128.28 APPOINTMENT OF OFFICIALS AND ASSISTANTS

Where the legislature appropriated money for vocational training of disabled persons even though the federal funds would not match the state funds, the division of vocational rehabilitation may expend the state funds for rehabilitation over and above the amount necessary to match federal funds. OAG Nov. 16, 1951 (9-A-13).

128.29 STATE TREASURER, CUSTODIAN OF FEDERAL FUNDS

HISTORY. 1917 c 491 s 3; GS 1923 s 3043; MS 1927 s 3043; 1939 c 145 s 7; 1941 c 169 art 9 s 29.

128.31 VOCATIONAL AID; RULES GOVERNING DISBURSEMENT

HISTORY. 1919 c 414 s 2; 1921 c 467 s 20; MS 1927 s 3038; 1939 c 145 s 2; 1941 c 169 art 9 s 31; 1943 c 572 s 1; 1945 c 374 s 1; 1949 c 713 s 1.

Where money is borrowed from the state by a school district on a bond issue, the money must be used for the specific purpose authorized by the people and no other. OAG Sept. 15, 1953 (159-A-5).

A vocational school may be maintained by a district under authority of section 125.01 and 125.06, subdivision 1. But to receive state aid, it must conform to the provisions of section 128.31. OAG Feb. 20, 1951 (170-C).

Only upon request of the school district or districts may the state board for vocational education employ itinerant vocational teachers to perform the service specified in section 128.31. The employment by the state board for vocational education of itinerant vocational teachers is under such rules as the board may adopt and until and unless the board adopts rules on the subject it may not employ such teachers. OAG Oct. 20, 1949 (172).

128.36 ACCEPTANCE OF FEDERAL AID

HISTORY. 1939 c 206 s 1-3; 1941 c 169 art 9 s 36.

Where the legislature appropriated an amount for vocational training of disabled persons, even though federal funds would not match the state funds, the division of vocational rehabilitation has the right to spend state funds for rehabilitation over and above the amount necessary to match the federal fund. OAG Nov. 16, 1951 (9-A-13).

The state board of education is the sole agency to make application for funds under Title I, Public Law 815, of the 81st Congress. OAG July 20, 1951 (170-H).

CHAPTER 130

TEACHERS

130.01 GENERAL CONTROL OF SCHOOLS

The destruction of a schoolhouse by fire does not terminate the teacher's contract and her salary continues. OAG Dec. 19, 1950 (172-C-1).

130.03 QUALIFIED TEACHER DEFINED

The action of a board of education of the city of St. Louis in removing women teachers solely because of their marriage is unreasonable and arbitrary. State ex rel v Board, 206 SW(2d) 566.

At the close of school in June where contract with the school was terminated under section 130.03, though it had not terminated under the provisions of section 130.18, it was not revived by a certificate to teach. OAG Sept. 19, 1946 (172-C-5).

Teachers holding a permit are teachers; and teachers under contract need not file a verified account. The man teaching on the veterans training program in the public schools of Minnesota is a teacher. OAG Sept. 22, 1948 (172-C-5).

130.04 STATE BOARD OF EDUCATION TO ISSUE CERTIFICATES

HISTORY. 1929 c 388 s 3; 1941 c 169 art 10 s 4; 1949 c 612 s 1.

The commissioner of education may determine whether a person may teach in a kindergarten who holds an "elementary school" advanced certificate. OAG June 2, 1947 (172-B).

130.05-130.10 Repealed, 1949 c 612 s 3.

130.15 OUTSTANDING CERTIFICATES NOT IMPAIRED

HISTORY. 1929 c 388 s 12; 1941 c 169 art 10 s 15; 1949 c 612 s 2.

