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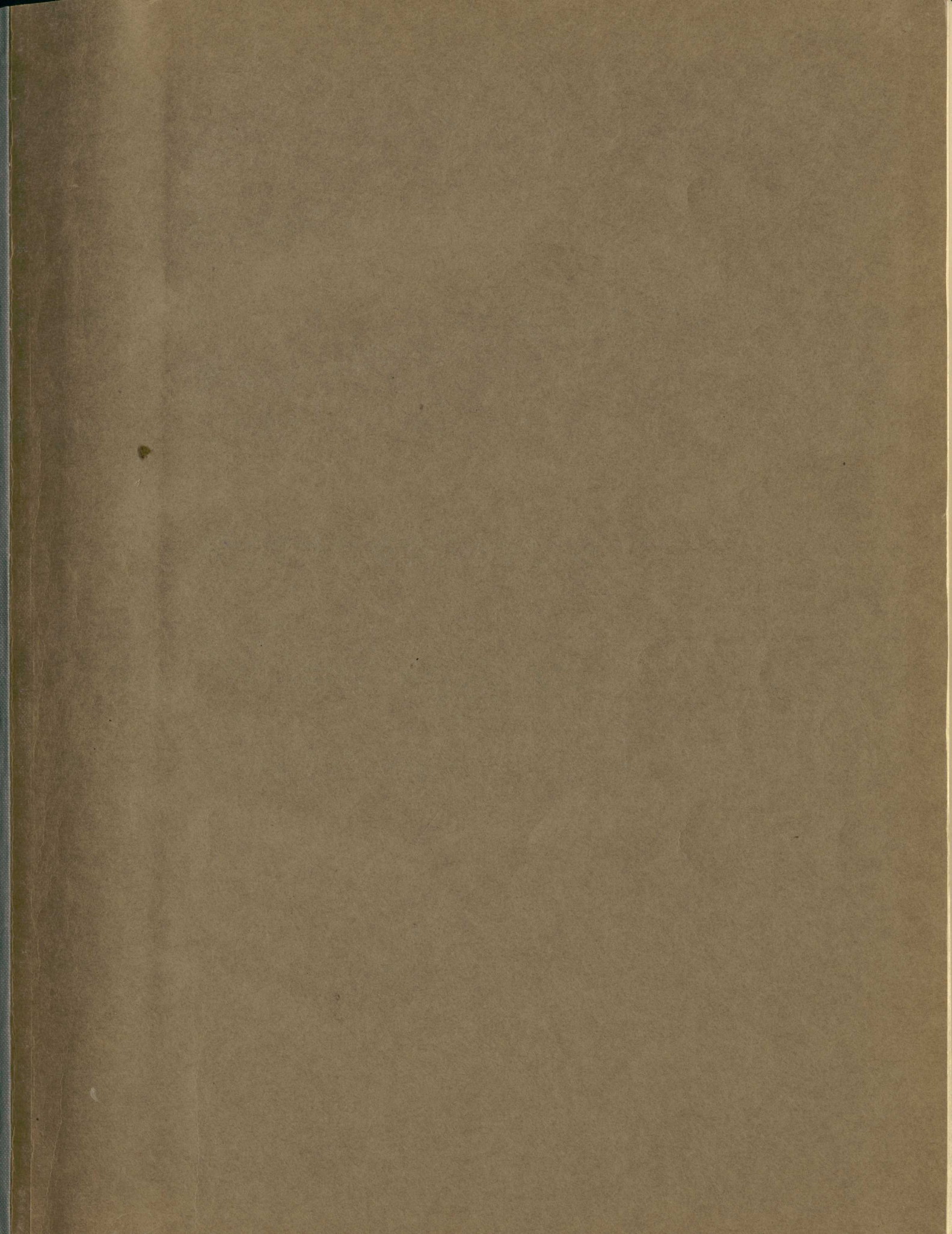
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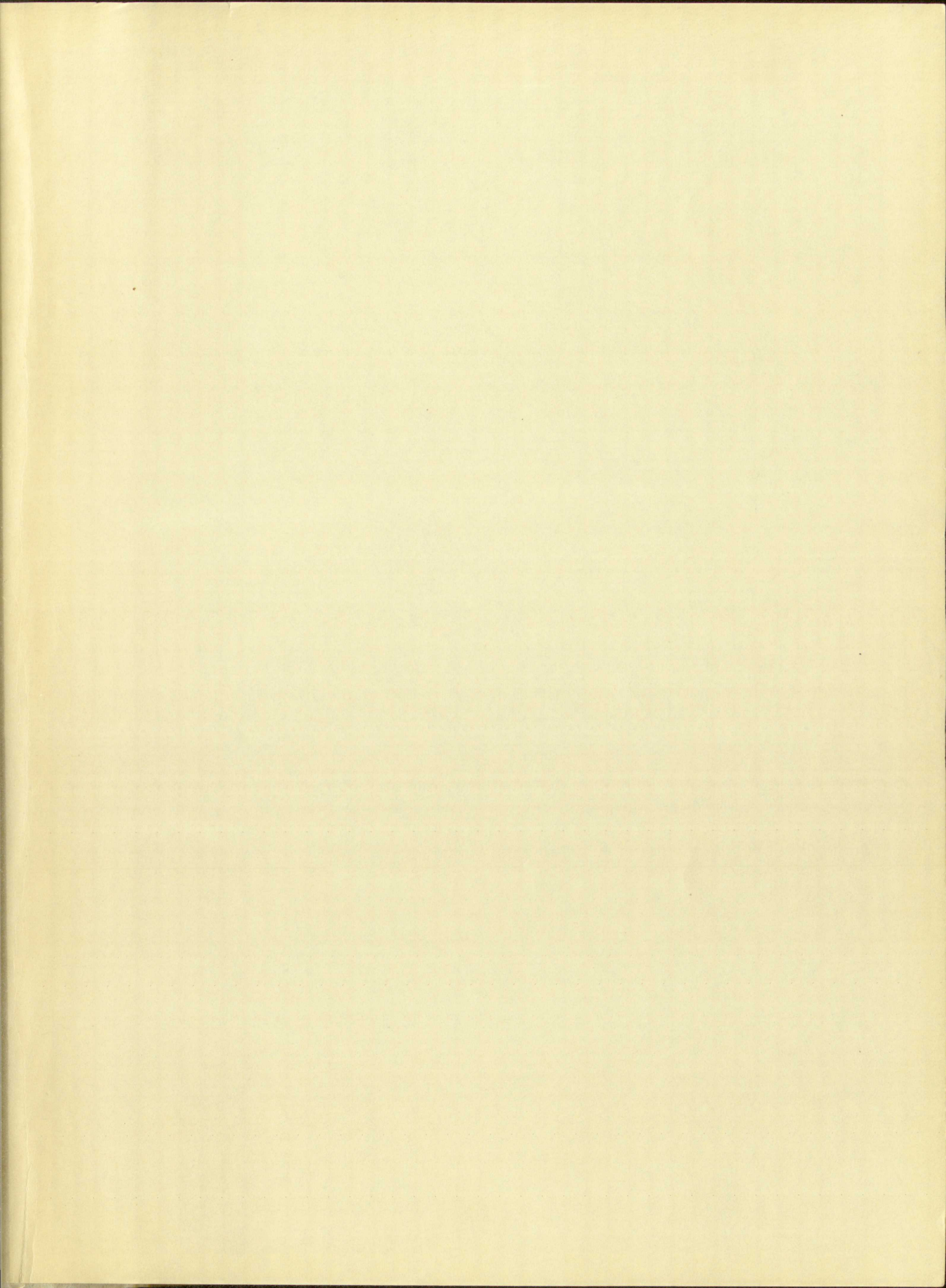
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LEGAL RESTRICTIONS GOVERNING TEACHERS
IN THEIR EMPLOYMENT AND WORK

By
Laurence C. Coffey

A Thesis
Submitted in Partial Fulfillment of the
Requirements for the Degree of
Master of Arts in Education

University of New Mexico

1937

LEGAL ETHICS AND GOVERNMENT LAWYERS
IN THEIR EMPLOYMENT AND MORE

BY

Lawrence C. Coffey

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THESIS

Submitted in partial fulfillment of the

Requirements for the Degree of

Master of Arts in Education

University of New Mexico

1937

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This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

George F. Hammond
DEAN

June 5, 1937
DATE

8/11/37 Letter 1.10

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This is to certify that the within copy of the original of the
matter has been received by the Secretary of the
Board of New York to be filed in the
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Secretary

JOHN J. HENRY
Secretary

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Secretary

JOHN J. HENRY
Secretary

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The invaluable assistance of Dr. J.E. Seyfried, who suggested the problem of this thesis and gave generously of his time and advice toward its development, is gratefully acknowledged.

A KNOWLEDGE

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ABBREVIATIONS

The citation "18 N.M. 183, 135 Pac. 96" means that the case is reported in Volume 18, New Mexico Supreme Court Reports at page 183, and the same case is reported in Volume 135, Pacific Reporter, at page 96.

The citation "96 S.W.(2d) 335" refers to Volume 96, Southwestern Reporter, Second Series, at page 335.

Where the citation to the State Reports has not been given, the name of the court is inserted in parenthesis, abbreviated. Where the name of the state alone appears, the case was decided by the court of last resort, known in most states, but not in all, as the supreme court.

The following are some of the standard legal abbreviations used most frequently in this report:

UNITS OF THE NATIONAL REPORTER SYSTEM

A. or Atl.	-----	Atlantic Reporter
Fed.	-----	Federal Reporter
N.E.	-----	Northeastern Reporter
N.W.	-----	Northwestern Reporter
N.Y.S.	-----	New York Supplement
Pac. (2d)	-----	Pacific Reporter, Second Series
So.	-----	Southern Reporter
S.E.	-----	Southeastern Reporter
S.W.	-----	Southwestern Reporter
S.W. (2d)	-----	Southwestern Reporter, Second Series

OTHER ABBREVIATIONS

A.L.R.	-----	American Law Reports
App.	-----	Court of Appeals or Appellate Court Reports
App. Div.	-----	New York Appellate Division Reports
L.R.A.	-----	Law Reports Annotated
Misc.	-----	New York Miscellaneous Reports
N.J.L.	-----	New Jersey Law Reports
Tex. Civ. A.	-----	Texas Court of Civil Appeals Reports.

OTHER ABSTRACTS

A.L.R.	American Law Reports
App.	Court of Appeals or Appellate Court Reports
App. Div.	New York Appellate Division Reports
L.R.A.	Law Reports Annotated
Misc.	New York Miscellaneous Reports
N.J.L.	New Jersey Law Reports
Tex. Civ. A.	Texas Court of Civil Appeals Reports

CHAPTER I

INTRODUCTION AND STATEMENT OF THE PROBLEM

Introduction. In this post-depression period, when educational leaders have focused their interest on teachers and their freedom at work, much attention has been directed to the legal status of the public school teacher. Laymen and politicians have said and done much to both praise and humiliate them in recent years. Tenure laws that operate throughout several states to protect teachers have been rigidly tested by the courts.

Much new legislation affecting teachers' rights has been put into effect. With new legislation in the field of school law has arisen an increase in the number of teachers who have turned to the courts for a satisfactory solution of their contract and tenure problems and a determination of their legal rights. One may point to certain notable causes; for example, the present economic condition in general, the surplus of teachers, the recent depression, and political pressure by community groups, which have helped bring an increasing number of cases involving teachers' claims into the appellate courts of the country.

Not only more numerous but new in kind are the cases being adjudicated. Ancient legal principles still apply to the determination of new problems, but the principles may go

unrecognized or appear in a much different light when dressed in the garb of modern legislation on the subject.

The old question of discrimination against the married woman teacher is still with us, and the courts contribute their views on this matter; views which are often conflicting. Economic conditions today reopen the question of barring or employing married women as teachers in the schools.

Loyalty oath laws are on the statute-books of twenty-one states, and the District of Columbia, - eleven states having adopted such laws since 1931. Teachers in these states are necessarily restricted by the operation of these laws. A more repressive situation exists in the District of Columbia, where twenty-nine hundred teachers are hedged by a law which makes it prudent that they skip all chapters on Russian history and geography because they might be "teaching or advocating communism."

The increase in legal enactments relating to teachers and their work would make it appear that a pertinent and profitable study might be made of the restrictions that govern teachers in their employment.

Statement of the problem. This investigation has been concerned with the operation of laws affecting teachers' rights as revealed by cases carried to supreme

.....

or other appellate courts and seeks specific answers to the general question "What are the legal restrictions that operate to affect the teacher in her employment and work?"

An attempt has been made to find the law as revealed by the reported cases to answer certain specific questions:

Is the teacher an employee or an officer? What is the teacher's legal status? Is the position a public office or a mere employment?

What restrictions surround the teacher in gaining eligibility to an employment by the school?

Does the teacher have a right to a school position, when eligible, and if not, who selects and appoints the eligible teacher?

How far does the discretionary power of the school board go in such selection and appointment?

How is the teacher restricted by the board's power to remove, discharge, or dismiss her from the teaching position?

May a teacher be dismissed at the pleasure of the board?

May a teacher be dismissed for political activity?

Is marriage of a woman teacher a good cause for her removal, discharge, or dismissal?

How do oath laws affect the teacher's contract?

May a board make membership or non-membership in teachers' associations a basis for appointment of teachers?

May nuns teach in the public schools?

The answers to these questions have been sought from the legal principles laid down in cases adjudicated in the courts.

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Is the teacher an employee or an officer? What is the
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or a mere employment?

What restrictions surround the teacher in relation
to eligibility to an employment by the school?

Does the teacher have a right to a school certificate,
when eligible, and if not, who selects and appoints the
eligible teacher?

How far does the discretionary power of the school
board go in such selection and appointment?

How is the teacher restricted by the board's power to
remove, discharge, or dismiss her from the teaching
position?

May a teacher be dismissed at the pleasure of the board?

May a teacher be dismissed for political activity?

Is marriage of a woman teacher a good cause for her
removal, discharge, or dismissal?

How do such laws affect the teacher's contract?

May a board make membership of non-membership in
teachers' associations a basis for appointment or removal?

May a woman teach in the public schools?

The answers to these questions have been sought from

the legal principles laid down in cases adjudicated in the

courts.

Delimitations. Court cases affecting college professors, teachers, and educational employees other than those whose work is in the public and private schools of the elementary and secondary level are not used in this study. The problem is limited to the analysis of certain legal restrictions of primary importance to the teachers in the public school systems of the country. The study is particularly directed to the legal principles controlling in the adjudicated cases involving the discretionary power of school boards in employing teachers, and their dismissal arising from arbitrary rules of the boards, or the marriage of the woman teacher. Attention is also directed to the relationship of the teachers' tenure of employment to oath laws, legislation on the matter of teaching or advocating communism, and the effect on further employment of the teacher who is politically active either within or outside the classroom.

Related Studies. Certain studies represent valuable contributions by various authors to the general subject of the legal and contractual relation of the teacher to the board and school. Some of these relate closely to the problem undertaken in this study, and deserve mention.

Cecil Winfield Scott, in his published work, "Indefinite Teacher Tenure," analyzed the teacher's assurance of position in eight states and the District of Columbia. All

Delimitations. Court cases affecting college

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contributions by various authors to the general subject of the legal and contractual relation of the teacher to the board and school. Some of these relate closely to the problem undertaken in this study, and deserve mention. Cecil Whistler, in his published work, "Influence Teacher Tenure," analyzed the teacher's position in eight states and the District of Columbia. All

of the regions studied had tenure laws in operation. He found that in over 62 per cent of the appeal cases arising where a teacher's position or rights were in controversy the decision was adverse to the teacher.

