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vouchers for a period taught before receipt of certificate?

"c. Assuming that under Article 2882 of the Revised Statutes of Texas that the contract between the local school board and teacher was for the reasons hereinbefore mentioned void, then would the school board be authorized to make payment of any reasonable amount to compensate such teacher for services actually performed?"

Additional facts appearing in the letter show that the teacher in question had sufficient school credits to entitle him to a high school certificate except that he had not taken two required courses in government. Late in the month of August he secured the position to teach provided he could secure a certificate and thereupon signed up for the government courses in Texas Tech and turned in his work to the instructor prior to the opening of the school year, but it was not accepted as satisfactory by the instructor in charge. Further delay was occasioned by the fact that the instructor took a leave of absence from Texas Tech and the work submitted by the teacher was not accepted and the teacher's certificate issued by the Department of Education until about February 1, 1940.

Please accept our thanks for the brief which you have submitted with your letter of request.

Article 2882, R.C.S., 1925, reads as follows:

"The county superintendent shall keep a record of all certificates held by persons teaching in the public schools of the common school districts and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his

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contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempted under the terms of this law." (Underscoring ours).

From your letter of request it does not appear that the teacher in question was teaching in such exempted branches as are referred to in this article.

Article 291, P.C., 1925, reads as follows:

"Any county or city superintendent or school trustee who approves any teacher's contract or voucher until the person has presented a valid certificate shall be fined not less than twenty-five nor more than one hundred dollars."

This department ruled in an opinion, addressed to the Hon. L. A. Woods, dated Oct. 18, 1935, Letter Book 367, p. 917, that a teacher's contract entered into under facts similar to those set out above was void.

In Richards v. Richardson, (T.C.A., 1914) 168 S.W. 50, the court stated:

"That statute enjoins a duty upon the teacher and affixes a penalty for failure to perform the duty. That penalty is that, unless he has a valid certificate, he shall not be paid out of free school funds. . .

". . . Appellant, at the time that he entered into the contract with the trustees, had no such certificate and in fact had no valid certificate for any grade. He may, as he claims, have been entitled to such certificate, but he had not obtained it. The certificate granted by the county superintendent was

null and void, and the contract founded upon it was null and void.

"Not only does the law provide that no teacher who has not a valid certificate shall receive any of the free school fund, but it is made a misdemeanor for any board of trustees to approve any contract until the person has presented a valid certificate. Article 1512 (Pen. Code) Rev. Criminal Stats. 1911. A contract made in violation of law would be absolutely void. W.U. Telegraph Co. v. Partlow, 30 Tex. Civ. App. 599, 71 S.W. 586; Hosmer v. Sheldon School District, 4 N.D. 197, 59 N.W. 1035, 25 L.R.A. 383, 50 Am. St. Rep. 639; Ryan v. Dakota Co. Dist. 27 Minn. 433, 8 N.W. 146; Kimball v. School Dist., 23 Wash. 520, 63 Pac. 213; Schafer v. Johns, 23 N.D. 593, 137 N.W. 481, 42 L.R.A. (N.S.) 412; Flanary v. Barrett, 146 Ky. 712, 143 S.W. 38 Ann. Cas. 1913C, 370.

". . . .

"Appellant has not performed any services for the money he seeks to collect, but, on the other hand, he has received \$110. of the free school money to which he was not entitled. Railway v. Randolph, 24 Tex. 317.

"The original contract was void, because repugnant to the statute, and it could not have been ratified and certainly cannot be vitalized by obtaining a certificate and endeavoring to have it read as though of date anterior to the execution of the contract. It would not matter how competent and well fitted he was to teach, nor that he may have been entitled to a first-class certificate; he did not have it when he entered into the contract; and that instrument, being null and void in its inception, could not be vitalized and purified by any subsequent events, but it 'is so

nugatory and ineffectual that nothing can cure it.'

"The statute provides for the employment of teachers who have valid certificates, and it is made a crime for a board of trustees to employ one who has not a valid certificate, and the statute does not say that the trustees can employ a person to teach who is entitled to a certificate, nor one who may obtain a certificate at some future time. The teacher must exhibit to the trustees a valid certificate, and, as said by Justice Neill in *W.U. Telegraph Co. v. Partlow*, herein cited: 'A contract without such a certificate . . . would unquestionably be void.' See, also, *Goose River Bank v. School Township*, 1 N.D. 26, 44 N.W. 1002, 26 Am. St. Rep. 605; *Bryan v. School Dist.* 111 Mich. 67, 69 N.W. 74; *McCloskey v. School Dist.*, 134 Mich. 235, 95 N.W. 18."

The statute before the court in that case required that a valid certificate be held and exhibited before the local board of trustees could enter into the contract. The present statute requires that a valid certificate be held and filed with the county superintendent before he shall approve the teacher's contract. The approval of the county school superintendent is essential to the validity of a teacher's contract made with the trustees, a common school district. *Hill vs. Smithville Ind. School Dist.*, 239 S.W. 987.

A. It is our opinion that the teacher's contract entered into and approved under the facts presented is void and compensation may not be paid thereunder to the person holding such void contract.

B. The county school superintendent is not authorized to approve vouchers issued to a person as compensation for teaching in a common school district for a period during which such teacher did not hold a valid teacher's certificate, since such approval is specifically prohibited by law.

C. A person teaching in a common school

district without first having obtained a valid teacher's certificate may not be paid a reasonable amount for services actually performed out of the public school funds of this state, for the period during which such teacher did not hold a valid certificate; Article 2882, R.C.S., 1925, specifically providing that the teacher 'shall not be paid for teaching or work done before the granting of a valid certificate.'"

This opinion does not apply to teaching in those branches exempted under the terms of Article 2882, R.C.S., 1925, and related statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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CCC:ob

APPROVED Apr. 11, 1940  
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