130.18 EMPLOYMENT; CONTRACTS, TERMINATION

HISTORY. 1861 c 11 s 10, 15, 16; 1862 c 1 s 12; 1865 c 13 s 17; GS 1866 c 36 s 12, 70; 1873 c 1 s 13, 15, 112; 1877 c 74 t 2 s 5, 13; 1877 c 74 t 7 s 8; GS 1878 c 36 s 23, 31, 101; 1879 c 17 s 1, 2; 1881 c 41 s 3; GS 1894 s 3681, 3694, 3798; RL 1905 s 1319, 1344; GS 1913 s 2745, 2832; GS 1923 s 2814, 2903; 1927 c 161; 1927 c 388 s 2; MS 1927 s 2814, 2903; 1929 c 388 s 2; 1933 c 238; 1937 c 161 s 1, 2; 1941 c 169 art 10 s 18; 1951 c 332 s 1.

If two members of the school board are related to a teacher applicant, the board may still hire her by unanimous vote of the full board. OAG Jan. 18, 1952 (172-A).

The wife of a member of the school board may be elected as a teacher by the unanimous vote of the entire school board. OAG March 22, 1952 (172-A).

If a teacher's contract is to be terminated by school board action it must be terminated before April 1 in the school year. OAG May 10, 1949 (172-C).

The law requires that the six steps required in terminating a teacher's contract must have been completed before April 1. A notice to the teacher that she will not be employed for the next year is not sufficient. There should be a notice that the matter of her contract will be for consideration at a stated time so that she may appear if she desires. OAG July 12, 1952 (172-C).

Where the board had a policy of not employing teachers and then employed four of them after adopting a new policy, cancelation of contract on the ground that they are married is of doubtful validity where the specific ground was not stated in the notice. OAG March 26, 1953 (172-C).

Before a teacher's contract is terminated by the school board, the board shall notify the teacher in writing and state its reason for the proposed termination. Within ten days after receipt of this notification the teacher may make a written request for a hearing and it shall be granted by the board before final action is taken. In the instant case the letter forwarded to the teacher on March 3, 1953, was adequate notice under the statute. OAG April 10, 1953 (172-C).

When the teacher's employment contract was for 9 months beginning "on or about Sept. 3," the exact opening date being uncertain; the fact that the school actually opened on Sept. 16, does not entitle the teacher to claim salary between Sept. 3 and Sept. 16. OAG Sept. 3, 1946 (172-C-2).

A stipulation in a contract inconsistent with the rights of a teacher and school district as outlined in section 130.18 is of no effect. A statement in the contract that

it is the policy of the school board to employ all married women teachers on a year to year basis is inconsistent with the provisions of section 120.18 and of no effect. OAG March 10, 1952 (172-C-3).

A teacher is not bound to enter into a contract with a school board but when a contract is made both parties are bound. It is the duty of the teacher to resign before April 1 if she wishes to terminate her contract and if she resigns after that date and before the end of the school year and the school board accepts the resignation, that ends her contract. OAG April 21, 1950 (172-C-4).

A teacher's contract may be terminated by the resignation of the teacher and no action by the school board is necessary thereon. OAG June 16, 1950 (172-C-4).

If disbursement, not authorized by law, is made to a teacher by the school board, individual members of the board who have assented to such disbursement may be held individually liable. OAG July 21, 1947 (172-C-5).

Teachers holding a permit are teachers; and teachers under contract need not file a verified account. The man teaching on the veterans training program in the public schools of Minnesota is a teacher. OAG Sept. 22, 1948 (172-C-5).

Where the people of Cook county voted to consolidate the school district of the county into a county district the county board will before March 1, 1949, appoint a new school board for the new county district; but in the meantime the respective boards of the several districts in existence before the election will continue to maintain the school in the respective districts under their own program but not later than July 1, 1949. In case no action is taken by either the new county school board or the present district boards to terminate the continuing contracts prior to April 1, 1949, the contracts will continue to be binding upon the new county school board for the next school year. The school board of the consolidated district may make contracts relating to services to be performed after July 1, following the consolidation. OAG Jan. 11, 1949 (172-C-5).