In one chapter of the study by David Wilbur Peters, "The Status of the Married Woman Teacher," there are laid down six general legal principles based on appellate court decisions involving married women teacher employment.

Ira Madison Allen in "The Teacher's Contractual Status," published in 1928, makes a rather thorough analysis of the contractual basis of a teacher's relationship to her board and school. The cases cited are numerous but of course would not include many of the teacher-in-court cases arising during the last ten years.

Data and its handling. The original source of the data, as previously mentioned, is in the reported appellate court decisions. They are found in the form of digested cases in the American Digest System Digests. Every case arising during the last thirty years and relating to teachers in any of the phases of this problem has been cited. In order to obtain them, search was made, under the topic "Schools and School Districts," through the Second Decennial Digest (1906-1916), the Third Decennial Digest (1916-1926), and Current Digests of the American Digest System (for years 1926 to

1936 inclusive). The cases cited in the Digests were then read from the original reports. The reports of the decisions are found in the various regional Reporter volumes, including the Federal Reporter and the New York Supplement.

A card system was devised to show the particular problem involved in each applicable case. For instance, the case might involve the right of the board to make non-membership in teachers' organizations a condition of employment; or the case might arise out of the board's dismissal or non-retention of a woman teacher who marries. The cards used also show the final disposition of the case, whether favorable to the teacher or against the teacher's interest, and such pertinent and peculiar facts of the case as are necessary to its proper evaluation and consideration. An endeavor has been made to trace any reversal of a decision by a higher court, or any reversal by a later court deciding a case resting on the same set of facts.

This report in its final form has been written from these case cards, and from re-reading of the original cases of seeming greatest weight; and when the importance of a case justified them, lengthy supplementary notes have been added.

To give background to certain peculiar legal situations that confront the teacher, consideration has first been given to the legal status of the teacher in general, and the restrictions surrounding her as a public employee.

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CHAPTER II

THE TEACHER AS AN EMPLOYEE; STATUS IN GENERAL

An analysis of the existing laws and judicial cases on the teacher's position and rights yields clearly defined answers to two questions: Is the teacher an employee or an officer? Is the position a public office or a mere employment?

I. LEGAL VIEW OF TEACHER POSITION

Distinction between employee and officer. In accordance with certain rules distinguishing a public office from a mere employment, one appointed or hired, under statutory authority, to perform duties with respect to a public school system, is an employee and not an officer. This distinction applies when the term is not fixed by such statute and none of the sovereign power of the state is delegated. Hence teachers, along with custodians, school architects, assistant superintendents, and even an attorney hired to defend a suit against the district, come under the meaning of the classification as employees.

Quoting from the opinion in a recent Indiana case where the court held the teacher not to be an officer and the position not to be an office:

When we consider the character of the service rendered by the teacher, it seems clear that he is not an "officer" of the school corporation. Officers of municipal corporations, school or civil, exercise the governmental powers of their respective corporations; and school boards or trustees of school townships as officers of school corporations and in the exercise of governmental powers, employ teachers to perform certain services for the corporation. But in performing these services, teachers do not represent the state or municipal corporations or in any sense exercise governmental powers. Consequently, we conclude that the position of a teacher is an employment and not an office.¹

The term 'office' implies a delegation of a portion of the sovereign power of the state, and a possession of it, by the person filling the office. An 'employment' does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature. This constitutes perhaps the most decisive difference between an employment and an office, and between an employee and an officer, as was pointed out in *State v. Sheats*.²

Numerous decisions affirm the view that a teacher's position is a mere employment; and the teacher, legally put in the status of an employee, is always subject, in performance of duties, to the direction of the school officers. In

¹*Kostanzer v. State*, (Ind.), 187 N.E. 337, (1933).

²*State v. Sheats*, 177 S.W. 43 (Florida) (1919).

When we consider the character of the service rendered by the teacher, it seems clear that he is not an officer of the school corporation. Officers of municipal corporations, school or civil, exercise the governmental powers of their respective corporations; and school boards or trustees of school territories as officers of school corporations and in the exercise of governmental powers, employ teachers as persons performing services for the corporation. But in performing these services, teachers do not represent the state or municipal corporations or in any sense exercise governmental power. Consequently, we conclude that the position of a teacher is an employment and not an office.

The term 'office' implies a delegation of a portion of the sovereign power of the state, and a possession of it by the person filling the office. An 'employment' does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature. This constitutes merely the most radical difference between an employment and an office, and between an employee and an officer, as was pointed out in State v. Thayer.²

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Numerous decisions affirm the view that a teacher's position is a mere employment; and the teacher, locally, in the state of an employee, is always subject, in performance of duties, to the direction of the school officers. In

¹Kochanek v. State, 120 N.E. 237, (1922).
²State v. Thayer, 117 N.E. 433 (Iowa, 1919).

a Maine case the court said, "An officer is distinguished from an employee in the greater importance, dignity, and independence of his position, in requirement of oath, bond, more enduring tenure, and facts of duties being prescribed by law."³

Courts construe the position of a teacher by law to be less than an office, regardless of whether the teacher enjoys the indefinite duration of employment under a tenure act or is hired from year to year. The Kostanzer case referred to above was decided under the Indiana Teachers' Tenure Act. California has a well established tenure act. There, the Court of Appeals held that a California teacher permanently employed by law "does not hold an office since the statute refers to it as an employment."⁴ Moreover, the Constitution of the state of California prohibits the legislature from creating any office the tenure of which shall be longer than four years.⁵ Other states have constitutional provisions or statutes

³

Bowden v. Cumberland Co., 123 A. 166 (1924).

⁴Alexander v. Wanton Joint Union Sch. Dist. 255 Pac. 516, (1927).

⁵California Constitution, Art. 5, Section 2.

limiting the term of a public office which have been held by courts to be controlling in similarly restricting their teachers.

The Supreme Court of the state of Washington regarded the teacher as an employee and not as a public officer.⁶ From the Southland came these words of an appellate court judge in Georgia. They are taken from an opinion in an often-cited case:

The position of a teacher in a public school of a city or a town is not an 'office' which appointee holds under the pleasure of the appointive power but is merely an 'employment.'⁷

The court further states in the above case that "a public office is never conferred by contract and that, although an employment may be created by law, it is not necessarily so, but is often, if not usually, the creature of contract."⁸

⁶

State v. Preston, (Wash.), 208 Pac. 47, (1922).

⁷Board of Education of Doerun v. Bacon, (Ga.), 95 S.E. 753 (1918).

⁸Supra, footnote 7.

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8
State v. Preston, (Wash.), 202 Pac. 47, (1922).
Board of Education of Des Moines v. Freeman, (Iowa), 262 A.2. 755 (1970).
8
Supra, footnote 7.

II. EMPLOYMENT AND CONTRACT

Power to employ. School districts are like other municipal corporations in that they have power, subject only to constitutional and statutory limitations upon the amount of indebtedness which they may incur, to appoint or employ, and pay the compensation of, such necessary teachers and other employees, and such only, as the statute may authorize either expressly or by implication. Since the purpose and function of a school district is to maintain efficient schools, it possesses power, unless restricted by statute, to employ such persons as are required to accomplish that purpose.⁹ Teachers are essential to the functioning of a school, and, once legally employed, are subject to the control of their principals and superintendents in the performance of their duties, but primarily are under the immediate authority and direction of the proper school officers who hired them.

Eligibility to teach. In such of the forty-eight states as have set up statutory qualifications for teachers, a person, to be eligible for employment or appointment as a teacher, must possess these qualifications. In addition, the school

9

State v. Brown, (Minn.), 128 N.W. 294 (1910).

power to employ. School districts are like other municipal corporations in that they have never, and only to constitutional and statutory limitations upon the amount of indebtedness which they may incur, to employ or employ, and pay the compensation of, such persons, and are and other employees, and must only, as the constitution authorize either expressly or by implication, for the purpose and further of a school district to maintain efficient schools, it possesses no power, unless restricted by statute, to employ such persons as are mentioned in accomplished that purpose. Therefore, it is essential to the functioning of a school, and some legally employed, are subject to the control of their principals and superintendents in the performance of their duties, and are not to be under the immediate authority and control of the board of school officers who direct them.

Eligibility to teach. In case of emergency, the board

as have set up statutory qualifications for teachers, and, to be eligible for employment or appointment as a teacher, must possess these qualifications. In addition, the school

authorities may have prescribed in their rules and regulations certain requirements as to age,¹⁰ moral character,¹¹ passing a prescribed physical examination, or possessing a proper certificate or license. In the absence of express requirements, it is sufficient that a teacher possess average qualifications and ability.¹²

Certain individuals or persons in certain relationship to the employing power are ineligible to teach in the particular district. For example, a school director or trustee who has official duties incompatible with those of a teacher, cannot be both officer and teacher at the same time.¹³ Therefore it is true that a school officer cannot enter into a contract to employ himself as a teacher. For two reasons, said a Vermont court, this should be true:

First, it is against public policy to allow one standing in such a relationship to contract with himself concerning the subject of his trust; and second, since the duty of the school officers is to remove a teacher when necessary, it is fundamental that such a man shall not be a judge in his own case.¹⁴

¹⁰

Landsberg v. Wyandotte County Board of Examiners, 129 Kan. 196, 281 Pac. 908 (1929).

¹¹

Marrs v. Matthews, (Tex. Civ. A.) 270 S.W. 586 (1925).

¹²

Neville v. Dist. No. 1 School Directors, 36 Ill. 71.

¹³

Ferguson v. True, 3 Bush. (Kentucky) 255.

¹⁴

Scott v. Williamstown School Dist. No. 9, (Vt.) 31 A. 145, 27 L.R.A. 588 (1894).

authorities may have prescribed in their rules and regulations certain requirements as to age, moral character, passing a prescribed physical examination, or possessing proper certificate or license. In the absence of such requirements, it is sufficient that a teacher possess average qualifications and ability.

Certain individuals or persons in certain positions ship to the employing power are ineligible to work in the particular district. For example, a school director or trustee who has official duties incompatible with those of a teacher cannot be both officer and teacher at the same time. Therefore it is true that a school officer cannot employ in contrast to employ himself as a teacher. For two reasons, said a Vermont court, this should be true:

First, it is against public policy to allow an individual in such a relationship to contract with himself concerning the subject of his trust; and second, since the duty of the school officer is to remove a teacher when necessary, it is fundamentally inconsistent that he should not be a judge in his own case."

- 10 Landabery v. Wyanadotte County Board of Examiners, 129 Kan. 136, 281 Pac. 908 (1929).
- 11 Harris v. Hartschaw, (Tex. Civ. A.) 279 S.W.2d (1955).
- 12 Neville v. Dist. No. 1 School Directors, 28 Ill. 2d 111, 171 N.E.2d 101 (1960).
- 13 Ferguson v. Time, 3 Bush. (Kentucky) 251.
- 14 Scott v. Williamstown School Dist. No. 2, 141 Vt. 51 A. 145, 87 A.2d 885 (1954).

Under some statutes persons within a certain degree of relationship to a member of the board are disqualified to teach unless the board is petitioned by the patrons of the school in the number required by statute.¹⁵ An appointment or petition under such a statute is valid in the absence of evidence establishing the fact that the petition had not been signed by the required number of patrons.¹⁶ Here the term 'patrons' had reference only to the heads of families.¹⁷

Under an Arkansas statute¹⁸ directors are prohibited from employing any person related to any of the directors within the fourth degree of consanguinity or affinity, yet they are permitted to do so upon the petition of two-thirds of the patrons of the school. In one Arkansas case,¹⁹ this statute was construed to remove the disqualification of the teacher who was related to the board and elected on petition of two-thirds of the patrons, and to make permissible two

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Neal v. Bethea, 158 Ark. 403, 250 S.W. 336 (1923).

¹⁶ Hendrix v. Morris, 127 Ark. 222, 191 S.W. 949 (1917).

¹⁷ Supra, footnote 16.

¹⁸ Act 206, Act 1913, p. 855.

¹⁹ Supra, footnote 15.

contracts to teach, one for the summer term and another for the winter term of school, - the petition contemplating both periods of teaching. But another case held that a petition for the employment of the plaintiff teacher, a first cousin of one school director, to teach summer school or "any succeeding school" did not authorize his employment for the summer of 1918 and the fall and winter of 1918-19.²⁰ The courts allow themselves to be governed by the probable intent of the legislature enacting the law against nepotism. This is altogether proper, in view of the disabling effect of such a law, and in view of the fact that the citizenship of a school district is constantly changing and patrons might change their minds from time to time.

If the disabling statute enumerates relatives disqualified, but omits wives of trustees, such statute will not be extended to disqualify wives of trustees from eligibility to teach.

A recent case held that, by becoming a member of a school committee, a dismissed teacher became ineligible to be a teacher in the same city.²¹

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School District No. 107 v. Perrymore, 143 Ark. 64, 66 219 S.W. 316 (1919).

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Clifford v. School Committee of Lynn, 175 N.E. 634 Mass. (1931).

continued to teach, and for the summer term and winter term of 1918-19. The plaintiff continued to teach the winter term of 1918-19. But another case held that a plaintiff's periods of teaching, but another case held that a plaintiff's the employment of the plaintiff teacher, a first grade at the school director, to teach summer school or any other school, this not authorizes his employment for the term of 1918 and the fall and winter of 1918-19. The court said themselves to be governed by the probable intent of the legislature enacting the law against an action, which is that teacher proper, in view of the discharging of a teacher and in view of the fact that the discharge of a teacher is not is necessarily a final and permanent right. Plaintiff's mind is free to find.

If the discharging of a teacher is a permanent right, plaintiff, but could view of plaintiff, and even if not be extended to discharge of teacher from his ability to teach.

A recent case held that, by becoming a member of a school committee, a plaintiff teacher became ineligible to be a teacher in the same city.

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School Director No. 107 v. Board of Education, 144 N.H. 44, 219 N.E. 2d 116 (1961).
31
Clifford v. School Committee of Lynn, 192 N.H. 412, 234 N.E. 2d 116 (1961).

A California statute invalidating contracts made by a school board in which a member has a pecuniary interest was held to disqualify the wife of a county superintendent for employment by him as a supervising teacher.²² The contract was declared contrary to public policy, -- the court stressing the confidential relations existing between husband and wife, and the pecuniary advantages which would be gained by the husband by reason of such a contract. However, in other cases the pecuniary interest of the husband in his wife's appointment has been held to be too far removed to bring it within the terms of the prohibitory statute.²³ In the case just cited the disabling statute affected "father or brother, mother or sister" of any board member. And certainly the argument can and should be made to the legislature that imposed the above restriction that it should be extended to cover the relationship of "husband and wife."

Regulations laid down by the board authorized to employ teachers may affect their eligibility to teach. It is in the local boards of education that the power is

²²Nielson v. Richards 75 Cal.A. 680, 243 Pac. 697 (1925).

²³Zaleski School Board of Education v. Boal, 104 Oh. 482, 135 N.E. 540 (1922).

A California statute invalidating contracts made by a school board in which a member has a pecuniary interest was held to be unconstitutional by the California Supreme Court in *People v. Board of Education*, 192 Cal. 104, 125 P.2d 104 (1942). The court stated that the statute was declared contrary to public policy, -- the court stating that the confidential relations existing between husband and wife, and the pecuniary advantages which would be gained by the husband by reason of such a contract. However, in other cases the pecuniary interest of the husband in his wife's appointment has been held to be too far removed to bring it within the terms of the prohibitory statute. In the case just cited the disqualifying statute affected "father or mother, brother or sister" of any board member, and consequently the argument was made and should be made to the legislature that it posed the above restriction that it should be extended to cover the relationship of "husband and wife."

