible, make the place where such is done a place of worship, would produce intolerable results. The house of representatives and the senate of the state legislature each elect a chaplin who, during the session, daily offers prayers to Almighty God in behalf of the state... In the chapel of the State University building, a religious service, consisting of singing of songs, reading portions of the Bible, with prayers and addresses by ministers and others, is held each day. The Young Men's Christian Association hold their services in that building each Lord's Day... At the Blind Institute on each Lord's Day prayers are offered, songs are sung, Surday School is taught and addresses made to children with regard to religious matters. Devout persons visit our prisons and offer prayers...; In fact, Christianity is so interwoven with the Web and Woof of the state government that to sustain the contention that the Constitution prohibits the reading of the Bible, offering prayers, or singing songs of religious character in any public building... would produce a condition bordering upon moral anarchy. The absurd and hurtful consequences furnish a strong argument against the soundness of the proposition. The right to instruct the young in the morality of the Bible might be carried to such extent in the public schools as would make it obnoxious

to the constitutional inhibition, not because God is worshipped, but because by the character of the services the place would be made 'a place of worship'". And further: 'There is no difference in the protection given by our constitution between citizens of this state on account of religious beliefs...; but it does not follow that one or more individuals have the right to have the courts deny the people the privilege of having the children instructed in the moral truths of the Bible because such objectors do not desire their own children shall be participants therein. This would be to starve the moral and spiritual natures of the many out of deference to the few. The cases are in conflict upon the questions discussed in this opinion but we believe the following sustain our conclusion by sound reasoning: "Moore v. Monroe, 64 Ia. 367, 52 Am. Rep. 444, 20 N.W. 475; Pheiffer v. Board of Education, 118 Mich. 560, 42 L.R.A. 536, 77 N.W. 250; Hackett v. Brooksville Graded School District, 120 Ky 608, 69 L.R.A. 592, 117 Am. St. Rep. 599, 87 S.W. 792."

A rule of the University requiring the students to attend its chapel exercises, unless they would sign a request asking to be excused, has been held not to come within the constitutional provision that "no person shall be required to attend or support any ministry or place of worship against his consent".[2] In Spiller v. Woburn 12 Allen (Mass.) 127, it was held that the school committee may order the Bible to be read and prayers to be offered in a public school. And a rule requiring pupils to commit to memory the Ten Commandments and repeat them once a week is not a violation of the constitutional prohibition against restraining the

2. North v. University of Illinois, 137 Ill. 296, 27 N.E. 54.

liberty of conscience and freedom of worship. This constitutional prohibition "was intended", said the court in Com. ex rel Wall v. Cook (Mass.) 7 Am. L. Reg. 417, "to prevent persecution by punishing for religious opinions. The Bible has long been in our common schools... It was placed there as the book best adopted from which to 'teach children and youth the principles of piety, justice, and a sacred regard for the truth, love for their country, humanity, and the universal benevolence, sobriety, moderation, and temperance... No scholar is requested to believe it; none to receive it as the only true version of the laws of God. The teacher enters into no argument to prove its correctness, and gives no instructions in the theology from it."

Sometimes the question has arisen whether a school board has the power to prohibit the reading of religious books including the Bible. The general holding on this point is that such prohibition by the school board is a matter exclusively within its discretion and therefore valid.[3] In Millard v. Board of Education, 121 Ill. 297, 10 N. E. 669, it was held that instruction in the catechism of the children of Catholic parents at the public school house before the opening of the daily school program does not constitute ground for an injunction in the absence of an allegation that the school board required, or had anything to do with, such an attendance.

3. Board of Education v. Minor, 23 Ohio St. 211, 13 Am. Rep. 223; Board of Education v. Paul, 7 Ohio N.P. 58.