1900

The Legal Status of the Teacher

Floyd R. Mechem
University of Michigan Law School

THE MICHIGAN ALUMNUS

Vol VI.—MAY, 1900.—No. 54.

THE LEGAL STATUS OF THE TEACHER.*

The subject upon which I have been asked to speak, is the legal status of the teacher. In endeavoring to comply with this request, I have assumed that such an audience as this would not be interested in the bare legal aspect of the question, as an audience of lawyers might be. Nevertheless, any effort to speak upon the teacher's legal status necessarily presupposes that what is to be said on the social, political, or pedagogical sides of the matter will be said by others, and that only that which pertains to the legal aspect is now in order. The mass of material from which the lawyer might select that which would be appropriate to his needs is now great, and presents many questions of a wholly technical nature, as well as much matter merely of a temporary or local interest. Attempting to eliminate this as of no interest to you, I shall confine myself to the larger and more general aspects of the subject.

It is, of course, at this day, simply a truism to say that the subject of education is one of the most important with which a free state has to deal. Although it may formerly have been true that to a large degree the matter of education was left to individual initiative and enterprise, and although education, in many places and to some extent, is still in private hands, it is now generally agreed that the proper education of its people is one of the most vital concerns of the State itself. In these states which were carved out of that great domain known as the Northwest Territory, the duty of the State was early recognized, and the sentiment was embalmed in those striking sentences so familiar to us all: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." In the territory, therefore, with which we are acquainted, particularly, while private schools and private teaching are by no means unfamiliar, the great bulk of the teaching energy is under the control and direction of the State.

This fact suggests that there may be important distinctions in the legal aspect of public and of private schools and teachers; and without meaning to intimate that the private schools and teachers are beyond the reach of State regulation and supervision, it is clear that public schools and teachers are

**An address delivered before the Schoolmasters' Club, in Ann Arbor, April, 1900.*

subject to such regulation, and it is with the public school teacher that we are now more immediately concerned.

That the maintenance and support of public schools is one of the public purposes to which public funds may be devoted, and for which the power of taxation of the State may properly be invoked, seems everywhere to be conceded. As stated by an eminent authority: "It may be safely declared that to bring a sound education within reach of all the inhabitants has been a prime object of American government from the very first. It was declared by colonial legislation, and has been reiterated in constitutional provisions to the present day. It has been regarded as an imperative duty of the government; and when question has been made concerning it, the question has related not to the existence of the duty, but to its extent."

The public school is therefore clearly a public institution, and the public school teacher is in some degree a public functionary. He is even to some extent, it has been said, to be regarded as a public officer.

Because the public school teacher thus occcupies a public and important position, it is clearly within the competence of the State to prescribe what shall be his qualifications and what the method of determining their existence. In the case of the common schools, elaborate provisions are often made for the examination and certification of teachers by public officials chosen for that purpose. In the case of the higher schools, the matter is not infrequently left to the determination of the boards or bodies having those schools in charge, though the tendency here seems also to be in the direction of formal examination or certification by some public authority.

The laws providing for examinations often specify with much minuteness what shall be the subjects upon which the candidate is to be examined, and what percentage of correct replies shall entitle him to a certificate. The opportunity, moreover, is not infrequently improved to make the examination of the teacher and the course of instruction in the school in which he is to teach, the medium for propagating some one's special views upon other subjects than those which are ordinarily regarded as purely pedagogical. The now familiar requirement that instruction of a certain kind and to a prescribed amount shall be given with reference to the supposed effect of tobacco and intoxicating liquors upon the human system, is an example of this tendency.

In addition to the mere matter of scholastic attainments, moreover, it is competent for the State to make or authorize reasonable classifications of teachers, based upon age, sex or nationality. Thus a minimum or maximum age may be prescribed, colored teachers may be required for colored schools, and although women in fact constitute the great body of teachers, it has been held to be competent to require that certain teachers, for example, the principals of boys' grammar schools or large mixed grammar schools, should be

men. And even where the Constitution of the State expressly provided that women twenty-one years of age and upwards should be eligible to any office of control or management under the school laws of the State, it was held that reasonable discrimination with reference to the sex of teachers might nevertheless be made.