Regulations laid down by the board authorized to employ teachers may affect their eligibility to teach, as is in the local boards of education that the power to

⁸² *Wilson v. Richards* 75 Cal. 2d 600, 237 P.2d 1042 (1951).
⁸³ *Palmer School Board of Education v. Board of Education*, 135 N.E. 540 (1922).

usually vested by statute to determine what qualifications teachers must possess to teach. These regulations must be reasonable to be upheld. Examples of rules interpreted as reasonable by the courts are the requiring of a physical examination approved by the health officer²⁴ and requiring residence in the city.²⁵ It has been held unreasonable to require a teacher to reside at a particular boarding house.²⁶ If a rule is valid, a teacher must comply with it to gain eligibility to teach.²⁷

The state board of education may set up requirements for teachers in all the schools, but if the statute provides that county boards may determine their own educational policies, the teacher must comply with the county standards, even though they are higher than the minimum state requirements.²⁸

Mode of employment and the contract. In order for a teacher to enter into a valid contract to teach, she must

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Coleman v. District of Columbia, 51 App. (D.C.), 352, 279 Fed. 990 (1922).

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Stuart v. San Francisco Board of Education 161 Cal. 210, 118 Pac. 712 (1911).

²⁶Horne v. Chester Sch. Dist., 75 N.H. 411, 75 A. 431 (1910).

²⁷Supra, footnote 24.

²⁸Davies County Board of Education v. Vanover, 219 Ky. 565, 293 S.W. 1063 (1927).

usually needed by a teacher to be able to teach. Teachers must possess the ability to be able to teach. It is the responsibility of the state to provide the necessary training and resources for teachers. The state must ensure that teachers are qualified and that they have the necessary resources to teach effectively. This includes providing them with the necessary training, resources, and support. The state must also ensure that teachers are paid a fair salary and that they have the necessary working conditions to be able to teach effectively.

The state must also ensure that teachers are able to work in a safe and healthy environment. This includes providing them with the necessary safety equipment and training. The state must also ensure that teachers are able to work in a supportive environment. This includes providing them with the necessary resources and support. The state must also ensure that teachers are able to work in a fair and equitable environment. This includes providing them with the necessary resources and support.

Notes, 28

Notes of the Committee on the State of the State, 1911

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possess such certificate of qualifications as the law requires. The board has no discretion in the matter and cannot waive the certification which the laws set up. Courts are not in agreement as to whether it is necessary that a teacher have the certificate when she signs the contract, or whether it is sufficient that she acquire such certificate before beginning to teach. Usually the wording of the statutes controls, as indication of the intent of the legislature. Certainly the teacher is not employed until she begins teaching; and the more reasonable view would be that it is sufficient if the teacher secure a certificate before beginning to teach. This is a sound attitude, especially since the general purpose is to prevent educational inefficiency arising from the employment of unqualified teachers, rather than to prevent making contracts with unqualified teachers.

The general rule is that a school district can be bound only by the formal acts of its governing board convened in a meeting duly called or held, and not by informal discussion or by the acts of the members of the board acting as individuals. This applies to the hiring of teachers. One contracting with a school district or board is bound to know the extent of its authority to make such contract. The restrictive effect of this rule upon the teacher is well illustrated in a Minnesota case where a contract was held void because one member of the school board had not been notified that a board meeting was called

possess such certificates of registration as required by law for
drivers. The board has no objection to the certificate being
wielded in the certificate of registration. The board has no
in agreement as to whether it is necessary for the board to
have the certificate of registration. The board has no objection
it is sufficient that the certificate of registration is valid.

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purpose is to present the certificate of registration. The board has no objection
the employment of the certificate of registration. The board has no objection
making contracts with the certificate of registration.

The general rule is that the certificate of registration is valid
only by the formal acts of the board. The board has no objection
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This applies to the board. The board has no objection
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authority to make such contracts. The board has no objection
rule upon the board. The board has no objection
where a contract was made. The board has no objection
board had not been notified. The board has no objection

for the purpose of electing a teacher?²⁹ A contract was sent to the teacher who did not know of any irregularity of the board meeting. The contract was signed by the proper officers, and yet the contract was held void because one member of the board was not notified of the meeting.

In the absence of a requirement by law that teachers' contracts be in writing, an oral contract is valid and enforceable.³⁰ On the other hand, many states have statutes specifically requiring that contracts with teachers be in writing. In such states oral contracts are invalid and no recovery can be had by the teacher in an action for breach of contract.³¹

Teachers' contracts follow the general law of contracts. A contract of employment made by a school district must, like every other contract, contain a valid offer and acceptance and comply with any statutory requirements as to its form and requisites. The contract, to be valid, must be mutual, certain, definite, and free from fraud and illegality. The agreement does not have to be incorporated in one paper.

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Martin v. School District N. 3, Ramsey County, 204 N.W. 320 Minnesota.

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Jameson v. Board of Education, 74 W. Va., 389, 81 S.E. 1126 (1914).

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Leland v. School District No. 28, 77 Minn. 469, 80 N.W. 354.

for the purpose of electing a teacher. A contract was sent to the teacher who did not know of any irregularity of the board meeting. The contract was signed by the proper officers, and yet the contract was held void because one member of the board was not notified of the meeting.

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Teachers' contracts follow the general law of contracts. A contract of employment made by a school district must, like every other contract, contain a valid offer and acceptance and comply with any statutory requirements as to its form and legalities. The contract, to be valid, must be mutual, certain, definite, and free from fraud and illegality. The agreement does not have to be incorporated in one paper.

²⁰ *Wright v. School District No. 2, Ramsey County, 204 N.W. 220 (Minnesota).*

²¹ *Johnson v. Board of Education, 20 N.W. 222, 81 N.W. 122 (Iowa).*

²² *Leahy v. School District No. 28, 77 N.W. 409, 80 N.W. 324.*

It may be gathered from a letter of application and the board minutes. It is to the advantage of the teacher to have it in writing, and definite and complete in its terms. In one case a teacher agreed to teach a term of school upon the board trustee's assurance that she would receive "good wages." The court held that the arrangement was indefinite, and consequently no contract had been formed.³²

Ratification of the contract. In accordance with the general rules relating to ratification of contracts, a proper teacher's contract of employment made in behalf of a school district by one acting without authority or in an improper manner, may be ratified and so rendered valid and enforceable. Thus where a teacher is permitted to teach a month or more under an invalid contract and is paid for his services, the contract may be held to be ratified.³³ Or ratification may occur by acceptance of the services of the teacher with knowledge of the existence of a contract. The general doctrine of ratification is well expressed in the

³² Fairplay School Township v. O'Neal, 127 Ind. 95, 26 N.E. 586.

³³ Watkins v. Special School District of Lepanto, 122 Ark. 611, 183 S.W. 168.

following excerpt from Commissioner Roberts' opinion in
Ryan v. Humphries:

A public body such as a school board, authorized to perform acts of a public nature, and to which public duties are entrusted, such as the employment of teachers for the public schools, should perform such duties as a board, and to do so it is imperative that all should meet, or at least be notified of such meeting, and have an opportunity to meet, and consult, relative to the employment of such teachers, before a valid contract can be entered into by them binding the district.

The foregoing is subject to the doctrine of the law that, where a public body, such as a school board, has the original power and authority to enter into a contract, such as the employment of teachers, such body or board may legally ratify a contract of employment, made by the board or a majority of the members thereof in an irregular or unauthorized manner, and a ratification of such a contract is equivalent to a full compliance with the authority originally given, and when so done renders the contract valid from its inception.³⁴

But a contract void in the beginning from want of power on the part of the district to make it, cannot be ratified.

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Ryan v. Humphries, 50 Okla. 343, 150 Pac. 1106, L.R.A. 1915 F 1047.

following excerpt from *Hammer v. Thompson*, 191 U.S. 620 (1904):

Ryan v. Thompson:

A public body such as a school board, authorized to perform acts of a public nature, and to which certain duties are entrusted, such as the management of the schools for the public schools, should exercise its duties as a board, and do so in an imperative that it shall meet, or at least be notified of such meeting, and have an opportunity to meet, and conduct its business, and employment of such board, being a public body, can be entered into by them without the district.

The foregoing is subject to the fact that the law that, where a public body, such as a school board, has the original power and authority to enter into a contract, such as the employment of teachers, such board may legally enter into a contract of such kind, and by the board or a majority of the members thereof, in an irregular or unauthorized manner, and a violation of such a contract is subject to a writ of mandamus to the authority originally given, and such contract is void from its inception.

But a contract void in its beginning is not void of

power on the part of the district to make it, and to

ratified.

CHAPTER III

DISCRETIONARY POWER OF SCHOOL AUTHORITIES IN EMPLOYMENT OF TEACHERS

The judge of an appellate court, in ruling that a school board of a large metropolitan city had an absolute right to decline to re-employ certain teachers who were members of a teachers' federation, spoke as follows:

It is no infringement upon the constitutional rights of any one for the board to decline to employ her as a teacher in the schools, and it is immaterial whether the refusal to employ is because the applicant is married or unmarried, is of fair complexion or dark, is or is not a member of a trades union, or whether no reason is given for such refusal.¹

The language of the above court opinion indicates that a wide discretion is vested in school authorities in the matter of employing teachers. It is the purpose of this chapter to analyze this discretionary power as it affects the employment of sectarian teachers, teachers who wear a religious garb, and teachers who are members of professional organizations like the American Federation of Teachers.

¹ People v. City of Chicago, (Ill.), 116 N.E. 158 (1917).

Discretionary power of the board in general. Broadly stated, the board or officer authorized to select and appoint or confirm the appointment of teachers has a discretionary power in passing upon the fitness of an applicant for the position of teacher in a particular school or grade,² and, unless there is a manifest abuse, the exercise of this discretionary power will not be reviewed by the courts.³

In the absence of statutory restrictions, the board may disregard questions as to religious belief;⁴ may take sex into consideration,⁵ or may take into consideration the affiliation of the applicant with labor organizations.⁶

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Commonwealth v. Philadelphia Board of Education,
187 Pa. 70, 40 A. 806, 41 L.R.A. 498 (1898).

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Hysong v. Gallitzen Borough School District,
164 Pa. 621, 30 A. 482, 26 L.R.A. 203 (1894).

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Millard v. Board of Education, 121 Ill. 297,
10 N.E. 669, 5 A.L.R. 884 (1887).

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Fitzpatrick v. New York Board of Education,
(N.Y. App.) 125 N.Y.S.954 (1910).

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People v. City of Chicago, (Ill.) 116 N.E. 158 (1917).
Frederick v. Owens, 35 Ohio Cir. Ct. 538.
Seattle Chapter No. 200 of American Federation of
Teachers v. Sharples, (Wash.) 293 P. 994 (1931).

Discretion in employing a sectarian teacher. In *Millard v. Board of Education*⁷ it was said that, under a statute which does not prescribe any religious belief as a qualification of a teacher in a public school, the school authorities may select a teacher who belongs to any church, or to no church, as they may think best.

In 1918 a New York court held that a school teacher who was a Quakeress was properly dismissed, not because of her religion but because of certain views and beliefs which she declared were based on her religion and which prevented her from properly discharging the duty she had assumed. She was opposed to war and to the existing war with the German government, would not uphold the country in forcibly resisting invasion, would not help, or urge her pupils to help, the United States Government in carrying on the war with Germany. She would not perform Red Cross services, nor buy thrift stamps, nor did she believe that a teacher was under special obligation to train her pupils to support the government of the United States in its measures for carrying on the war. Answering the contention that there was a violation of the federal and state constitutions in that she was discriminated against on account of her religion, and

⁷ *Millard v. Bd. of Educ.*, 121 Ill. 297, 10 N.E. 669, 5 A.L.R. 884 (1887).

that there was an attempted restraint on the observance of the Quaker faith, the court said such was not the case:

The petitioner was not dismissed because she was a Quakeress. It has simply been found that certain views and beliefs, which she declares are based upon her religion, prevent her from discharging the duty she assumed. Where a person agrees with the state to perform a public duty, she will not be excused from performance according to law merely because her religion forbids her doing so. While the petitioner may be entitled to the greatest respect for her adherence to her faith, she cannot be permitted, because of it, to act in a manner inconsistent with the peace and safety of the state.⁸

The Iowa Supreme Court in 1918 affirmed a judgment granted to enjoin a school district from using public money for the support of a parochial school. It was held that the school board could not, in the exercise of the power given it to rent a room and employ a teacher where there are ten children for whose accomodation there is no school house, appropriate school funds to rent a room in a parochial school building for the use of the public school, where it appeared that the pupils were by this action placed under the sectarian influence of such school. The court held that the school was under the control of the Roman Catholic Church when it was taught by sisters in the garb of their order, when it had emblems hanging upon the walls, and when religious exercises

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McDowell v. Board of Education, 104 Misc. 564, 172 N.Y. Supp. 590, New York (1918).

that there was a significant increase in the number of students who had been in the military service.

The following table shows the number of students who had been in the military service, by year of graduation, for the years 1945 through 1950.

Year	Number of Students
1945	1,234
1946	1,567
1947	1,890
1948	2,123
1949	2,456
1950	2,789

The following table shows the number of students who had been in the military service, by year of graduation, for the years 1951 through 1955.

Year	Number of Students
1951	3,012
1952	3,345
1953	3,678
1954	4,011
1955	4,344

The following table shows the number of students who had been in the military service, by year of graduation, for the years 1956 through 1960.

Year	Number of Students
1956	4,677
1957	5,010
1958	5,343
1959	5,676
1960	6,009

The following table shows the number of students who had been in the military service, by year of graduation, for the years 1961 through 1965.

Year	Number of Students
1961	6,342
1962	6,675
1963	7,008
1964	7,341
1965	7,674

were conducted either in the school building or in the adjoining church.⁹

Injunction against discretionary acts of school directors. While the general rule holds that no action within the discretion of the school board can be controlled by injunction,¹⁰ the decision in Knowlton v. Baumhover mentioned in the preceding paragraph is authority for the principle that where the board has abused its discretion, -- that is, where the board of school directors acts without jurisdiction or in excess of its powers, and, by some act in an official capacity, has done, or attempted to do, that which it has not the right to do, -- the courts will interfere and correct the wrong.¹¹

Employment of teachers wearing religious garb. Cases bearing on this problem show two opposing viewpoints taken by the courts. First, there is the legal attitude that the wearing of a distinctive religious costume and its influence

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Knowlton v. Baumhover, 182 Iowa 691, 166 N.W. 202 (1918).

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24 Ruling Case Law, 575, 576.

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Supra, footnote 9,
24 Ruling Case Law, 574.

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constitutes sectarianism in the school, even though there be no teaching of any particular sect or doctrine.¹² The minority view, however, is that the wearing of a religious garb is not "sectarian teaching" prohibited by law.¹³

The Pennsylvania court took the latter point of view in *Hysong v. Gallatzin*.¹⁴ There it was held that, in the absence of proof that sectarian religious instruction is imparted by them during school hours, or that secular religious exercises were engaged in, the court could not by injunction restrain sisters of a religious order of the Catholic Church from teaching in the public schools, nor the school directors from employing or permitting them to act in that capacity. In such matters the board exercised its discretion in the performance of its official duty and no abuse was shown to make it reviewable by any court. When a teacher of good moral character applies for a school and presents a certificate of qualifications as to scholarship and aptness to teach, and the board appoints such teacher, there can be

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O'Connor v. Herrick 184 N.Y. 421, 7 L.R.A. (N.S.) 402, 77 N.E. 612, 6. Ann. Cas. 432 (1906).