Regardless of the provision in a contract which terminates it when the teacher reaches the age of 65, the action required by statute must be taken in order to terminate the contract. OAG March 14, 1949 (172-C-5).

Teachers' contracts are made only in writing. OAG March 14, 1949 (172-C-5).

Where the superintendent of an independent school district at a meeting held for that purpose recommended to the board that three of the teachers be not rehired the board by resolution approved the superintendent's recommendation. Thereafter, at a meeting called for that purpose a motion was made to set aside the approval and to disapprove the recommendation of the superintendent. The vote was 3-3. Consequently, the motion to disapprove was lost and the recommendation of the superintendent to discharge the three teachers was valid and upheld. OAG June 2, 1950 (172-C-5).

To terminate a teacher's contract the board shall notify the teacher in writing of its intention and state the reason for the proposed termination, and if the teacher demands a hearing the board must grant the request. OAG June 6, 1952 (172-C-5).

A teacher's contract cannot be modified without the consent of both parties, but it may be terminated under the procedure provided in section 130.18. OAG Feb. 10, 1953 (172-C-5).

Teachers are employed to teach school and when they strike they refuse to do the very thing which they have contracted to do. By striking they have broken the contract and a striking teacher who refuses to teach may be discharged. The powers of a school board may not be surrendered or contracted away. OAG April 8, 1948 (172-D).

Unused sick leave may not be paid for by a school district in addition to payment of salary. Such payment would be a gratuity. OAG Dec. 23, 1949 (174-A).

A teacher's contract may not provide for a bonus by way of payment of salary for unused sick leave, thereby paying double time. OAG April 3, 1951 (174-A).

Unless the contract so provides the school board cannot pay an absent teacher the difference between her daily salary and that paid to a substitute. OAG Jan. 19, 1952 (174-A).

If a school district wishes to liberalize its regulations relating to leaves of absence it must amend its regulations effective prospectively. It may provide by regulation that an employee on leave shall receive his compensation in full for a prescribed period of days and that the employee may receive for any prescribed additional number of days compensation in the amount which is the difference between his regular compensation and the cost of providing a substitute. The number of days must be reasonable and have a relationship to his employment so that it is apparent that such payments are not gratuities. OAG Aug. 21, 1952 (174-A).

A teacher's contract in cities other than those of the first class is not an annual contract. The contract must specify the wage per year and remain in full force and effect except as modified by the mutual consent of the school board and the teacher, or by written resignation of the teacher before April. The salary should be specified for the first year, and if the board adopts a salary schedule, progressive in its nature, reference should be made in the contract to this progressive schedule, and the schedule should be attached and made a part of the contract. OAG May 25, 1948 (174-E).

A school nurse holding a certificate from the state department of education is eligible to membership in the teachers retirement fund. OAG Nov. 6, 1951 (175-A).

The school board, in hiring a teacher, must enter into a contract directly with her. Contracts cannot be made with teachers' agencies. OAG April 29, 1947 (270-D).

Where teachers give to a union or other representative power of attorney to negotiate and contract with school boards, the contract to be valid must be with the individual teacher so as to be the only form of agreement which meets the prescription of section 130.18. OAG April 29, 1947 (270-D).

The school boards in cities other than cities of the first class may not make a contract for employment of a superintendent of schools for a three-year term. OAG April 23, 1953 (768-K-1).

130.20 KEEPING OF REGISTERS

HISTORY. 1861 c 11 s 15, 16; 1862 c 1 s 33; 1864 c 4 s 1; GS 1866 c 36 s 33; 1873 c 1 s 15, 84; 1876 c 13 s 1; 1877 c 74 t 2 s 13; 1877 c 74 t 5 s 1; GS 1878 c 36 s 31, 75; 1879 c 17 s 2; 1883 c 54 s 1; 1887 c 41 s 1; GS 1894 s 3694, 3759; RL 1905 s 1345; GS 1913 s 2833; GS 1923 s 2904; MS 1927 s 2904; 1941 c 169 art 10 s 20.

