

MAINE STATE LEGISLATURE

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May 27, 1952

To Harland A. Ladd, Commissioner of Education
Re: Power to Terminate Contracts

This office is in receipt of your memo of May 12, 1952, and attached copies of continuing contract forms. One of these forms was used in Union No. 53 during the school year 1951-52, the other being a suggested form prepared by your department and approved by this department.

You ask particularly with reference to the contract of Union No. 53 if the superintendent of schools, acting under the powers reserved to him in paragraph 5 of Section 78 of Chapter 37, R. S., may properly and with the force of law initiate the notice of separation without a recorded vote of the superintending school committee.

That part of Section 78 with which we are concerned reads as follows:

"He shall nominate all teachers subject to such regulations governing salaries and the qualifications of teachers as the superintending school committee shall make, and upon the approval of nominations by said committee, he may employ teachers so nominated and approved for such terms as he may deem proper, subject to the approval of the school committee. Except that after a probationary period of not to exceed 3 years, subsequent contracts of duly certified teachers shall be for not less than 2 years, and furthermore, that unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for 1 year and similarly in subsequent years."

It is to be noted that the statute does not expressly provide from whom the written notice of separation shall originate. By virtue of this statute a superintendent may employ a teacher whose nomination has been approved by the superintending school committee for such terms as he may deem proper, subject to the approval of said committee.

The "terms" considered are, with respect to those teachers who are duly certified and have completed the required probationary period, that their terms of contract shall be such that the contract shall be for a period of time not less than 2 years. At this point the contract embraces the further term, not necessarily by virtue of any written work, but by express provision of the law, that unless such teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for 1 year and similarly in subsequent years.

It can be seen, then, that the terms under which a teacher is hired include a contract for 2 years with a six-months notification

clause, subject to the approval of the school committee. Such a contract has incorporated within itself the provisions of law under which it is made. Such a contract having been made, with the approval of the school committee, the question is, Can the superintendent, without the approval of the school committee, give the notice contemplated by the statute, terminating the contract?

An individual possessing such a contract, with an automatic extension clause, has in effect a continuing contract, subject to termination on six months' notice. The giving of such a notice has the same result as a dismissal.

We take this opportunity to point out that the courts in the State of Maine, while recognizing the right of a superintendent to nominate and employ upon the approval of such nomination, do not recognize the right of the superintendent to dismiss a teacher. Those being the facts, the contract with its terms being subject to the approval of the school committee, the terms including a two-year contract with an automatic extension feature, unless notice to the contrary is given within six months, it seems only legal and proper that the six months' notice be given by the school committee.

The superintendent, acting as agent for the school committee would give the notice and the result would be that the notice would come from the superintendent on behalf of the committee.

Relative to the nominating powers of a superintendent, such power is not destroyed by his inability to give the necessary six months' notice to terminate a contract. The contract is a continuing one, terminable only upon notice and no renomination is contemplated by such a contract.

If a teacher were employed by the superintendent for a five-year period, such employment approved by the school committee, and after the contract was in effect a year, the superintendent became dissatisfied with the teacher, the same problem arises. We submit that such problem does not include the ability of the superintendent to nominate. It is, rather, a problem concerning dismissal, for in each instance the contract extends beyond the time at which the superintendent became dissatisfied.

Again, the terms of the contract being subject to the approval of the school committee, it is reasonable to anticipate that the contract itself is executed either by the superintendent as agent for the school committee or perhaps by both the superintendent and the chairman of the committee. The law contemplates that those executing the contract have agreed between themselves to perform certain acts and, in the event that either party disapproves the contract, it would seem only right and legal that the complaining party do his complaining under the same authority by which he executed the contract. It is difficult to believe that a contract executed by an agent with the authority of the principal can be terminated by the agent alone without the approval of the principal.

It will be noted, further along in Section 78, that the right to terminate a contract after due notice of 90 days is reserved to the superintending school committee, when changes in local conditions warrant the elimination of the teaching position for which the contract was made. Here again, we see the right reserved to the school committee to terminate the contract. It is not expressly stated, however, from which the notice should come. We feel that here, too, notice should originate from the superintending school committee, which has the right to terminate the contract. We might also use this 90-day clause to show that it was the intent of the Act to reserve all termination proceedings to the school committee.

With respect to the contract of Union No. 53, in which it is expressly stated that the six months' notice shall be given by the school committee, there is not the slightest ^{doubt} there being nothing in the statutes to the contrary, that notice given by the superintendent without the approval, and possibly with the disapproval of the school committee, has no legal effect.

"One who offers or accepts a contract of a certain character is bound by its terms as properly interpreted, even though he meant something different and thought the words conveyed his meaning. It has been said that the court must give effect to the meaning and intention of the parties as expressed in the language of their contract, in the absence of anything to show legal impediment to prevent their entering into any contract they see fit or expressing it in the language of their choice. Accordingly, one who accepts a written obligation is conclusively bound by its terms."

12 Am. Jur. 511

James G. Frost
Deputy Attorney General

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