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Hysong v. Gallatzin Borough Sch. Dist., 164 Pa. 621, 30 A. 482, 26 L.R.A. 203 (1894).

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Supra, footnote 13.

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no judicial inquiry of such act of the board. Very pertinent is the following language of the Hysong case:

But it is further argued that, if the appointment of these Catholic teachers was lawful, they ought to be enjoined from appearing in the schoolroom in the habit of their order. It may be conceded that the dress and crucifix impart at once knowledge to the pupils of the religious belief and society membership of the wearer. But is this, in any reasonable sense of the word, sectarian teaching which the law prohibits? The religious belief of many teachers, all over the commonwealth, is indicated by their apparel. Quakers or Friends, Ommish, Dunkards and other sects wear garments which at once disclose their membership in a religious sect. Ministers or preachers of many Protestant denominations wear a distinctively clerical garb. No one has yet thought of excluding them as teachers from the schoolroom on the ground that their peculiarity of their dress would teach to pupils the distinctive doctrine of the sect to which they belong. The dress is but the announcement of a fact -- that the wearer holds a particular religious belief. The religious belief of teachers and all others is generally well known to the neighborhood and to pupils, even if not made noticeable in the dress, for that belief is not secret, but is publicly professed. Are the courts to decide that the cut of a man's coat or the color of a woman's gown, is sectarian teaching because they indicate sectarian religious belief? If so, then they can be called upon to go further. The religion of the teacher being known, a pure unselfish life, exhibiting itself in tenderness to the young and helpfulness for the suffering, necessarily tends to promote the religion of the man or woman who lives it. Insensibly, in both old and young, there is a disposition to reverence such a one, and, at least, to some extent, consider the life as the fruit of the particular religion. Therefore irreproachable conduct to that degree is sectarian teaching. But shall the education of the children of the commonwealth be entrusted only to those men and women who are destitute of any religious belief?

Our recollection extends back almost to the beginning of the common-school system of the commonwealth; in many counties there never was a time when ministers of Protestant sects were not frequently selected as teachers; some of them wore in the schoolroom, where children of Catholic parents were pupils, a distinctively clerical

garb; when the office of county superintendent was first created in 1854, in many counties preachers were chosen to fill the office; the present state superintendent of public instruction is a Protestant preacher. It is fair to presume that high moral character, the result of Christian sect teaching, as well as scholarly attainments, prompted their selection. Ordination vows, binding them to a particular creed, were considered no disqualification; it was not assumed that the fact of membership in a particular church, or consecration to a religious life, or the wearing of a clerical coat or necktie would turn the schools into sectarian institutions. In the sixty years of existence of our present school system, this is the first time this court has been asked to decide, as a matter of law, that it is a sectarian teaching for a devout woman to appear in a schoolroom in a dress peculiar to a religious organization of a Christian church. We decline to do so; the law does not so say. The legislature may, by statute, enact that all teachers shall wear in the schoolroom a particular style of dress and that none other shall be worn,¹⁵ and thereby secure the same uniformity of outward appearance as we now see in city police, railroad trainmen, and nurses in some of our larger hospitals. But we doubt if even this would repress knowledge of the fact of a particular religious belief; that, if the teacher had any, would still be effectively taught by unselfish devotion to duty; no mere significance or insignificance of garb could conceal it; the daily life would either exalt or make obnoxious the sectarian belief of the teacher.¹⁶

¹⁵

Pennsylvania enacted a legislative prohibition against public school teachers wearing religious garb or insignia in 1895, the year following this court decision.

¹⁶ *Hysong v. Gallatzin Borough Sch. Dist.*, 164 Pa. 621, 30 A. 482, 26 L.R.A. 203 (1894).

One judge, dissenting from the view that the hiring of the nuns as teachers was legal in the Hysong case, ably pointed out that he agreed that teachers should be selected for the common schools because of their fitness and not because of their religious belief or their church affiliation. But he objected to the employment of the Sisters in this case:

Now, the point of the objection is not that their religion disqualifies them. It does not. Nor is it that church membership disqualifies them. It does not. It is not that holding an ecclesiastical office disqualifies, for it does not. It is the introduction into the schools, as teachers, of persons who are by their striking and distinctive ecclesiastical robes, necessarily and constantly asserting their membership in a particular church, and in a religious order within that church, and the subjection of their lives to the direction and control of its officers.¹⁷

In a legal sense the common schools cannot be used to exalt any given church or sect, but should be free from ecclesiastical control and sectarian tendencies. The case of *Gerhardt v. Heid*,¹⁸ recently decided in North Dakota, concerned a teacher in the public schools of that state who was a member of a religious order and who wore the habit of the order while engaged in teaching, and contributed a portion of her earnings to the order. It was held

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Hysong v. Gallatzin, (Pa.) 30 A. 482 (1894).

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Gerhardt v. Heid, (N.D.), 267 N.W. 127 (1936).

One thing, however, is certain: the more the

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that these facts cannot alone be said to make the school a sectarian school, nor remove the school from the absolute control of the state, nor place the school under sectarian influence.

Whether it is wise or unwise to regulate the style of dress to be worn in our public schools or to prohibit the wearing of dress or insignia indicating religious belief is not a matter for the courts to determine.¹⁹

In other words, their inquiry went only so far as to determine whether what had been done infringed the provisions of the Constitution. The Court decided it did not.

The Pennsylvania legislature, in 1895, deeming it "important that all appearance of sectarianism should be avoided in the administration of the public schools of this commonwealth", passed a law as follows:

No teacher in any public school in this commonwealth shall wear in said school or whilst engaged in the performance of his or her duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect, or denomination.²⁰

The constitutionality of this statute was sustained in *Commonwealth v. Herr* in 1909.²¹

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Gerhardt v. Heid, (N.D.), 267 N.W. 127 (1936).

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Act of June 27, 1895. P.L. 395.

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Commonwealth v. Herr, 229 Pa. 132, 78 A. 68, Ann. Cases 1912 A. 422 (1909).

that these latter are in fact the same as the former
as far as the control of the state is concerned
influence.

Whether it is a matter of fact or not, the fact is
that the control of the state is in the hands of the
people, and it is not a matter of fact that the control
is in the hands of the people.

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of the people.

And in the New York case of *O'Connor v. Herrick*,²² it was held that a regulation established by the state superintendent of public instruction, who had implied authority under the statute to establish regulations as to the management of the public schools, prohibiting teachers in public schools from wearing a distinctively religious garb while engaged in the work of teaching therein, was a reasonable and valid exercise of the power vested in him.

Ineligibility of nuns to teach in the public schools in Iowa. An opinion recently rendered by Edward L. O'Connor, Attorney-General of Iowa, held that nuns may not teach in the public schools of Iowa. This is the first opinion handed down on the question there, and according to the Des Moines Register "will have a sweeping effect in some strongly Catholic communities where nuns have been employed freely in the past to teach in the public schools."²³

The opinion points out that no one may be denied the right to teach in the public schools because of his religious belief "but such persons must not wear the garb of any order while on duty and must not transfer their salary to any such order."

²²

O'Connor v. Herrick, 184 N.Y. 421, 77 N.E. 612, 7 L.R.A. (N.S.) 402, 6 Ann. Cases 432 (1906).

²³

The Des Moines Register, October 13, 1936.

Mr. O'Connor cited a decision of the New York Supreme Court which holds that nuns have "renounced the world, their own domestic relations and their family names . . . their property, their right to their own earnings", and that it is improper for any person wearing any religious garb to teach in the public schools for the reason that the wearing of the garb constitutes the injection of ecclesiastical sectarianism into the public school system.

Mr. O'Connor stated as his opinion that the Catholic nun receiving a salary as teacher in the public schools would be required, under the vow that she took when she became a nun, to turn this money over to her ecclesiastical order. Thus, the attorney-general asserted, public money would be used for the purpose of supporting sectarian institutions which, under the laws of Iowa, is prohibited. Even though the nun should apply for a position in the public schools with the provision that no salary would be paid for her services, she would, in the attorney-general's opinion, still be prohibited from teaching because of the wearing of her religious garb.

Restrictions on teachers as to membership in teachers' associations. There is some authority that a board of education may pass a resolution making members of teachers' associations ineligible for appointment as teachers.

In a Washington case such a resolution was held to be

within the lawful power of the board in respect to its future appointments. The court ruled:

The Seattle Board had power to adopt a resolution that no person should be employed or continue in employment as teacher while a member of the American Federation of Teachers and that the board might require teachers to sign a declaration to that effect.²⁴

This decision virtually recognizes that a school board in Washington has complete power with respect to employment of its teachers. Thus speaks the court in the Washington case:

The general doctrine, undoubtedly the law, is that in selecting the teachers with whom it will contract, the discretion of the school directors will not be reviewed by the courts.²⁵

However, the minority opinion in this case suggested that the board had exceeded its lawful authority, and in his dissenting opinion the judge stated that he

. . . was not disposed to hold that qualified and capable teachers, as a condition precedent to employment, may be required to sign such a stipulation which is beyond the power of the school director to enforce by discharge, if violated by the teacher.²⁶

Discretionary power to refuse employment on ground of affiliation with teachers' associations. In some jurisdictions

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Seattle High School Chapter No. 200 A.F.T. v. Sharples, (Wash.), 293 Pac. 994, (1931).

²⁵

Supra, footnote 24.

²⁶

Supra, footnote 24.

Within the last few years, the Government has been

concerned with the problem of the unemployed.

The Government has been very active in this

matter, and has been successful in many

instances in securing the employment of the

unemployed.

One of the most important of these

measures is the establishment of the

Government's own employment service.

This service has been very successful in

securing the employment of many

unemployed persons.

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employment service.

such a board resolution barring members of trades unions or teachers' associations might be held to be discriminatory and void.²⁷ The practical result of such a resolution is that otherwise qualified and capable teachers are not employed or retained in employment.

But where the statutes, by an indefinite tenure act or otherwise, make no attempt to regulate the discretion of the superintendent and his board in the selection of teachers, the whole subject is submitted to their sound discretion. In other words, the board may take into consideration an applicant's affiliation with the American Federation of Teachers.²⁸

Where courts uphold the right of the board to make a rule against the employment as teacher of a member of a teachers' union, it is presupposed that such a rule conditioning the employment of teachers was adopted for the promotion of the best interests of the public schools. In a Chicago case,²⁹ the court decided against the teachers, in determining that the passage by the board of education of a rule forbidding affiliation with labor unions after the election of the teachers for

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People v. Chicago, 199 Ill. A. 356.

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Frederick v. Owens, 35 Ohio Cir. Ct. 538.

²⁹

People ex rel. Fursman v. Chicago, 116 N.E.158, (1917).

the ensuing year, did not violate their contracts, if the teachers do not signify the acceptance of the employment prior to the passage of the rule. The concurring opinions place certain limitations on the powers of boards to make such rules:

This power [to make rules] does not, however, include the power to adopt any kind of an arbitrary rule for the employment of teachers it chooses to adopt; for a rule can easily be imagined the adoption of which would be unreasonable, contrary to public policy, and on the face of it not calculated to promote the best interests and welfare of the schools. In our opinion, courts would have the power in the interest of the public good to prohibit the enforcement of such an arbitrary rule.³⁰

The rule here in question was made by twenty-one members of the board of education of the city of Chicago and recited that

. . . membership by teachers in labor unions or organizations of teachers affiliated with a trade union or a federation or association of trade unions, is inimical to proper discipline, prejudicial to the efficiency of the teaching force, and detrimental to the welfare of the public school system.³¹

There is very little judicial authority upon the power of local school authorities to prescribe qualifications or conditions of employment of teachers, other than those prescribed by statute. Statutory requirements must be met, at least in

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People ex rel. Fursman v. Chicago, 116 N.E. 158 (1917).

31

Supra, footnote 30.

substance, when contracts are granted. There is a well-recognized right of states to fix prerequisite qualifications for teaching service. But local school boards have wide discretionary powers to set up additional requirements. About the only ground a teacher would have to stand on, it seems, if he or she felt aggrieved in the matter -- be it a rule barring a member of a teachers' federation or a regulation requiring a common-school teacher to have two more years of college training above the requirements for certification by law -- would be to contend that the superintendent and board were abusing the discretion reposed in them by the legislature in the selection of teachers. To successfully do so, it must be shown that they had intentionally and wilfully selected incompetent teachers when competent teachers were available.

In the absence of such a showing the courts will not question the propriety of the policies of school boards. The board has the absolute right to decline to re-employ any applicant for any reason whatsoever, or for no reason at all. The board is responsible in its actions only to the people. It is no infringement on the constitutional rights of any teacher for the board to refuse to employ him or her as a teacher, and "it is immaterial whether the reason for the refusal to employ is because the applicant is married or unmarried, is of fair complexion or dark," et cetera. The board is not bound to give reasons, as the above indicates, but is free to contract with whomsoever it chooses.

CHAPTER IV

MARRIAGE AS A GROUND FOR THE NON-APPOINTMENT OR DISMISSAL OF TEACHERS

Whether the teacher who marries should be required to step aside for the unmarried may be a debatable question. Certainly the statements by judges in the courts and boards in control of education show a wide difference of opinion in the wisdom of the various policies and practises involving married women teachers.

Statutes and regulations governing marriage. No state has a statutory provision concerning the marriage of a female teacher as affecting her future employment by a board of education.

The board may make rules governing the election and removal of its employees, including teachers.¹ And a board of education is usually clothed with broad discretionary power in formulating and maintaining proper rules and regulations. They have the effect of law within the school administration. Such board provides its own policies at will, and, so long as its rules, regulations, and policies are reasonable, the courts cannot interfere.²

¹ *Oikari v. School Dist.*, 170 Minn. 301, 212 N.W. 598, (1927).

² Dillon, *Municipal Corporations* (5 Ed.) Sec. 574.

MARRIAGE AS A BUSINESS AND THE STATE

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Whether the teacher who marries should be required to step aside for the unmarried may be a debatable question. Certainly the statements by judges in the courts and boards in control of education show a wide difference of opinion in the wisdom of the various policies and practices involving married women teachers.

Statutes and regulations governing marriage, the state

has a statutory provision concerning the marriage of a female teacher as affecting her future employment in a school of education.

The board may also regulate governing the election and

removal of its officers, including teachers, and a board

of education is usually elected with broad discretion.

power in formulating and maintaining proper rules and regu-

lations. They have the effect of law within the school

administration. Such board provided by law and

will, and, so long as its rules, regulations, and policies

are reasonable, the courts cannot interfere.

Oliver v. School Board, 114 Tex. 101, 201 S.W. 2d 101 (1937).

