PUBLIC INSTRUCTION, DEPARTMENT OF: Teacher's contracts validity of for three-year term in consolidated school corporations.

April 26, 1939.

Hon. Floyd I. McMurray,
Superintendent of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the contract of a high school principal of Linton-Stockton Joint High School with the trustees of the joint corporation. It is not so stated in your letter but I assume that the joint school corporation is a consolidation of a city or town and a township for the purpose of operating the high school.

There are a number of methods for effecting such a consolidation and it would have been desirable to have a more detailed statement as to the method used in this case. However, it is evident that the township trustee is ex officio a member of the board of trustees of the joint school corporation and that he acts with other trustees chosen according to the method prescribed under the particular act under which the consolidation has been made.

You state that the contract involved was entered into with the principal for a term of three years but that since the change in the occupant of the office of township trustee, the present township trustee, who is the secretary of the board, refuses to sign warrants for the purpose of paying the principal, it being claimed by him that the contract is illegal. Your letter does not state what is claimed to be illegal about the contract, but I assume the question involved is the right of the board of trustees to enter into a contract with the principal for a term of three years.

In the case of Moon v. School City of South Bend, 50 Ind. App. 251, a contract entered into by the board of trustees of the School City of South Bend with the appellant for a term of three years was upheld. In that case, on page 255, the court quoted from the earlier case of Reubelt v. School Town of Noblesville (1886), 106 Ind. 478, as follows:

"The authority of the board of school trustees to employ teachers, and a superintendent of the schools
in the town or city, is given in general terms, just as
the authority to make other contracts is given. * * *

"It may be that instances will occur when the au-
thority to employ teachers and superintendents in
advance of the incoming of a new member of the board
may be abused, but the possibility is not very great,
as but one member goes out at a time. But the fact that
the authority may be abused, is not a sufficient reason
for holding that it does not exist. On the other hand,
desirable teachers and superintendents might be lost
to the schools, if the board were not authorized to em-
ploy them until after the election in June." * * *

Later, on page 256, the court said:

"In so far as our legislature has indicated any
policy, it is to leave the term of the employment of
city school superintendents to the sound discretion and
judgment of the school trustees."

Again, on page 257, the court says that:

"The decided weight of authority outside our own
State is to the effect that such contracts are not against
public policy."

Finally concluding the discussion, the court says on page
257:

"* * * the possibility of abuse, as stated in several
of the cases already cited, does not give a sufficient
reason for denying the authority to make such contract
under a statute conferring the power so to do, with-
out limitation, nor does it show that such contracts are
against public policy."

It should be remembered that the rule as applied to city
schools is not quite the same as the rule as applied to town-
ship schools. An example is found in the fact that as applied
to school townships it is made unlawful for a township trus-
tee to contract with a teacher to teach in any common school
if the actual term of service of such teacher under such con-
tract does not begin before the expiration of the term of
office of such trustee (Burns Indiana Statutes Annotated
(1933), section 28-4301); and likewise all contracts made in
violation of the Township Reform Act of 1899 are null and
void. Burns Indiana Statutes Annotated (1933), section 65-321. See in this connection Mitcheltree School Township v. Baker, 53 Ind. App. 472. Likewise, as to contracts made by the board of county commissioners or officers, agents or employees of counties, it is expressly provided that in such case they cannot bind the count by any contract beyond the amount of money already appropriated for the purpose. Burns Indiana Statutes Annotated (1933), section 26-525.

However, I do not find a similar provision rendering contracts made by school cities with teachers void upon similar grounds. It is, of course, true that no payment can be made in the absence of an appropriation, but, as I understand your letter, that is not the point here involved. If it is, then the answer is simple. There can be no payment in the absence of an appropriation.

Consolidated school corporations are neither city, town nor township school corporations, although in their government they more closely resemble town corporations. It is sufficient, however, to point out that the schools of such corporations are not township schools. The statutes with reference to the authority of a township trustee acting for a township, therefore, would not, in my opinion, apply in the case of a consolidated school corporation consolidating the schools of a city and town and a township. In such a case the trustee acts ex-officio as a member of the joint board and not strictly as the township trustee. The limitations upon the township trustee as heretofore set out would not apply, therefore, to his action as a member of the joint board.

Unless there is something other than the length of term of the contract involved in the case submitted by you, I am of the opinion that such contract would not be invalid, but its enforcibility would be conditioned upon the existence of an appropriation out of which the amount agreed to be paid could be paid.