130.22 TEACHER TENURE ACT; CITIES FIRST CLASS; DEFINITIONS

The definition of the word "teacher" as found in section 130.22, subdivision 2, is exclusive. The position of administrative assistant to the superintendent of schools, the duties of which involve no classroom teaching and which involve research and statistical work incidental to school administration by the superintendent with little or no superintending or supervising of classroom instruction, is not subject to teacher tenure under the Teacher Tenure Act. Board of Education v Sand, 227 M 202, 34 NW(2d) 689.

A school board cannot be estopped to deny that a position is subject to tenure rights if it is in fact a non-tenure position. The state and its political subdivisions may be estopped in certain cases in the same manner as an individual, but the application of estoppel is strictly limited to purely proprietary matters and generally is not applied to matters involving questions of governmental power or the exercise thereof. Board of Education v Sand, 227 M 202, 34 NW(2d) 689.

Where a former supervisor of special classes in the department of education, who had been transferred to position of principal of girls occupational school, was assigned to an additional principalship after rendition of a judgment directing that she be restored to her former position or given employment in some other position

for which she was qualified at the same annual salary, and as a result of such assignment her salary exceeded that received in her former position and evidence established that the new position was equal if not superior in rank to the former position, the additional assignment constituted full compliance with the Teacher Tenure Act and school ordinances and rendered moot the issues raised by the former supervisor as to the abolition of her former position. The appeal is therefor dismissed. Henderson v City of St. Paul, 236 M 353, 53 NW(2d) 21.

Subject to legislative control and to regulations of the board of education, a teacher who has completed a probationary period of three consecutive years in a public school of a city of the first class has a vested right to continued employment. Minneapolis Federation of Men Teachers v Board, ... M ....., 56 NW(2d) 203.

Where, as in Duluth, certain courses of study in the Duluth Junior College will be discontinued because of a branch of the University of Minnesota, teachers having tenure may be deprived of that right because of discontinuance of her position, or lack of pupils. Before the board concludes that such position may be discontinued, or that there is a lack of pupils for the teacher to instruct, the teacher because of her tenure has a right to be heard and to urge that the board shall not so conclude. If, after such hearing, the board decides on the evidence that grounds do exist, the policy to be followed in exercising the power of the board in determining what teachers are to be discharged is an executive function over which the courts can exercise little or no control. OAG Aug. 3, 1948 (172).

Teachers employed by the Minneapolis board of education, as well as the board itself, are subject to city charter provisions. This applies to both probationary and other teachers employed under the Teacher Tenure Act; consequently, all employed in Minneapolis as teachers for the year 1947-48 were charged with the knowledge that the budget originally adopted for that year might exceed the receipts for school purposes. The charter provides that the board of education shall never incur an obligation for a greater sum than can be paid when due out of the regular revenues of the board for the school year. Because it exceeded the budget item for salaries, the contract was neither illegal nor void, but it was of no effect as to a larger sum than allowed by the budget. Although payments are made for 40 weeks, only 38 weeks of classroom weeks are required. Taking approximately four weeks for which no payment has been made during the period of the strike, the teachers, unless the time is made up prior to the end of the present school year, lose one-tenth of their anticipated salary. The loss in pay, however, under the setup of the strike is made up in such a way that only two weeks salary of the 38 weeks that they were to teach will be lost to them, and that is legally made up in part by an increase of $40 per month for approximately three months remaining of the 1947-48 school year. Furthermore, the non-striking teachers who were represented by a committee, and that committee and the representatives of the unionized teachers, approved the final arrangement made by the school board. Both striking and non-striking teachers have returned to their positions, accepted the increase in salaries, and taught during the usual Easter vacation, and as the settlement arranged for was based upon a final condition of the school funds and in certainty of enforcement of the teachers' contracts, the settlement was obviously adopted under an arrangement to eliminate any claims for salaries during the four weeks when the schools were closed. The teachers have waived the right, if any existed prior thereto, to collect compensation for the four weeks when no service was rendered. OAG April 6, 1948 (174-B).