2. Miller, *Statutory Construction*, 2d ed., 1929, 274.

Reciting from the opinion in a recent case where the court held legal the refusal of the board to permit a teacher after marrying to perform her contract:

It is the duty of the board to promote the public interest . . . It may be that ordinarily she (the teacher who marries) can perform her duties as satisfactorily as an unmarried one. There may be special cases where it is unfortunate, in different ways, for the married teacher to cease teaching. On the other hand, many claim that marital duties interfere with that degree of regularity and devotion that is required of teachers. It is claimed that the retention of married women, who have husbands presumably able to support them, is unfair to unmarried teachers and particularly to those who are without employment. The state expends large sums of money to maintain our teachers' colleges, and, if their graduates are unemployed, it will tend to destroy incentive for proper training. The opposition to the employment of married teachers is not aimed to discourage marriage but rather to act upon the theory that it is in the public interest to dispense with the services of that class of teachers who assume new duties which tend toward the disparagement of school interest. In the instant case the board did not attempt to establish an inflexible rule, but put the matter of the continuance of employment in the discretion of the board. Rule No. 13³ is not contrary to any statute. Granting that there may be a wide difference of opinion as to the wisdom of the policy involved, the fact remains that the board has the duty and authority to establish a suitable policy, and it is apparent that, in the instant case, it exercised its discretion in good faith. We cannot say, as a matter of law, that rule No. 13 is unreasonable. It follows that it is valid.⁴

³Rule 13: "Female teachers that are single when hired and married thereafter, their contract shall be in force only at the discretion of the board after marriage."

⁴Backie v. Cromwell Consolidated School District, 186 Minn. 38, 242 N.W. 389 (1932).

Resisting from the opinion in a recent case where
the court held legal the refusal of the board to permit a
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financially able to support them, is unfair to unmarried
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maintain our teachers' colleges, and if their husbands
are unemployed, it will tend to destroy incentive for
proper training. The opposition to the employment of
married teachers is not aimed at dissuading marriage but
rather to set upon the theory that it is in the public
interest to discriminate with the marriage of both classes of
teachers who assume that duties which tend toward the
dissemination of school interests. In the instant case
the board did not attempt to establish an inflexible
rule, but one that would be the maintenance of equal-
ity in the direction of the board. . . . It is
not contrary to any statute, providing that there may be
a wide difference of opinion as to the wisdom of the
policy involved. . . . It is claimed that the board has the
duty and authority to establish a suitable policy, and
it is reasonable that, in the instant case, it exercised
its discretion in good faith. . . . It follows that the
law, that rule No. 12 is unconstitutional. It follows that the
is valid.

1915 17: "Kansas Teachers' Association v. Board of Education" and married teachers, their contract shall be in force only as the direction of the board "then exercise."
Baskie v. Board of Education, Kansas District,
188 Minn. 36, 242 N.W. 1892 (1932).

Origin of cases coming before the courts. The cases studied have mostly arisen out of board rules and resolutions on the matter of marriage of their teacher employees. Usually some expression of unfavorable attitude of the board towards employment of married women teachers is incorporated in the board's rules and regulations. This precedes the action of the board to dismiss the teacher upon her marriage or after her marriage.

The dismissal may take the form of a summary discharge during the term of service. It may be accomplished with or without a formal notice and hearing being permitted the teacher on the cause or reasons for her removal. Or there may be a failure, after the teacher marries during vacation and after her re-election, to reappoint her for the succeeding term. The board may attempt to abrogate its contract claiming infraction of its rule against marriage, or claiming that there is a 'precedent in the district not to employ a married woman teacher.'

Minutes kept by boards of education may contain statements of discriminatory rules such as, "married women shall not be eligible to positions in the district except by special resolution of the board", or, "all women teachers who marry during their term of service thereby automatically terminate their contracts."

Other causes reach the courts wherein the teacher

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brings suit under her contract, claiming damages for an unlawful dismissal, and the board is able to point to a special reservation in the written contract that "marriage renders this contract void," or, "it is agreed that the contemplated marriage of the party of the second part shall not be performed before the Christmas holidays."

The reasonableness of such rights reserved in the contract, or of marriage provisions found in by-laws and regulations set up by the boards, is usually reviewed by the courts. Sometimes it is essential to the court's determination of the case that the board rule involved be held reasonable or unreasonable. The legality of school board rules which arbitrarily exclude female teachers and applicants for teaching positions, solely on the ground of their marital status, might be questioned.

In Indiana, New York and certain other states where teachers' tenure acts have been passed, and where permanency in the teaching position may be acquired after the statutory period of service, board rules against marriage of a woman teacher employed under such a statute has been held not "a good and just cause" for her removal. The enumeration of specific statutory causes for removal is held to be exclusive, and the teacher has her protection against removal for other than the causes enumerated in the statute, i.e., protection against removal for marriage. In the absence of statutory

provision to the contrary, the courts are generally agreed that marriage is not a sufficient cause for dismissal of a permanent teacher.

There is another type of situation wherein the teacher who has married during the school term is immediately pressed by the board to tender her resignation, -- the board relying on their rule against married women teachers. The teacher, through pressure, feels compelled to sign a voluntary resignation, or abandons her contract, either method ending her employment. Such cases rarely reach the courts. They always end unfortunately for the teacher. These coercive practices are prevalent today among certain boards prejudiced against married women employees.

Review of the law of teacher dismissal in general.

The right to hire teachers and other school officials presupposes the right to dismiss them and thus end their employment. These two powers are lodged generally in the local school boards. Every contract made with a teacher includes by implication the statutory provisions for dismissal, and in the absence of statutory provisions it includes the implied power of the board to dismiss for adequate cause. Terms of a statute, whether favorable or unfavorable to the teacher, are written into her contract; and a school board will not be permitted to circumvent a statute providing for dismissal for cause only, by including in the contract the

power to dismiss arbitrarily without cause. A rule of a school board providing for the dismissal of a female teacher in case of marriage, has been held capricious and unreasonable -- and therefore invalid -- where the statute provided for dismissal for cause only.

Where a teacher has been properly dismissed, the dismissal constitutes a good defense in an action by the teacher against the board for subsequent compensation. Failure to renew a teacher's contract does not constitute dismissal of the teacher, and in such a case the statute prescribing the cause and manner for dismissal does not apply.

Proceedings for the dismissal of a teacher are frequently regulated by statute, and consequently depend on the wording of the particular statute in force. In such statutes the grounds for dismissal are generally stated in the broadest terms, but it is held that the board is limited to the grounds specified. Some statutes give absolute power of dismissal to the board, without mention of cause or procedure, so that the power is discretionary and not reviewable by the courts.

In New Mexico there is no controlling provision of the law to place restrictions upon school officers as to the form of contracts which they may make with school teachers, nor are there any restrictions upon their power

power to dismiss any teacher without cause. A rule of a
school board providing for the dismissal of a teacher without
in case of marriage, has been held unconstitutional and void.
-- and therefore invalid -- under the statute provided for
dismissal for cause only.

Where a teacher has been properly dismissed, the
dismissal constitutes a good defense in an action by the
teacher against the board for wrongful suspension. But
one to remove a teacher's name from the list of teachers
dismissed of the board, and in such a case the statute
prescribing the cause and manner for dismissal does not
apply.

Proceedings for the dismissal of a teacher are
frequently regulated by statute, and consequently subject
on the wording of the particular statute in force. In such
statutes the grounds for dismissal are generally stated in
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to the grounds specified. Some statutes give absolute
power of dismissal to the board, without mention of cause
or procedure, so that the power is discretionary and not
reviewable by the courts.

In New Mexico there is no controlling provision
of the law to place restrictions upon school officers as to
the form of contracts which they make with school
teachers, nor are there any restrictions upon their power

of removal. "In the absence of some controlling provision of law, the authority to employ teachers includes the power to dismiss." ⁵

Dismissal for marriage cases distinguished. In order to clarify the study of dismissal-for-marriage cases, a distinction must be drawn between two types; those arising under state statutes which prescribe certain causes for dismissal and where the law specifically enumerates these causes, and those arising in jurisdictions such as New Mexico where there is no controlling provision of law. The law in New Mexico is as silent on the matter of dismissal of a teacher on account of marriage as it is in regard to any other cause for a teacher's discharge save one, -- tuberculosis.⁶

A third line of reasoning is shown by courts where a woman teacher who marries is dismissed under a statute which provides for dismissal "only for good cause shown." Does marriage constitute good cause for dismissal under such a statute?

Marriage in itself not a ground for discharge. This legal principle was handed down in the famous Oregon case,

⁵State ex rel. Sittler v. Board of Education, Town of Gallup, 18 N.M. 183, 135 Pac. 96 (1913).

⁶Supra, footnote 5.

of course, in the case of the
of law, the court is not bound
to decide.

This is the first time that a court
to finally say that it is not bound
to follow the law in cases of emergency.
Under these circumstances, the court
should not be bound to follow the law
in cases of emergency, and should
be free to decide as it sees fit.
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The court should not be bound to follow
the law in cases of emergency, and
should be free to decide as it sees fit.

Richards v. District School Board,⁷ which is still considered a leading case on the subject of marriage. There a school board attempted to enforce a rule providing that the marriage of a woman teacher automatically terminated her service. The reason advanced for the rule by the board was that after marriage a woman might devote her time and attention to her home, to the neglect of her school work. The reasonableness of the rule might well be doubted, and was discussed at length by the court, which held such a board rule unreasonable. Since the Oregon statute which applied in this case provided that teachers might be dismissed only for good cause shown, the court held the dismissal of Maude Marsh Richards unlawful and granted the remedy of mandamus to reinstate her in her former position.

The illegality of the attempted dismissal was twofold, said the court, (1) in that such dismissal was ineffective for want of complaint, notice, and hearing, and (2) that Miss Marsh's marriage was not a reasonable cause for dismissal. According to the court:

It is impossible to know in advance whether the efficiency of any person will become impaired because of marriage, and a rule which assumes that all persons do become less competent because of marriage is unreasonable because such a regulation is purely arbitrary. If a teacher is just as competent and efficient after marriage, a dismissal because of marriage is capricious. If a teacher is neglectful, incompetent,

⁷ Richards v. Dist. Sch. Board, 78 Or.621, 153 Pac. 482, (1916).

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and inefficient, she ought to be discharged whether she is married or whether she is single.⁸

Actions arising under statutes which prescribe certain causes for dismissal. In West Virginia in 1914 it was held that the marriage of a female teacher after the teaching contract was made, was not ground for its revocation or her removal.⁹ Here the board had contracted orally with the teacher for her re-election, and the board minutes showed such election. The teacher sent notice of her acceptance to the president of the board. She married in August, and the president of the board informed Mr. Jameson, her husband, of "a precedent in the district not to employ any married women teachers." She was not allowed to begin teaching. The court, in ruling that she held a valid contract binding on the board, termed the contract irrevocable except for causes prescribed by statute in that state. In West Virginia the statutory causes for dismissal are "incompetency, neglect of duty, intemperance, profanity, or immorality." Since marriage is not covered by any of these, marriage after election to the teaching position is not in itself good ground for revocation by the board or abrogation of its contract.

⁸Richards v. Dist. Sch. Board, 78 Or. 621, 153 Pac. 482, (1916).

⁹Jameson v. Board of Education, 74 W. Va. 389, 81 S.E. 1126 (1914).

and that, indeed, the only way to
achieve a better world is by

working together in a spirit of

cooperation and understanding. It is

only by working together that we can

achieve the goals we have set for

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with the best of intentions, and

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In Indiana, lawyers employed by school districts formerly maintained that "marriage has been held to be a legal reason for not employing a woman teacher in the schools" of that state. But an Indiana case ¹⁰ decided since 1927, when the Teachers' Tenure Law ¹¹ was passed, proved the inaccuracy of such a statement, by enforcing the rights of three teachers. These rights arose out of this tenure law. A provision of this law granted permanent tenure to any teacher who "shall serve under contract as a teacher in any school corporation . . . for five or more successive years, and who shall . . . enter into a teacher's contract for further service with such corporation."

It was not denied by the district that these teachers were holders of indefinite contracts as public school teachers, but that their dismissal was because they were married women. Such dismissal followed a resolution adopted by the school trustees that, in the future, no married women should be employed as teachers, and that necessary steps should be taken to terminate the indefinite contracts of all married women teachers in the school corporation.

The Indiana statute provided that cancellation of an indefinite contract of a permanent teacher might be made for

¹⁰Elwood v. State ex rel. Griffin, (Ind.) 180 N.E. 471 (1932).

¹¹Chapter 97, Acts 1927, Sections 6967.1 - 6967.6 Burns' Ann. St. Supp. 1929.

incompetency, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause.¹²

The school trustees admitted that these teachers were not dismissed for any of the causes specified in the statute, but claimed their action was properly and lawfully taken under the phrase in the statute, "other good and just cause." But it was held that marriage in itself, in the absence of a statutory provision to the contrary, did not constitute such a good and just cause as was contemplated by the statute, and that the removal for such cause was improper. The defendant school district was compelled to restore the three to teaching positions and to full rights as permanent teachers. The court said:

If a teacher, after marriage, becomes inefficient, impaired in her usefulness, neglectful or otherwise incapable of performance of her duties as a teacher in a proper manner, then good reason would exist for her dismissal; but marriage in itself, does not constitute a good and just cause [under Indiana Tenure Law] for the discharge of a teacher. Marriage as an institution involves no element of wrong, but, on the contrary, is protected, encouraged, and fostered by a sound public policy.¹³

¹²Section 6967.2, supra, footnote 11.

¹³Supra, footnote 10.

The Indiana Teachers' Tenure Law passed in 1927 was repealed in 1933, and a similar law was passed applying to teachers, principals, assistant superintendents, and superintendents in school towns and school cities only.

A more recent Indiana decision made under this revised law, also in favor of the teacher, held that "a board rule forbidding marriage of a woman teacher or declaring that marriage 'must automatically terminate the contract' is not a reasonable rule." Whereas the board claimed the teacher's marriage was an act of insubordination, the court ruled otherwise:

One of the statutory 'good and just' causes is insubordination, which is defined as 'wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation.' If the rule respecting marriage is a reasonable rule then appellee's marriage was an act of insubordination and constituted good and just cause for the cancellation of her contract. But her marriage bears no relationship to her fitness or capacity to hold the position of a teacher in the public schools and discharge the duties thereof.¹⁴

Effect of the enumeration of causes for dismissal other than marriage. When the causes for dismissal are specifically mentioned in the statute, this enumeration is generally held by courts to be exclusive of other causes for

¹⁴ Kostanzer v. State, (Ind.), 180 N.E. 337 (1933).

dismissal;¹⁵ and marriage, not being enumerated, is excluded as a cause for dismissal.

The provisions of the Greater New York Charter that teachers in the public schools shall hold their positions subject only to the limitations of the act, and subject to reassignment or removal for cause after trial on charges of gross misconduct, insubordination, or general inefficiency, are exclusive; therefore a by-law of a board of education providing that if a female teacher marry, her place shall become vacant, -- is void as in conflict with the charter.¹⁶

Teachers in New Jersey enjoy permanent tenure "during good behavior and efficiency" ¹⁷ after a three year probationary period. A 1936 New Jersey decision upheld a ruling of the Commissioner of Education on marriage, the court saying "the fact that a female teacher under tenure is married does not constitute a legally sufficient reason for the dismissal of such teacher."¹⁸ Also quoting from the opinion in the same case:

¹⁵ Thompson v. Gibbs, 97 Te.. 489, 37 S.W. 277, (1896).
State v. Sinclair, 103 Kan. 480, 175 Pac. 41, (1918).

¹⁶ People v. Maxwell, 177 N.Y. 494, 69 N.E. 1092 (1904).

¹⁷ New Jersey Pub. Laws 1909, Chap. 243, and Pub. Laws 1935, Chap. 27.

¹⁸ School Dist. of Wildwood v. State Board of Ed., 116 N.J. Law 512, 185 A. 664 (1936).

There is no express provision in the statutes forbidding the employment of a married woman as a school teacher in the public schools.