On the other hand, discrimination based upon religious belief would not be justifiable. The public schools are not to be made the place in which, or the medium through which, religious instruction is to be given; but, at the same time, a teacher, otherwise qualified, is not to be discriminated against because he does not hold the religious views of the community, so long as he does his duty and does not use his position as a means of propagating his own religious notions.

In a recent case in Pennsylvania, it appeared that the inhabitants of the school district were largely Catholics. The school board was wholly composed of Catholics, and about ninety per cent. of the voters were Catholics. Eight teachers were employed in the public schools, and of these six were members of a Catholic sisterhood. These Sisters held regular certificates granted by the County Superintendent, but the examination had been a special one, held by him at the house of the Sisterhood. The Sisters while in school were dressed in the peculiar garb of their order, with a crucifix suspended from the neck and a rosary from the girdle. They were addressed by the pupils as "Sister." During the regular school hours the ordinary studies were pursued, but after school the Catholic pupils were detained for drill and recitation in the Catholic Catechism. On Catholic holidays and feast days, the schools were closed.

Certain Protesant parents whose children attended the school applied to the court for an injunction to restrain the employment of these Sisters as teachers, and, if this could not be granted, to forbid the teachers from wearing their distinctive garb in the school room, and from teaching the Catholic Catechism in the school room after school hours.

The court granted the injunction against teaching the catechism, but held, (one judge dissenting,) that it was within the proper discretion of the school board to employ these Sisters as teachers, and that no one's rights were violated by their wearing their peculiar garb in the school room. The court, moreover, suggested that it was entirely competent for the State not only to permit but to require teachers to wear, while on duty, some appropriate garb or uniform, like policemen or railroad officials.

Under the Wisconsin constitution, the stated and regular reading of the Bible in the public schools, was held to be "sectarian instruction" and made the school a "place of worship," within the prohibitions of that instrument, even though children whose parents objected to it, were not required to remain in the room during the reading. On the other hand, under the Michi-

gan constitution, the reading of selected extracts from the Bible during the closing hours of each session, from which any pupil might be excused upon the application of his parent or guardian, was held not to constitute religious worship or to make the teacher a "teacher of religion."

What the social status of the teacher is or should be, seems not often to be made the subject of express legal regulation. In the case of Chauncey Depew, an Englishman is said to have concluded that, because Mr. Depew had his office in the Grand Central Station, he must belong to our "great middle class." Whether so well founded a presumption could be made with respect to any other of our teachers than those who are assigned to the "Central" building, may be open to question.

In 1814, an English lawyer objected to a bail bond on the ground that one of the signers, who was a schoolmaster, had been erroneously described as a "gentleman;" but the court held the bond good, saying that the description was sufficient.

I do not suppose that this would be regarded as a judicial determination that *all* schoolmasters are gentlemen; but it might, perhaps, be regarded as an opinion that it is not legally impossible for some schoolmasters to be gentlemen.

Where the statute, as in this and many other states, prescribes the qualifications which shall be required, it is also common to provide that no contract shall be made with any teacher who is not at that time qualified as the law provides, and to declare that any contract made in violation of such a provision shall be void.

These provisions have usually been regarded as mandatory, and the courts have enforced them with strictness. Thus, where the statute requires the possession of a certificate as the evidence of qualification, it is held that the teacher must have obtained the certificate at the time the contract is made, and that its subsequent acquisition, even before the term is to begin, will not cure the defect.

It has moreover, been held, under these statutes, that even though the unqualified teacher may have taught the school for the full term without objection. he can recover no compensation—he cannot recover on the contract—for that was void—nor can he recover for services rendered, in those cases, at least, in which recourse must be had to State funds for his payment.

It is common, further, for the statutes to specify, by what *officers* and in what *form*, the contract with the teacher shall be made, and these requirements also are usually deemed to be mandatory. Thus where the statutes required that the teacher should be hired at a *meeting* of the board, it was held that the separate and individual concurrence of the members was not sufficient; and where *all* of the board are required to act, a contract made by part only, without notice to or concurrence by the other members, is not valid.

Whether defects of this sort may be cured by the subsequent recognition of the contract by the board or the school district, has been much questioned in the courts, but the prevailing rule is that if the defect relates to mere matters of form and to the conduct of the district officers, the subsequent recognition of the contract by the body having the power to make such a contract will be deemed to be a ratification of it.