130.24 PERIOD OF SERVICE AFTER PROBATIONARY PERIOD; DISCHARGE OR DEMOTION

Where a former supervisor of special classes in the department of education, who had been transferred to position of principal of girls occupational school, was assigned to an additional principalship after rendition of a judgment directing that she be restored to her former position or given employment in some other position, for which she was qualified at the same annual salary, and as a result of such assignment her salary exceeded that received in her former position and evidence established that the new position was equal if not superior in rank to the former position, the additional assignment constituted full compliance with the Teacher

Tenure Act and school ordinances and rendered moot the issues raised by the former supervisor as to the abolition of her former position. The appeal is therefor dismissed. Henderson v City of St. Paul, 236 M 353, 53 NW(2d) 21.

If a teacher is uncertain as to the effect of signing a statement of intention as to teaching the following year, tenure being involved, a justiciable controversy exists. Minneapolis Federation of Men Teachers v Board, ... M ....., 55 NW(2d) 203.

130.26 HEARING OF CHARGES AGAINST TEACHERS

Where board of education granted a teacher leave of absence until the date of his 55th birthday and accepted resignation effective as of such date, until such date the teacher was still employed by the board, and a member of the teachers retirement association and was on Feb. 1, 1945, though on leave of absence, entitled to the benefits conditioned on membership. Bartlett v Duluth Teachers' Fund, 224 M 522, 28 NW(2d) 740.

Provisions in the Teacher Tenure Act and the school code of the city of St. Paul relative to abolition of a position, filing of charges, and hearing of evidence in connection therewith, are material only where a teacher has been discharged from her employment or has been transferred to a position involving a demotion in rank or salary. Henderson v City of St. Paul, 236 M 353, 53 NW(2d) 21.

130.32 SERVICES TERMINATED BY DISCONTINUANCE OR LACK OF PUPILS; PREFERENCE GIVEN

Where a former supervisor of special classes in the department of education, who had been transferred to position of principal of girls occupational school, was assigned to an additional principalship after rendition of a judgment directing that she be restored to her former position or given employment in some other position for which she was qualified at the same annual salary, and as a result of such assignment her salary exceeded that received in her former position and evidence established that the new position was equal if not superior in rank to the former position, the additional assignment constituted full compliance with the Teacher Tenure Act and school ordinances and rendered moot the issues raised by the former supervisor as to the abolition of her former position. The appeal is therefor dismissed. Henderson v City of St. Paul, 236 M 353, 53 NW(2d) 21.

Where, as in Duluth, certain courses of study in the Duluth Junior College will be discontinued because of a branch of the University of Minnesota, teachers having tenure may be deprived of that right because of discontinuance of her position, or lack of pupils. Before the board concludes that such position may be discontinued, or that there is a lack of pupils for the teacher to instruct, the teacher because of her tenure has a right to be heard and to urge that the board shall not so conclude. If, after such hearing, the board decides on the evidence that grounds do exist, the policy to be followed in exercising the power of the board in determining what teachers are to be discharged is an executive function over which the courts can exercise little or no control. OAG Aug. 3, 1948 (172).

CHAPTER 131

SCHOOLS; CLASSIFICATION, CONDUCT

131.01 PUBLIC SCHOOLS

HISTORY. 1915 c 238 s 11; 1919 c 443; 1921 c 467 s 5, 18; GS 1923 s 2764, 3026; 1925 c 282; 1925 c 413; MS 1927 s 2764, 3026; 1929 c 190 s 1-4; 1935 c 214; 1935 c 288 s 1; 1941 c 169 art 11 s 1; 1947 c 633 s 16; 1949 c 732 s 9; 1953 c 371 s 1.

Validity of requirement that children of Mexican or Latin descent attend separate schools. 30 MLR 646.