By statute no principal or teacher in New Jersey shall be dismissed or subjected to reduction of salary except for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause . . . ¹⁹

Thus under this statute the court held marriage not to be a just cause for dismissal. The court agreed with the state board, who, in a prior ruling, had pointed out that these words in the tenure act must be read in conjunction with their context. This interpretation clearly implied that only a dereliction by the teacher would be the subject matter of a charge against her. But, said the court:

There is perhaps room for argument that a married woman, on account of her duties to her husband and family, is not as well qualified to perform those of a teacher in addition; but this is a matter for the Legislature.²⁰

As the law stands in New Jersey, marriage is not a sufficient cause for dismissal of its women teachers.

Actions arising under statutes which regulate the procedure for dismissal. Where the statute expressly provides that the removal or dismissal shall be made in a prescribed

¹⁹ New Jersey State Annual 1935, Sect. 185-106 a.

²⁰ Sch. Dist. of Wildwood v. State Board of Education, 116 N.J. Law 512, 185 A. 664 (1936).

There is no express provision in the
constitution regarding the employment of
school teachers in the public schools.

By statute no individual teacher
shall be dismissed or suspended from
salary except for inefficient
teaching, or other just cause.

Thus under this statute the teacher is
to be a just cause for dismissal. The
state board, who, in a prior ruling, had
these words in the statute and held that
with their consent, with the consent of
that only a suspension by the board was
matter of a private contract, and that
there is no implied contract between
teacher and school board. In the
case of a teacher dismissed for
inefficient teaching, the board is
not bound to pay the teacher for the
balance of the year.

As the law stands in this state, the

actions arising under a contract for
procedure for dismissal. Under the statute
that the removal or dismissal shall be

17
New Jersey State Manual 1911, p. 104
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N.J. Stat. at Large, 1911, c. 114, p. 144
118 N.J. Stat. at Large, 1911, c. 114, p. 144

manner, all the essential steps to be taken must be at least substantially complied with.²¹ Thus, where the statute of the District of Columbia expressly prohibited dismissal of a teacher without the written recommendation of the superintendent of schools, a board rule providing for the automatic dismissal of teachers upon marriage was declared void. A mandamus was granted against the board in favor of a teacher thus dismissed, to compel the board to restore the teacher to her former position.²²

Employment conditional upon the promise not to marry.
In *Ansorge v. Green Bay* (1929),²³ the board of education of the Wisconsin city entered into a written agreement with the teacher plaintiff for the purpose of hiring her as a teacher for the ensuing school year at a stipulated salary. Previous to the date of this contract the board had adopted a rule against the hiring of married women as teachers, except where single teachers were not available. Prior to the contract the director of the board learned that this teacher was

²¹*State v. Sinclair*, 103 Kan. 480, 175 Pac. 41 (1918).

²²*Blair v. U.S.*, 45 App. D.C. 353 (1916).

²³*Ansorge v. Green Bay*, 198 Wis. 320, 224 N.W. 119 (1929).

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contemplating marriage. Therefore, in view of the prior policy pursued by the board, a provision was inserted in the written contract as follows:

It is agreed that the contemplated marriage of the party of the second part shall not be performed before the Christmas holidays. If performed at that time the party of the second part agrees to give thirty days' notice to that effect. If not performed at that time, the party of the second part agrees that she will not be married until after the close of the school year.

In January of the school year the teacher married, and she was soon thereafter notified of her discharge. On appeal, in affirming the trial court's decision that the teacher was only entitled to salary up to the time of her dismissal, the court said:

In the employment of teachers the board must be and ordinarily is vested with a wide discretion, and when such discretion is exercised in good faith and is not contrary to law, the exercise of such discretion should not be interfered with or controlled by the courts. The action of the board does not contravene the provisions of Section 6,015 of the Statutes, which section recognizes the freedom of women to contract the same as men. Such section, so far as it is pertinent to the instant case, refers only to the right of a woman to enter into a contract, and does not restrict the board in the employment of either men or women in accordance with its views.²⁴

Again, an old Indiana decision stands for the proposition that a board may employ a teacher upon the condition that she will remain unmarried during the term. Here the teacher married before signing the contract, but did

²⁴Ansorge v. Green Bay, 198 Wis. 320, 224 N.W. 119 (1929).

not disclose the fact, for she had represented that she did not intend to marry during the school year, and the board informed her that they would not employ a married woman. It was held that the board, on discovery of the marriage, could rescind the contract.²⁵

Employment subject to rules and regulations of the board. Rules and regulations adopted by a board prior to the making of a contract of employment, which are known or ought to be known to the teacher when she enters into the contract, form part of the contract, and the teacher's employment is subject thereto. So it was held in Minnesota in 1932 that it is within the power of the board to rule that contracts of single teachers who subsequently marry, shall be voidable at the discretion of the board.²⁶ By virtue of such a rule and a contract for teaching "subject to the ruling of the board", a teacher who married could legally be dropped from service. Three judges dissented from this opinion. The court stated that, of course, where a statute expressly provides the sole grounds and methods for a discharge, it must be substantially followed, but that in Minnesota there was no such statute.

²⁵Guilford School Township v. Roberts, 28 Ind. App. 355, 62 N.E. 711 (1901).

²⁶Backie v. Cromwell Consol. Sch. Dist., (Minn.), 242 N.W. 389 (1932).

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In New York State, if a board is able to prove that its discriminatory by-law is not inconsistent with the city charter or state law, the by-law will not be over-ruled as it was in the case of *Murphy v. Maxwell*.²⁷

In December, 1931, the Maryland State Department of Education ruled that a woman teacher in the public schools of that state could not be dismissed on account of marriage. In Maryland, then, a clause in a teacher's contract reading "if a female teacher marries in any school year she will be expected to resign at the close of the school year" is in conflict with the state school law, which provides no ground for discrimination on account of sex, and does not differentiate between married and single teachers.

Effect of misrepresentation of marital status. In the case of *Guilford School Township v. Roberts*,²⁸ an unmarried woman at the time of her application for a position as teacher represented that she did not intend to marry during the school year, and was informed by the school authorities that they would not employ a married woman. The woman married, before signing the contract, but did not disclose the fact,

²⁷Appeal of *Conger v. Superintendent*. 8 State Dept. Reports 616 N.Y.

²⁸*Guilford School Township v. Roberts*, (Ind.), 62 N.E. 711 (1901).

EATONS
CORRASABLE BOND

and signed the contract in her maiden name. Here it was held that the school authorities, subsequently discovering the marriage, could rescind the contract. The non-disclosure of marriage was a species of fraud upon the school district. It was contended that "fraud could not be predicated upon acts which the party charged has a right by law to do, nor upon the non-performance of acts which by law he is not bound to do, whatever may be his motive, design, or purpose." In reply to this the court stated that the principle did not apply where one, for a consideration, agreed not to do what -- under the law, but for the agreement -- he would have had the right to do; and that the condition of the employment in this case was that the party employed was unmarried and would remain so for a limited time.

But where a married woman teacher kept the school record in her old name for the rest of the term, it was held that her discharge was unjustified under a rule of the board "that a married woman should be known by her married name on all school records." The statute provisions for dismissal of teachers were for "misconduct, incompetency, inefficiency, or inattention to duty." ²⁹

²⁹ State ex rel. Thompson v. School Directors, 179 Wis. 284, 191 N.W. 746 (1923).

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A 1936 decision by the Supreme Court of Missouri reversed the lower court's decision in a case where the teacher was single when elected but was married when she signed her contract in August. The board learned of her marriage before school opened and refused to let her begin teaching. The Supreme Court held that the district was entitled to cancellation of this contract under the principle that "no valid contract can arise out of a fraud." When the teacher, who was then married, signed her employment contract in her maiden name, she did so with knowledge of a provision in it that the contract should become void upon her marriage. Therefore, said the court, the teacher could not recover damages for an alleged breach in refusing her permission to teach. By treating the contract as a nullity, the court eliminated from discussion the enforceability of the existing rule of the board against marriage. The judgment was reversed against the teacher and her contract ordered set aside and cancelled.³⁰

Authority of board to insert in its contracts a provision against marriage. A teacher is bound to take

³⁰Taggart v. School District No. 52, Carroll County, (Mo.), 96 S.W. (2nd) 335 (1936).

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notice of all rules of the school board, which may affect the power to dismiss.³¹ An Oregon case³² recently called attention to the above principle, and ruled against the teacher who married. Here the board, under a rule adopted against married teachers, inserted the following provision in the contract: "In case the teacher under this contract . . . marries . . . said teacher agrees that this contract becomes null and void." This condition inserted in the teaching contract was held valid. The case was distinguished from the Richards case³³ because a different statute applied authorizing boards to hire and make contracts with teachers.

It is unnecessary for us to determine, but we think that the school board in a district like the defendant, is entitled, in the absence of a prohibitory statute, to act upon the theory that a woman who marries subsequently to entering into a teaching contract, will, in the very nature of things, be engrossed in her home duties to the disadvantage of the school. That was a matter particularly within the power of the board to determine, and somewhat in the matter of a legislative question, and is not for the courts.

Strong argument can be made in favor of the beneficence of the rule adopted, and also much reasoning can

³¹56 Corpus Juris 399.

³²Hendryx v. School District N. 4, Lane County, 35 Pac. (2nd) 235 (1934).

³³Richards v. District School Board, 78 Or. 621, 153 Pac. 482, (1916).

be displayed in favor of a contrary view, and this, we think, results that in the exercise of its discretion, the board may adopt and insert in a teacher's contract such a provision against marriage.

Where a teacher has been furnished with rules and regulations of the board or has actual knowledge of such rules, they are a part of her contract. And so it was held in Missouri in 1935 that a teacher, who has actual knowledge of the rule against marriage and violates it, cannot complain that the rules and regulations were not furnished her by the board. The evidence, the court said, "held to show the teacher had actual knowledge before her marriage that the school board had adopted a rule that no married women would be employed." She was not allowed to recover her salary.³⁴

Abandonment by teacher or breach by board. Thirty years ago a New York State teacher, who, after her marriage, had resigned her position on the assurance of the principal of the school and of the district superintendent that, because of the by-law, it would be necessary for her to do so, applied for a writ of mandamus against the board of education. She asked for reinstatement on the ground that her resignation was not her own free act, but was obtained by fraud and duress. This was the ruling even though the by-law was afterwards

³⁴Strayhorn v. Blodgett Consolidated School District No. 35 of Scott County, 86 S.W. (2nd) 374, (1935).

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declared by the court to be invalid.³⁵

But an offer to teach, after marrying, until the end of the term is not a resignation from the position at that time.³⁶ The resignation, to be effective, must be offered by the teacher as her resignation. As to the propriety of her act of notifying the board the court said: "It was very proper to give notice to the trustees, not only of her contemplated marriage, but of her intention to continue teaching until the end of the year, as otherwise they might have been in doubt on that subject."

A recent Missouri decision³⁷ saved the school district from liability for breach of a teaching contract, where the evidence supported a finding that the school teacher, whose marriage violated the school regulations voluntarily abandoned her contract. The evidence indicated that the teacher's attorney had informed her that the school board had no authority to prevent her from teaching, notwithstanding her marriage in violation of the board's restrictive regulation. The teacher soon gave up her desk and went to her home town.

³⁵ Matter of Grendon 114 App. Div. 757, 100 N.Y.S. 253.

³⁶ Underwood v. Prince George's County School, 103 Md. 181, 63 A. 221, (1906).

³⁷ Bynington v. School District of Joplin, 30 S.W. (2nd) 621 (1930).

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Some time later she wrote to the school board offering to perform her contract, but she did not appear in person again at the school. The Missouri statute provides that school boards shall have no power to dismiss teachers. In denying the application of the teacher the court said:

I do not think that the record shows that any duress or coercion was exercised in order to induce her to resign. It is well known that it was a common custom of married teachers to resign upon their marriage, in obedience to the by-laws, and voluntary obedience to the by-laws, rules, and regulations, whether lawful or otherwise cannot be regarded as duress in a legal sense.

Absence on account of childbirth. The case of *People v. Peixotto*³⁸ came under the Civil Service Statute for Greater New York which provides: "Teachers shall continue to hold their positions subject only to the limitations of statute and removal for cause." It further provides that absence may be excused for serious personal illness. Under this statute a teacher is employed in continual service from year to year. If a teacher is seriously ill she is excused and substitutes are provided. In that case the plaintiff, a married woman, had been teaching in New York schools for eighteen years, paying into the teachers' pension fund her pro rata assessment. The court held that since the law provided that teachers should hold their positions subject

³⁸ *Peixotto v. Board of Educ.*, 144 N.Y.S. 87 (1913).

Some results of the work of the school are shown in the following table. The table shows the results of the work of the school in the various subjects. The table is divided into two parts. The first part shows the results of the work of the school in the various subjects. The second part shows the results of the work of the school in the various subjects.

Subject	Results
Mathematics	...
Science	...
History	...
Geography	...
English	...
Physical Education	...
Art	...
Music	...

The table shows the results of the work of the school in the various subjects. The table is divided into two parts. The first part shows the results of the work of the school in the various subjects. The second part shows the results of the work of the school in the various subjects.

only to the limitation of the statute and were excused for serious personal illness, the birth of a child under the circumstances was not a cause for dismissal. This case, on appeal, was reversed for lack of jurisdiction,³⁹ the court however, saying: "It seems that while the board is vested with the authority to excuse a teacher absent on the ground of illness, it may in some circumstances, find that absence for alleged illness constitutes neglect of duty"⁴⁰ justifying a discharge.

But in North Dakota where there is no such statute as the one governing the Peixotto Case the court ruled adversely to the married teacher absenting herself for birth of a child. The teacher's contract being one for personal service for the entire school term, the board were excused from allowing her to go on after she quit on January 18th and did not reappear until March 17th. A new teacher had been elected meanwhile and the board were not bound by her alleged agreement with the school board president to get her a substitute.⁴¹

³⁹ Peixotto v. Board of Educ., City N.Y. 160 App. Div. 557, 145 N.Y.S. 853 (1914).

⁴⁰ Auran v. Mentor School District No. 1 of Divide Co. 233 N.W. 644, (1930).

⁴¹ Supra, footnote 40.

Recent cases in England. In England the power of educational authorities to remove women teachers who are married has been sustained in recent cases.

By the English Education Act, the local educational authority is charged with the duty "to maintain and keep efficient all public elementary schools within their area." ⁴² Local authority is granted full discretion in the appointment and removal of teachers, who are expressly declared "to hold office during the pleasure of the authority." And so the authority has power to dismiss a teacher on the ground of her marriage.⁴³ The discharge of a teacher by the local educational authority must be, however, an honest exercise of its discretion and motivated by an intention of discharging its statutory duties of maintaining educational efficiency in the schools.

The discharge of married teachers, in one case, was to make room for unmarried teachers, and the court held such action under the circumstances of the case "to be motivated by an intention to promote educational efficiency in the schools."⁴⁴

⁴² English Education Act, Par. 3, 148, (1921).

⁴³ Short v. Poole, 1 Ch. (Eng.) 66, 95 L.J. Ch. N.S. 110, (1926).

⁴⁴ Pennell v. East Ham County Borough 1 Ch. (Eng.) 641, 95 L.J. Ch. N.S., 119, (1926).