Whether one school board may lawfully make a contract for a period extending into the official term of the successors of that board, has also been discussed under various statutes, with a preponderance of opinion, perhaps, to the effect that it cannot be done.

Authority is usually expressly conferred by statute upon school boards to make rules and regulations for the conduct of the school, but even where no such express authority is given, the power of the school board to make reasonable and appropriate rules could not be doubted.

Such reasonable rules bind teacher and scholar alike. The teacher is bound by them, and must enforce or be governed by them, as the case may be. What regulations would be deemed reasonable under varying conditions can not be determined by any hard and fast rules, for much must always depend upon the circumstances under which they are to be enforced; but as a few, out of many passed upon by the courts, the following have been held to be reasonable and valid:

A rule that pupils in a public high school shall employ a certain period in the study and practice of music and provide themselves with certain books therefore, or for unexcused disobedience be expelled; that pupils who are absent, without satisfactory excuse, six half days in four consecutive weeks shall be suspended; that schools shall be opened with reading from the Bible and prayer during which each pupil shall lay aside his books and remain quiet, or shall bow his head unless his parents request that he shall be excused from doing so, and for wilful disobedience he may be expelled; that pupils shall write compositions and take part in rhetorical exercises, or be suspended for disobedience; that pupils guilty of persistent misconduct be expelled; that children of immoral and licentious character be excluded; that the doors shall be locked and no scholar admitted for fifteen minutes during the opening exercises in the morning, provided due regard is had to the weather, and the age, health and comfort of the excluded pupils; that white and colored children shall be taught in separate apartments provided equal accomodations are provided for both.

But, on the other hand, the following regulations have been held unreasonable:

That no pupil shall, during the school term, attend a social party, and for disobedience expelling him; that pupils who carelessly or wantonly injure or destroy the school property shall pay for the same, and for a failure to pay,

whipping or expelling them; barring the doors in cold weather against little children who are late; refusing admission to a public college because the applicant is a member of a Greek letter fraternity or other secret college society; requiring every scholar on returning from recess to bring in a stick of wood for the fire.

But even though the regulation be in itself reasonable it must also be enforced in a reasonable manner and under proper circumstances, with due regard to the health, comfort and welfare of pupils and teacher.

Where the school board or other proper authorities have prescribed no rules, it is within the power of the teacher, to make rules for the government of his school.

The implied power of the teacher to legislate in this respect is doubtless more restricted than the implied power of the school board under like circumstances; and little more can be said than that the teacher has the implied power to make and enforce such rules and regulations as are reasonably necessary and proper for the good conduct of his school in all matters not provided for by the school authorities and not prohibited.

And even where rules have been prescribed by the board, the teacher may, unless expressly prohibited, make such additional rules and requirements as special cases or sudden emergencies may render necessary.

But as the rules prescribed by the school board must be reasonable ones, *a fortiori* must those be reasonable which are ordained by the teacher. Instances of what rules are or are not reasonable have already been given, and the same principles would apply to those made by teachers. But, in general, "acts done to deface or injure the school-room, to destroy the books of scholars, or the books or apparatus for instruction, or the instruments of punishment of the master; language used to other scholars to stir up disorder and insubordination, or to heap odium and disgrace upon the master; writing and pictures placed so as to suggest evil and corrupt language, images, and thoughts to the youth who must frequent the school;" using profane language, quarreling and fighting among each other,—these and many other similar and obvious acts the teacher may prohibit and punish.

So, in regard to the studies to be pursued, the teacher may, where no rules are prescribed by the board, exercise a reasonable discretion "as to the order of teaching them, the pupils who shall be allowed to pursue them, and the mode in which they shall be taught;" but the teacher should not compel a pupil to pursue a study which he knows the parent has forbidden his child to take.

The authority of the teacher is not confined to the school-room or grounds, but he may prohibit and punish all acts of his pupils which are detrimental to the good order and best interests of the school, whether such acts are committed in school hours or while the pupil is on his way to or from school, or after he has returned home.

Upon the question of the teacher's control over the pupil out of school hours, and off of the school ground, a New England court forty years ago, laid down rules, which, while savoring perhaps somewhat of New England rigor, have never been elsewhere questioned.