In one case a woman was given notice to terminate her teaching, after the board determined that her husband was able to support her. The reasons given by the education committee for their action were that they considered that the duty of a married woman was primarily to look after her domestic concerns, and that they regarded it as impossible for her to do so and act effectively and satisfactorily as a teacher at the same time. They also ruled it unfair to the large number of unmarried teachers who were seeking positions that the positions should be occupied by married women, who presumably had husbands capable of maintaining them.⁴⁵ The courts in England generally refuse to interfere with such removals of married teachers. They overrule all arguments that these removals are illegal, or that the action is against public policy and is in restraint of marriage. To quote one judge:

It would, in my opinion, be pressing public policy to intolerable lengths to hold that it was outraged by this authority expressing a preference for unmarried women over married women as teachers, in view of the fact that the services of the latter are frequently not continuous, but are liable to be interrupted by absences extending over several months.⁴⁶

⁴⁵Fennell v. East Ham County Borough 1 Ch. (England) 641, 95 L.J. Ch. N.S. 119, (1926).

⁴⁶Price v. Rhondda Urban Council 2 Ch. (England) 372, 93 L.J. Ch. N.S. 1 (1923).

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Summary of disposition of married teacher cases.

The application of these precedents is limited. In about forty of the states, the courts have not tested the validity of board regulations discriminating against married women. Nor has the power of the board to terminate a woman teacher's services on account of marriage been contested in the appellate courts of the majority of the states. Table I shows the location and final disposition of cases studied, and indicates whether the decision was favorable or unfavorable to the woman teacher involved.

This table is included to indicate which way the balance of weight of the legal opinion on the question seems to fall, and to indicate some measure of the chances of success the woman teacher might expect if she goes to court on her contract of employment entangled by marriage. Let the reader comprehend, however, that one can never validly weigh one court case against another in this manner, even though the cases are based on identical facts and legal principles. Assuming the decisions to be of equal weight for the sake of arriving at some determination in the matter, it appears the married woman teacher has had less than 40 per cent success in court in the past.

TABLE I
ANALYSIS OF APPELLATE COURT DECISIONS INVOLVING
MARRIED WOMEN TEACHERS' RIGHTS

Origin of court case	Total number of cases	Decision by appellate court	
		Favorable to teacher	Adverse to teacher
Dist. of Columbia	1	1	
England	3		3
Indiana	3	2	1
Maryland	1	1	
Minnesota	1		1
Missouri	3		3
New Jersey	1	1	
New York	4	1	3
North Dakota	1		1
Oregon	2	1	1
South Carolina	1		1
West Virginia	1	1	
Wisconsin	2	1	1
Total cases	24	9	15
Per cent of cases		37.5	62.5

UNITED STATES DEPARTMENT OF AGRICULTURE

BUREAU OF PLANT INDUSTRY

Name of Plant	Number of Plants	Value of Product
Cotton	1,000,000	\$10,000,000
Wool	500,000	\$5,000,000
Hemp	200,000	\$2,000,000
Flax	100,000	\$1,000,000
Silk	50,000	\$500,000
Linen	30,000	\$300,000
Jute	20,000	\$200,000
Kemp	10,000	\$100,000
Ramo	5,000	\$50,000
Totals	1,880,000	\$18,800,000

Summary of principles. As a guide to the non-legally trained boards, administrators, and interested teachers, these general legal principles in married teacher employment follow:

1. No state to date has legislated with reference to the employment of married women teachers.

2. Marriage of a woman teacher is not, in itself, grounds for discharge, in the absence of statutory provision to the contrary.

3. In those states whose statutes give specific causes for dismissal as "immorality," "gross misconduct," and the like, courts have held that a board has no power to reserve the right to dismiss for any other than statutory reason, and that marriage is not a cause for dismissal.

4. Teachers under permanent tenure by statutory enactment are protected against school board rules providing for termination of service on account of marriage.

5. In the absence of limitations by statute law, a board can, in employing teachers, determine its own policies on marital status of women.

6. Where there is a clause in the school law to the effect that the board has the right to dismiss "whenever in their opinion the interests of the school requires it," usually the board may dismiss on a specified notice for cause, including marriage.

7. In the absence of statutory provision to the contrary, a by-law, reservation in the contract, or board rule to dismiss a woman teacher on account of marriage may be legally enforced.

8. A board may employ a woman teacher upon the condition that she will remain unmarried during the term.

9. If a woman teacher misrepresents marital status because of a rule against employing married women in order to procure employment, such misrepresentation constitutes fraud.

1. The first of the three main points of the report is that the Commission has found that the Government has failed to provide adequate protection for the rights of the individual. This is a serious failure, and it is the duty of the Government to rectify this situation as soon as possible.

2. The second point is that the Commission has found that the Government has failed to provide adequate protection for the rights of the individual. This is a serious failure, and it is the duty of the Government to rectify this situation as soon as possible.

3. The third point is that the Commission has found that the Government has failed to provide adequate protection for the rights of the individual. This is a serious failure, and it is the duty of the Government to rectify this situation as soon as possible.

CHAPTER V

POLITICAL RIGHTS OF TEACHERS; LEGAL EFFECT OF TEACHERS' OATHS AND LIKE RESTRICTIONS

A reasonable attitude might be taken by the general public today that school teachers are not to be denied free speech, or a reasonable amount of activity in all public affairs. Courts concur in this opinion.¹

Recent legislative trends affecting teachers' freedom are particularly significant. Analysis will be made in this chapter of statutes popularly known as teacher oath laws, the "little Red Rider"² in the District of Columbia, and certain teacher dismissal cases the decisions of which were controlled by such legislation.

A brief survey of the general right of a board of education to dismiss a teacher for political activity will be made first.

¹Gardner v. North Little Rock School District, (Ark.) 257 S.W. 73 (1924).

²So called because it rode through the United States Congress on an appropriation bill which became law June 14, 1935, (Public No. 138). The provision known as the "Little Red Rider" reads as follows: "That hereafter no part of any appropriation for the public schools shall be available for the payment of the salary of any person teaching or advocating Communism." This law applies to all public school teachers in the District of Columbia.

Political activity in the classroom. One case alone is cited as evidence that political activity of a certain type and degree in the classroom may not be condoned by the board of control. Here a California teacher advocated before his high school class the election of a particular candidate for county superintendent. The highest court of the state ruled such action was unprofessional conduct warranting the teacher's suspension, and his legal dismissal was therefore authorized. The reasons the court gave are found in this

statement extracted from the opinion:

It is to be observed that the advocacy before the scholars of a public school by a teacher of the election of a particular candidate for a public office -- the attempt thus to influence support of such candidate by the pupils and through them by their parents -- introduces into the school questions wholly foreign to its purposes and objects; that such conduct can have no other effect than to stir up strife among the students over a contest for a political office, and the result of this would inevitably be to disrupt the required discipline of a public school. Such conduct certainly is in contravention not only of the spirit of the laws governing the public school system but of that essential policy according to which the public school system should be maintained in order that it may subserve in the highest degree its purposes.⁴

³Goldsmith v. Board of Education, (Cal. App.) 225 Pac. 783 (1924).

⁴Supra, footnote 3.

Political activity in general. In holding that the discharge of a superintendent of schools for alleged insubordination and political activities was wrongful, the Supreme Court of Arkansas says:

It is difficult to draw a line of demarcation between the political rights of a school teacher, or others engaged in educational work, with respect to activity in politics. Certainly they are not denied the right of free speech or the right to a reasonable amount of activity in all public affairs. There is, however, a limit to such an extent that their usefulness in the work for which they are employed shall not be impaired. Their zeal in political activity must not carry them to such a degree of offensive partisanship that their usefulness in educational work is impaired or proves a detriment to the school interests affected by their service. It does not appear to us that the evidence in this case shows any such overzeal or activity on the part of the plaintiff.⁵

In Oregon, teachers may not be legally dismissed for soliciting votes for school elections.⁶

A county board cannot adopt rules precluding a teacher from securing a position because of active support of a candidate for office of sub-district trustee.⁷ In Arkansas it was held that a school district is not warranted in discharging a teacher before his contract expired because of a rumor that he intended to run for county superintendent.⁸

⁵ Gardner v. North Little Rock School District, (Ark.), 257 S.W. 73 (1924).

⁶ Stoddard v. Board et al., (Or.) 12 Pac. (2d) 309 (1932).

⁷ Bd. of Educ. of Logan Co., v. Akers, 47 S.W.(2d)1047 (1932).

⁸ Watkins v. Spec. School Dist. of Lepanto, (Ark.) 194 S.W. 32 (1917).

Teachers' oath laws in general. During 1935, teachers' oath bills were introduced in the legislatures of sixteen states. They were defeated by legislative action in Connecticut, Florida, Pennsylvania, Wisconsin, Illinois, Iowa and Kansas. They were vetoed by governors in Delaware and Maryland. An unsuccessful attempt was made in the national House of Representatives to pass a resolution calling on the states to enact these laws. The states which passed laws requiring teachers to swear an oath to support the Constitution were: Arizona, Georgia, Massachusetts, Michigan, New Jersey, Texas, and Vermont. The addition of this group brings the number of states with statutes of this kind up to twenty. Of this number, six states passed such bills in the first two post-war years, 1919-1921, and six more states passed such laws in 1931. In addition to the twenty states, there is in the District of Columbia a requirement of both an oath and a pledge not to teach or advocate Communism.

Ten of these laws cover teachers in private and parochial schools as well as public schools, and four of them apply to aliens as well as citizens. In Arizona and Georgia they affect aliens; in Massachusetts, Michigan, and Vermont, the statutes affect not only teachers in public schools but those in private and parochial schools as well. Michigan, in a unique manner, so enlarged the scope of their oath law in 1936 that students of state institutions are compelled to take the oath.

Typical oath law statutes. The simplest oath required of teachers, found in South Dakota and Vermont, is a pledge to support the United States Constitution and the constitution of the state. The South Dakota oath reads:

I do solemnly swear (or affirm) that I am a citizen of the United States and that I will support the Constitution of the United States and the Constitution of the State of South Dakota.

By law, then, in South Dakota no teacher shall be employed unless such an oath is administered either before certification or at time of employment. In the latter case, the oath shall be attached to and become part of the contract of employment.⁹ The South Dakota law makes no mention of aliens; but the Vermont oath law broadly provides that the oath not be required of those who are citizens of a foreign country.¹⁰

While no penalty is provided by South Dakota laws for those violating the oath after they have begun to teach, yet presumably any one convicted of violating his oath could be removed by the local board. This follows since South Dakota has no tenure plan for its teachers and non-tenure teachers may be summarily discharged for a breach of contract, which would be the case where a teacher violated an oath written into the contract.

⁹Section 227, South Dakota Laws, 1921.

¹⁰Section 4236, Vermont Statutes 1935.

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Colorado, Texas, Oklahoma and Arizona border New Mexico on the north, south, east, and west. Each of these states has a mandatory oath law. Typical of these oaths is the Teachers' Oath of Allegiance in Colorado, which reads as follows:

I solemnly swear or affirm that I will support the Constitution of the State of Colorado and of the United States of America and the laws of the State of Colorado and of the United States, and will teach, by precept and example, respect for the flags of the United States and the State of Colorado, reverence for law and order and undivided allegiance to the government of one country, the United States of America.¹¹

The sustaining law in Colorado also provides that an administrative officer permitting a teacher to enter upon his duties without taking an oath may be fined not more than \$100 or imprisoned for not more than six months, or both.¹² Apparently those who have written the laws requiring teachers to take an oath of allegiance centered their attention upon those applying for state certificates, or preparing to sign contracts, or about to enter their duties. No law provides a penalty for those violating their oath after beginning to teach except in the District of Columbia.

¹¹ Colorado Laws 1921, Section 8441.

¹² Colorado Laws 1921, Section 8443.

This is the first of a series of reports
Mexico on the subject of the
status and conditions of the
the territory of the United States
as follows:

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territory of the United States
and the sixteenth report is on the
territory of the United States

In addition to the pledge "to support" the federal and state constitutions, Texas and Arizona require teachers to swear "to defend" the Constitution. The Arizona teacher must subscribe as follows:

I _____ do solemnly swear that I will support the Constitution of the United States and the Constitution and law of the state of Arizona; that I will true faith and allegiance bear to the same, and defend them against all enemies whatsoever, and that I will faithfully and impartially discharge the duties of _____ according to the best of my ability, so help me God. ¹³

The Arizona law similar to most oath statutes, does not mention specifically the status of foreign teachers. No test case of the constitutionality of the Arizona requirement of an oath of alien teachers has yet been made. The American Civil Liberties Union has offered to furnish without charge the necessary legal services when such an oath law as Arizona enacted affects an alien teacher. Strictly interpreted, the law would probably prevent the employment or payment of a foreign citizen who did not take the required teachers' oath.

Oklahoma requires of teachers the customary oath of office and a pledge of loyalty in addition. The law makes the oath a definite part of the contract and the teacher presumably makes a pledge each year. One teacher case reached the appellate court where the jurat of the officer administering

¹³ This is the text of the oath of office prescribed for public office in 1901, and required of Arizona teachers in 1935.

the oath had not been attached, but the court permitted the error to be corrected at time of trial, and the teacher lost nothing thereby.

Teacher dismissal under the Michigan oath law. In an unsuccessful suit by four teachers for the Royal Oak Township School in 1935, for breach of their teaching contracts, the following facts appeared.¹⁴ The four teachers had taught the 1931-32 term under contract and had taken the statutory oath. In signing new contracts for the year to begin in September, 1932, no oath of allegiance was attached. Before starting to teach in the fall, oral oaths were administered to the teachers by the superintendent. In January, 1933, the teachers were notified by the board that, owing to a shortage of funds necessitating curtailment of salaries and teaching force, their services were not acceptable after January 20th. The dismissed teachers brought suit for their salaries. On appeal, the board successfully contended that such dismissal was not wrongful; that the written contracts were illegal and void because they did not contain the oath of allegiance. The court reviewed the controlling law in this language:

¹⁴ *Sauder v. District Board*, (Mich.) 261 N.W. 66, (1935).

the other hand, the fact that the
error to be corrected is the same, and the
nothing to be done.

There is a great deal of work to be done
in the future, and it is not possible to
do it all at once.

It is not possible to do it all at once,
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It is not possible to do it all at once,
and it is not possible to do it all at once.

Acts No. 19, Public Acts 1931 reads as follows:
"At the time of signing of said contract and any renewal thereof each teacher shall make and subscribe the following oath or affirmation. 'I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of the state of Michigan, and that I will faithfully discharge the duties of the office of teacher according to the best of my ability,' which shall be embodied in and made a part of said contract."

The court held the provisions of the oath statute mandatory, and hence contracts which did not comply with it strictly were void and hence the teachers could not recover. Said the court:

The purpose of the enactment of this legislation was to make certain that teachers coming in contact with youth were such as believe in the Constitution and principles of government in our state and nation. Whether or not this sort of legislation is desirable and needful is a matter for the legislative branch of our government to concern itself with. The province of the court in the instant case is to construe the Act.¹⁵

Thus by a strict mandatory construction of an oath provision, the school district was saved several hundred dollars at the expense of the dismissed teachers who were replaced immediately by others at much lower salaries.

¹⁵ *Sauder v. District Board*, (Mich.), 261 N.W. 66 (1935).

At the time of the investigation, the following information was obtained from the files of the United States Department of the Interior, Bureau of Land Management, regarding the land in question:

The land in question was acquired by the United States Government in 1900, and was then transferred to the Bureau of Land Management. It was then transferred to the Bureau of Reclamation in 1917, and was then transferred to the Bureau of Indian Affairs in 1934.

The land in question was then transferred to the Bureau of Reclamation in 1917, and was then transferred to the Bureau of Indian Affairs in 1934. It was then transferred to the Bureau of Reclamation in 1917, and was then transferred to the Bureau of Indian Affairs in 1934.

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(1935)

CHAPTER VI

SUMMARY OF GUIDING LEGAL PRINCIPLES

1. An officer is distinguished from an employee in the greater importance, dignity, and independence of position; in the requirement of an oath, bond, more enduring tenure, and facts of duties being prescribed by law.

2. The position of teacher in a public school is not an 'office' but an 'employment.' Teachers, as public employees rather than as officers, exercise no governmental powers but are restricted to their contractual rights, and are always subject, in the performance of their duties, to the direction of the school officers.

3. School districts have the power, subject to statutory restrictions, to employ the teachers and other employees necessary to effectuate the purpose of maintaining efficient schools.

4. No one has an inherent right to teach in a public school. Even a license to teach is revocable.

5. Eligible teachers are those who have met the requirements of statutes and regulations of the employing board as to age, health, certificate, etc.

6. One cannot be a school officer and teacher at the same time; the two positions have incompatible duties.

7. Disabling statutes disqualifying relatives of board members to teach will be construed strictly.

8. The teacher contracting with a school board is legally bound to know the extent of its authority to make such contract.

9. Ignorance of the law excuses no one, not even a teacher. Ignorance of the provisions of the contract made with the board does not affect the board's authority to dismiss the teacher under the provisions of such contract.

10. Generally, the school district can be bound only by the formal acts of its governing board, convened in a meeting duly called for the purpose of hiring teachers, and not by informal discussion or by the acts of the board members acting as individuals.

11. The teacher's contract must contain a valid offer and acceptance and meet any statutory requirements. A valid contract must be mutual, certain, definite and free from fraud and illegality.

12. In many states teachers' contracts must be in writing; in the absence of a specific requirement by law that contracts with teachers be in writing, an oral contract is valid and enforceable.

13. Where oral contracts are invalid, no recovery can be had on such by the teacher, in an action for breach of contract.

14. A contract of employment made by the board or a majority of its members in an irregular or unauthorized manner may be ratified when the board has the original power and authority to enter into a contract; but a contract void in the beginning from want of power on the part of the district to make it, cannot be ratified.

15. Boards authorized to select and appoint teachers have a broad discretion in passing upon the fitness of applicants; unless abused, the exercise of this discretionary power will not be reviewed by the courts.

16. Unless restricted by law, the employing board may disregard questions as to religious belief of applicants, may express preference for a man over a woman teacher, or may take into consideration the affiliation with labor organizations.

17. The Constitution prohibits sectarian teaching in the public schools.

18. Courts are not in agreement as to what constitutes sectarianism in the schools. According to one view, the mere wearing of a distinctly religious costume by a teacher, and its influence, is sectarian teaching which the law prohibits, without actual teaching of any particular doctrine. The minority view is that the wearing of a religious garb is not such sectarian teaching which the law prohibits.

19. The legal objection to Catholic sisters teaching in the public schools is that, by wearing their distinctive ecclesiastical robes, they are necessarily at all times asserting their membership in a particular church, and in a religious order within that church, and the subjection of their lives to the discretion of its officers. Furthermore, public money may not be used to support sectarian institutions, which is the ultimate result in event such ecclesiastical persons transfer their salaries to their order.

20. There is conflicting authority on whether a board may pass a resolution making members of teachers' associations or unions ineligible for appointment as teachers. In some jurisdictions such a resolution is held to be discriminatory and void; in others it is held within the lawful power of the board, at least with respect to future appointments.

21. Teachers under permanent tenure by statutory enactment are protected against school board rules providing for termination of services on account of marriage.

22. In the absence of statutory provisions to the contrary, marriage of a woman teacher is not, in itself, grounds for discharge.

23. Within statutory limitations, a school board can determine its own policy in regard to employment of married women teachers.

24. Where a statute specifies the causes for which a teacher may be dismissed, a board rule setting up marriage as an additional cause for dismissal is not valid.

25. In the absence of a statutory provision to the contrary, a board rule or reservation in the contract to dismiss a woman teacher on account of marriage may be legally enforced.

26. Misrepresentation of marital status on account of a rule against the employment of married teachers constitutes fraud.

27. Courts assume that teachers are not to be denied free speech or a reasonable amount of activity in all public affairs.

28. Political activity in the classroom to the point of advocating a particular candidate for public office is unprofessional conduct on the part of a teacher for which such teacher may be legally discharged.

29. Zeal in political activity must not carry teachers to such a degree of offensive partisanship that their educational usefulness is impaired or the school interests are detrimentally affected.

30. In subordination and political activity on the part of a principal, justifying his discharge, is not sufficiently established merely by evidence of persistent advocacy of his school policies and plans, without

24. The first of these is the fact that the law is not a mere collection of rules, but a system of principles which guide the judge in the application of the law to the facts of the case. The second is the fact that the law is not a mere collection of rules, but a system of principles which guide the judge in the application of the law to the facts of the case. The third is the fact that the law is not a mere collection of rules, but a system of principles which guide the judge in the application of the law to the facts of the case.

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30. The seventh of these is the fact that the law is not a mere collection of rules, but a system of principles which guide the judge in the application of the law to the facts of the case. The eighth is the fact that the law is not a mere collection of rules, but a system of principles which guide the judge in the application of the law to the facts of the case.

disrespect or personally offensive conduct toward members of the board.

31. Oath laws operate as a positive restriction on the contract rights of a teacher. Presumably one convicted of violating the oath could be removed by the employing board.

32. Courts construe the statutory provisions for teachers' oaths as mandatory requirements. Where a teacher violates an oath written into the contract, such teacher may be summarily discharged for breach of contract. Where the law specifies the written contracts shall contain the oath of allegiance, contracts not so complying are null and void.

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disregard of personal appearance and dress
of the party.

11. When taken on a party, the
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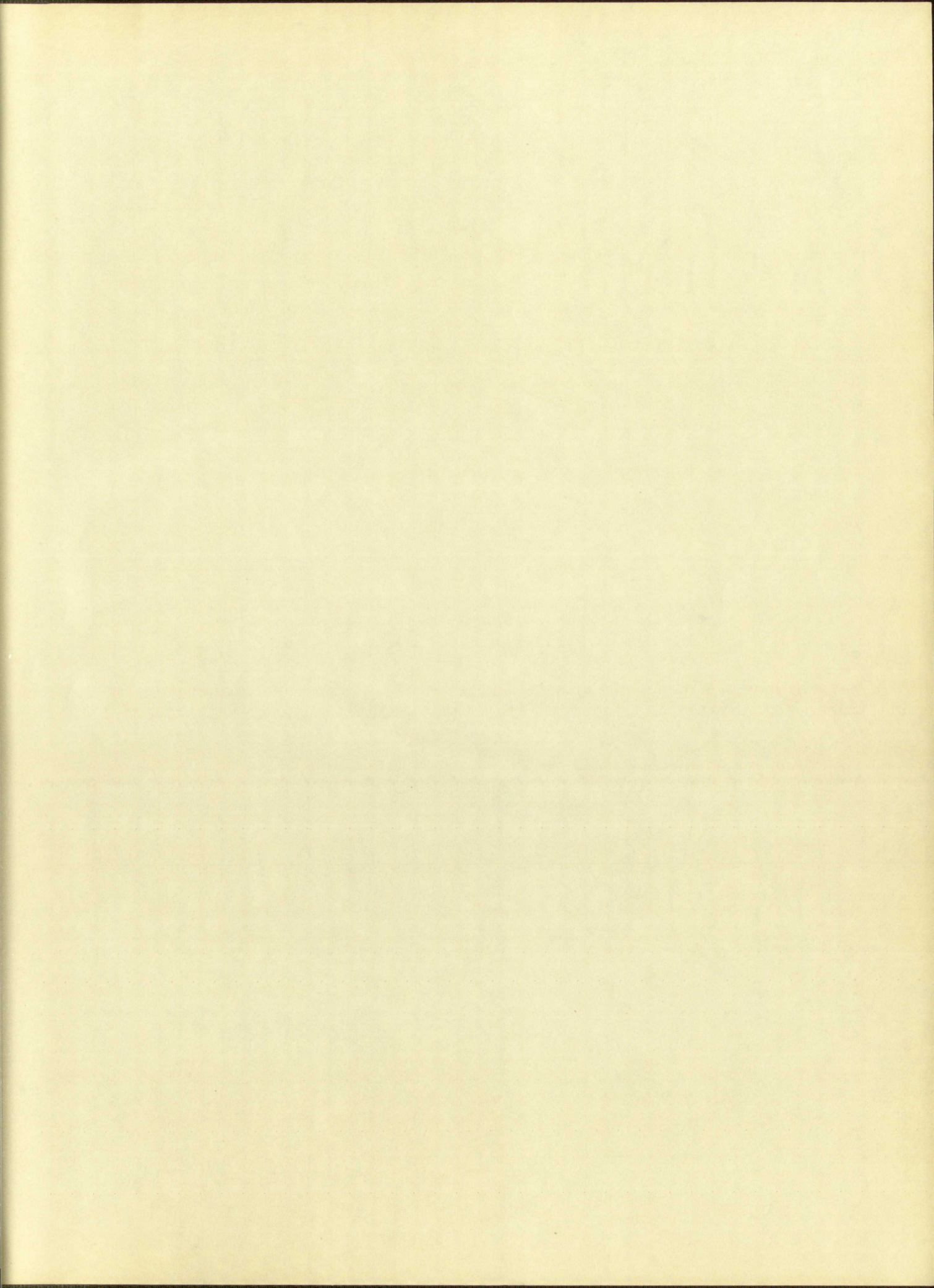
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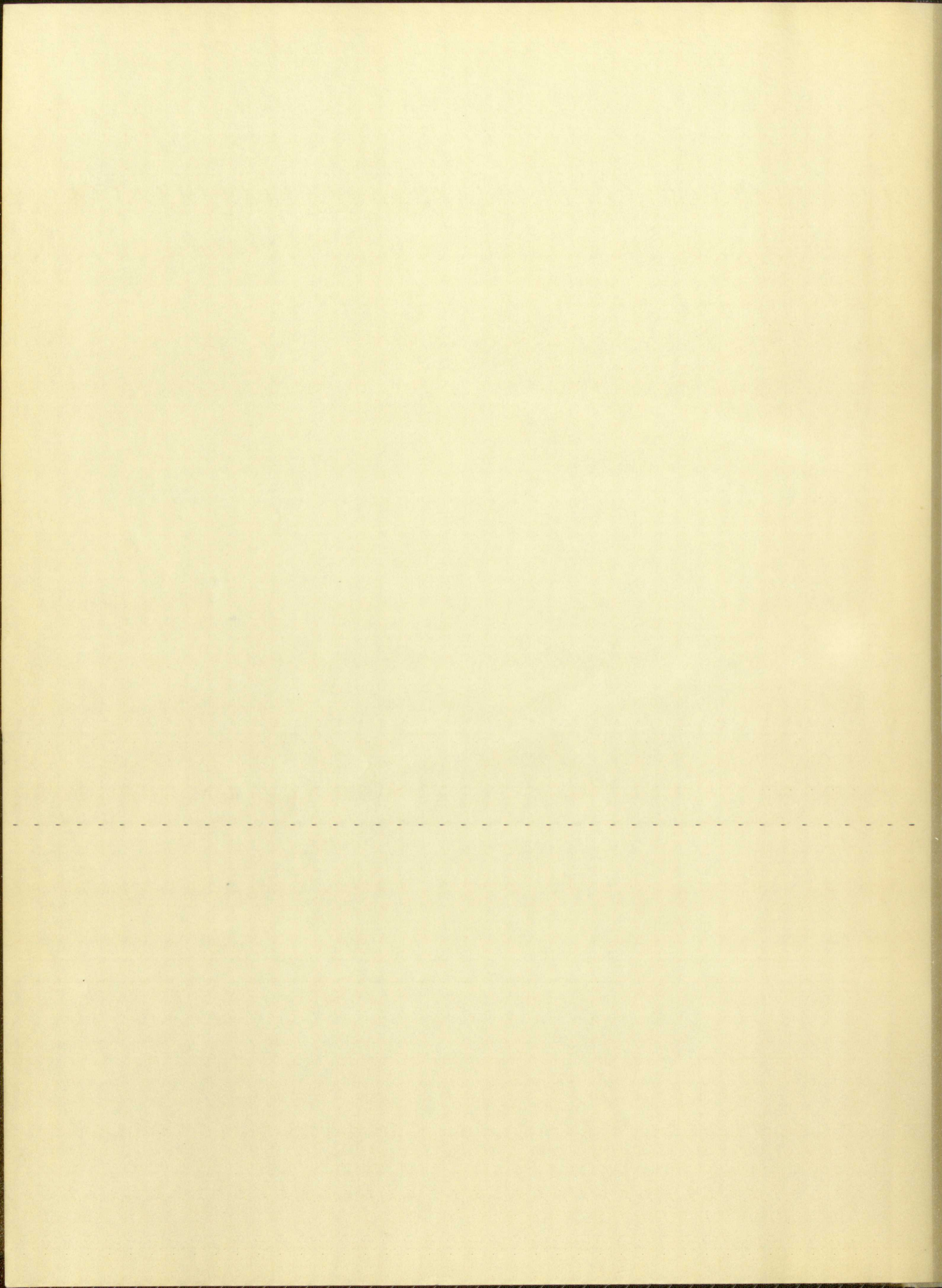
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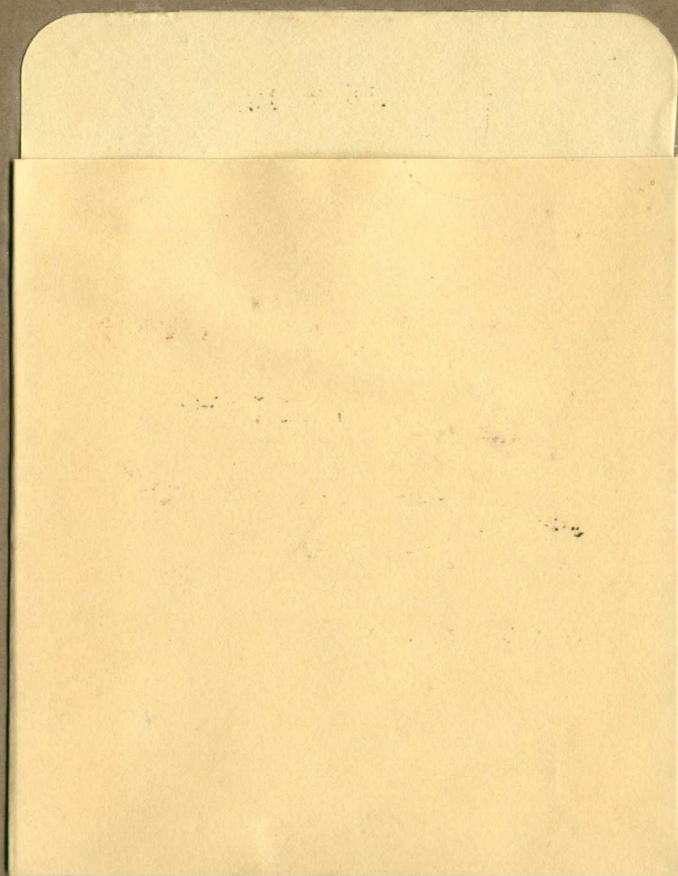




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