It was conceded that the master's right to punish extended to school hours and the court said there seemed to be no reasonable doubt that the supervision and control of the master over the scholar extended from the time he leaves home to go to school until he returns home from school.

After his return home, the pupil comes again primarily under parental discipline, but even in such a case the court declared that if the act done, though at home, had a direct and immediate bearing upon the welfare of the school or upon the authority of the master and the respect due to him, the master might punish the scholar if he came again to school.

For the purpose of maintaining the order and discipline of his school, the teacher, it has been held, has the inherent power to suspend a pupil from the privileges of the school, unless he has been deprived of that power by the affirmative action of the proper board.

If he so suspends a pupil, he should at once report the fact with the reasons to the board.

But while the teacher may thus suspend a pupil, he has no inherent power to finally and entirely expel the pupil. That power belongs properly to the board, unless by statute or other regulation, some different rule has been enacted.

Upon the vexed and vexatious question of the right of the teacher to inflict corporal punishment, it is not easy to lay down positive rules. It is clear enough to any one that the public sentiment in regard to the subject as it affects home and school discipline, has greatly changed in recent years, and is still in an unsettled condition. This change in public sentiment is certain to make itself felt in legislation and in the decisions of the courts. In many places, rules have been enacted forbidding the infliction of such punishment by others than the principal. Up to the present time, however, the courts have uniformly sustained the right of the teacher to inflict reasonable corporal punishment.

In dealing with the question the court in Vermont, in a somewhat early case, laid down rules which have been quite generally approved. Said the court:

"A school-master has the right to inflict reasonable corporal punishment. He must exercise reasonable judgment and discretion in determining when to punish and to what extent. In determining upon what is reasonable punishment, various considerations must be regarded,—the nature of the offense, the apparent motive and disposition of the offender, the influence of his example and conduct upon others, and the sex, age, size, and strength of the pupil to be punished.

"Among reasonable persons, much difference prevails as to the circumstances which will justify the infliction of punishment, and the extent to which it may properly be administered. On account of this difference of opinion, and the difficulty which exists in determining what is a reasonable punishment and the advantage which the master has by being on the spot to know all the circumstances, the manner, look, tone, gestures, and language of the offender (which are not always easily described), and thus to form a correct opinion as to the necessity and extent of the punishment, considerable allowance should be made to the teacher by way of protecting him in the exercise of his discretion.

"Especially should he have this indulgence when he appears to have acted from good motives, and not from anger or malice. Hence the teacher is not to be held liable on the ground of excess of punishment, unless the punishment is clearly excessive, and would be held so in the general judgment of reasonable men. If the punishment be thus clearly excessive, then the master should be held liable for such excess, though he acted from good motives in inflicting the punishment, and in his own judgment considered it necessary and not excessive. But if there is any reasonable doubt whether the punishment was excessive, the master should have the benefit of the doubt."

In a late case in New Hampshire, it appeared that a school teacher had been annoyed by repeated unnecessary coughing among the pupils; and he requested its cessation. It continued, however, and on one occasion while the teacher was in the midst of an expostulation against it, a pupil coughed. The teacher interpreting this as an act of defiance to his request, inflicted some moderate personal chastisement upon the pupil. The pupil, claiming that he was affected with whooping cough and that the cough in question was involuntary and beyond his control, sued the teacher for assault and battery. The trial court instructed the jury that even though the pupil's claim was true, the teacher would not be guilty if he, in good faith, believed that it was a voluntary act done for the purpose of defying his authority and disobeying the rules of the school. Upon appeal to the Supreme Court of the State this ruling was affirmed, the court saying: "The law clothes the teacher, as it does the parent in whose place he stands, with power to enforce discipline by the imposition of reasonable corporal punishment. He is not required to be infallible in his judgment. He is the judge to determine when and to what extent correction is necessary; and, like all others clothed with a discretion, he cannot be made personally responsible for error in judgment when he has acted in good faith and without malice."

The teacher also owes some duty, not yet clearly defined and fortunately not often called in question, of protecting the children under his care against injuries resulting from their helplessness and inexperience. To some extent, for a limited time, the teacher stands in *loco parentis*, and while it has never been decided, so far as I am aware, how far the teacher is, or should be held,

responsible for either physical or moral injuries to the children which the teacher might have prevented, I feel very sure that we shall all agree that both law and morals should require the exercise of reasonable care and foresight in the protection of the pupil. In an English case, a teacher was held liable for an injury to a pupil from fireworks which the teacher had permitted the child to have and use, and while there were peculiar circumstances attending this case, I have no doubt that the principle is one of more extended application.

The duty of the teacher is primarily to teach, and except, when the contract or well established custom so requires, he could not be expected to be janitor and wood-cutter besides.

In many country districts, however, it is the well established custom that the teacher shall build his own fires and sweep and dust his school-room, and one who undertakes to teach with knowledge of this custom would doubtless be deemed to have assumed these duties also.

The statute in this State requires the school district to provide the school-house with the "necessary appendages," and among these necessary appendages are specified a "looking glass, comb, towel, water pail, cup, ash pail, poker, stove shovel, broom, dust-pan, duster, wash-basin, and soap," but it fails to specify who is to use these articles, or to what use they shall be put. Inasmuch as only one towel and comb are required, it may be that these articles are valued for their suggestiveness rather than for any actual use which may be made of them.

The teacher who has performed his contract is entitled to his salary or wages as agreed. From this no deduction is to be made by reason of holidays upon which schools are not usually kept open.

And where the teacher has stood ready to perform his part of the contract, the fact that the District may not have been able or willing, without any fault on his part, to avail itself of his services, furnishes no excuse for not paying. Thus where the school is closed by reason of a lack of funds, or because of the prevalence of contagious diseases, the teacher who has been ready and willing to perform may recover for the full period.

In the absence of a statute providing otherwise, it would be entirely competent for the school authorities and the teacher to agree, as to the duration of the employment, and the causes and method of its termination. And in such a case, even though they had made no express agreement, the law would imply that the teacher might be lawfully dismissed for immoral conduct, incapacity, neglect of duty, or failure to comply with the obligations imposed by the contract.

It is common, however, for the statutes to expressly stipulate what the terms of the contract shall be in this regard, and what shall be the evidence of such default on the part of the teacher as will justify his discharge.

Thus where an examination is provided for, and a certificate is to be issued, by some public board or official, as in this State, provision is often

made for the suspension or revocation of the certificate by the same authority, and the contract is required to contain a stipulation that this suspension or revocation shall terminate the contract. Under provisions of this nature, the district authorities possess but a limited power of arbitrary removal.

In a case in this State, where the statute provides that the board of school examiners may suspend or revoke any certificate for causes which would have justified its refusal in the first instance, and also for neglect of duty, incompetency, or immorality; and the contract contained a stipulation that such a suspension or revocation should terminate the contract, it was held that the district officers had no jurisdiction to pass upon any alleged default of the sort indicated, or to remove the teacher for such default, but that the question of his guilt and the consequent termination of his contract must be confided to the Board of School Examiners.

It was, however, held that for defaults in other respects than those indicated,—defaults which would at common law justify a master in discharging a servant,—such for example, as the inhuman treatment of the pupils, the teacher might be discharged by the district board without reference to the suspension or revocation of his certificate.

When the causes for which the teacher may be removed are thus specified by statute, the courts have held that the power of removal cannot be exercised until the teacher has been notified of the alleged default and has been given reasonable time and opportunity to make his defense. This right is expressly granted by statute in this State.

A teacher who is wrongfully discharged before the expiration of the term for which he was engaged, is entitled to recover damages for this dismissal. Such damages would ordinarily be the amount of the salary for the residue of the term, less any sums the teacher may have been able to earn during that period in other like employment in the same locality.

A teacher though wrongfully discharged would still be under obligation to use reasonable efforts to find another similar position and thus to reduce his loss as much as possible; but he would not be obliged, in order to reduce his recovery, to accept another kind of employment, or to go to other places to seek it.

In a late case in Iowa, a teacher wrongfully discharged just after the opening of the year who had been unable to find any other like position, was held entitled to recover the full year's salary even though he had in the meantime started a private school which had proved to be a financial failure. If it had been successful. he would doubtless have been required to deduct his earnings from the salary he was seeking to recover. Money earned during vacations would not, however, affect his right to his salary, and in one case it was held that the school board might, as part of the contract, permit the teacher to offer extra courses in his school and charge for these an extra compensation which he might retain as his own.

Floyd R. Mechem.