The Teachers' Tenure Act-Constitutionality and Interpretation

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Courts of Pennsylvania have stated the rule that only the contingent interests where the person to take is ascertained will pass to the trustee in bankruptcy.\(^4\) This to some extent limits the broad rule stated in the *Packer* case above.

Dale F. Shughart.

**THE TEACHERS' TENURE ACT—CONSTITUTIONALITY AND INTERPRETATION**

On April 6, 1937, the Governor of Pennsylvania approved Act No. 52, passed by the General Assembly, which is known as the "Teachers' Tenure Act," and which by its terms became effective on the date of approval. Before considering any questions concerning constitutionality or interpretation, it will be appropriate to emphasize the effect of this legislative enactment both from the viewpoint of the individual teacher and the viewpoint of the Board of School Directors, which has given rise to considerable litigation in the various counties of the Commonwealth.

The undoubted intent of the legislature in enacting this Act, which amends the School Code of May 1, 1911, was to make a teacher's tenure of employment stable. The Act prevents the removal of capable and experienced teachers at the political or personal whim of officeholders. Teachers who were employed on the date the Act became effective and those who are fortunate enough to secure a position in the future, are thereby practically assured of a livelihood for the remainder of their lives. It follows that such persons would have no objection to such an enactment. However, the Board of School Directors are deprived of a powerful weapon, which they could previously exercise at will, and are forced to retain teachers who are perhaps their most bitter opponents, both politically and socially. Consequently, the School Directors have attacked the Act from all sides with the hope of discovering some manner in which they may retain use of the weapon which was formerly available.

**CONSTITUTIONALITY**

Teachers' Tenure Laws have, it seems, uniformly been held valid as against objections based on public policy or violation of constitutional provisions, par-

\(^4\) In *Re Twaddell*, 110 Fed. 143. The court stated that if the person to take were not ascertained then the interest would not pass. This case applies another well established rule of property in this state that is somewhat peculiar, namely, that the interest was to pass to her "surviving children" and by the rule in this state it means surviving at the death of the testator rather than at the death of the life tenant. Since it meant those surviving at the testator's death the persons were ascertained and the interest was vested. The rule above laid down under this holding is merely dictum. The case presents a good review of the cases on the subject of transmissibility of interests in Pennsylvania.

In the case of *Storm v. Moscow Borough School District*, C. P., Lack. Co., July Term, 1937, defendant contended that the Act violated Art. 3, Sec. 6, of the Constitution. This section provides as follows: "No bill, except general appropriation bills, shall be passed containing more than one subject which shall be clearly expressed in its title." It was objected that the subject matter of the act was not sufficiently expressed in the title, because the title merely provided for ". . . regulating the employment, dismissal, suspension and demotion of such employees," while sec. 2 of the Act provided that "Each Board of School Directors or Board of Public Education in all school districts in this Commonwealth shall, within thirty days after the effective date of this Act, enter into contract with all professional employes . . ." Judge Lewis overruled this constitutional objection and was of the opinion that the Tenure Act did not contemplate the renewal of such contracts, but rather that the contracts which were then in existence should continue indefinitely unless terminated by resignation or removal of the teacher as provided by the act, and that such continuation of employment was sufficiently expressed in the title.

Sec. 6 of the Act provides that, "No contract in effect at the enactment of this act shall be terminated, except in accordance with the provisions of this act." The effects and consequences of the proposed construction of a law, as well as its reason and spirit, must be considered in determining the legislative intent. Hence, if there is room for construction, the court will prefer that construction which is most consonant with the purpose for which the act was passed. *Turbett Twp. v. Port Royal Borough*, 33 Pa. Super. 520. In the light of this rule it appears that the interpretation of Judge Lewis seems most plausible. A title need not set forth all items intended to be made part of the act; it is sufficient if the title names only the real subject of the legislation. "If the subject is designated with sufficient clearness to put one on inquiry into the body of the act, all necessary or appropriate details to carry out the purpose of the statute there found will be treated as within the title." *Comm. v. Snyder*, 279 Pa. 234. Hence the provision in the body of the Tenure Act for continuation of the employment of teachers then employed is germane to the subject matter expressed in the title of the act, and therefore the title is upon its inspection sufficient notice to put one on inquiry into the body of the act. It is always to be presumed that a statute was intended to have the most reasonable and beneficial operation that its language permits. *Wiesheier v. Kessler*, 311 Pa. 380.

Another objection that has been raised as to the constitutionality of the Teachers' Tenure Act is that it is special legislation within the meaning of Art. 3, Sec. 7, of our Constitution. The Act defines the term "professional employe"
and then undertakes to prescribe certain regulations with respect to such employees. The first section of the Act defines "professional employee" to include "teachers, supervisors, supervising principals, directors of vocational education, dental hygienists, visiting teachers, school secretaries the selection of whom is on a basis of merit as determined by eligibility lists, school nurses who are certified as teachers, and any regular full time employee of a school district who is a certified teacher."

It was contended in *Malone v. School Directors*, Fayette Co., No. 450, March Term, 1937, that the term "professional employee" did not include all of the members of any general class; in particular it did not include all persons who were under the supervision of the School Directors. It was also contended that the Act includes regular full time employees who are duly certified as teachers, but excluded part time or substitute employees who are duly certified as teachers.

In determining what amounts to special legislation, we will look at a few of our Pennsylvania cases. In *Ayars Appeal*, 122 Pa. 266, it was said ".... the underlying principle of all the cases is that classification, with the view of legislating for each class separately is essentially unconstitutional, unless a necessity therefor exists—a necessity springing from manifest peculiarities, clearly distinguishing those of one class from each of the other classes and imperatively demanding legislation for each class separately, that would be useless and detrimental to the others." But it cannot be doubted that legislation based on genuine and substantial distinctions is within the constitutional power of the legislature, and an act which applies to all members of a class is general and not special legislation. *Brown v. Gumbert*, 256 Pa. 531; *Comm. v. Puder*, 67 Pa. Super. 11.

It was the opinion of Judge Hudson and Judge Brownson in *Malone v. School Board* (Supra) that the classification made by the legislature in the Teachers' Tenure Act did not amount to special legislation. It was their opinion that because of the special nature of the excluded employees' functions there were good and substantial reasons for dealing separately with employees who perform the service of teaching and giving them a different tenure from other employees. But it should be noted that the term "professional employee" does not include only those who actually teach. It was not pointed out just what peculiarities exist between the classes which necessitated the discrimination. Perhaps, the distinction is based on the fact that the employees benefited by the act come into close and constant contact with the students, while those excluded are a little removed from the realm of educational advancement. It would seem that such a distinction is based on the theory that educational standards are advanced by continuing to employ experienced teachers, but that the continued employment of other employees is not necessitated. Undoubtedly many persons will disagree on the wisdom
of such a distinction, but as Teacher Tenure Acts have been held valid in practically all states in which such laws have been passed, it seems safe to say that courts will have little trouble in distinguishing between the classes in order to carry out the legislative intent. There is nothing in the Tenure Act which confers upon any citizen or class of citizens, as such, any privilege or immunity which does not, upon the same terms, belong to all citizens.

When the Teachers' Tenure Act was passed teachers were working under a standard contract as prescribed by the Act of 1911, P. L. 309, Sec. 1205, as amended by the Act of 1931, P. L. 243, Sec. 26. By the terms of these standard contracts, the parties thereto, namely, the teacher and the Board of School Directors, agreed that it was to continue in force year after year, unless terminated by written resignation or notice presented sixty days before the close of the school term. In the light of these contracts, it has been contended that the passage of the Teachers' Tenure Act amounts to an impairment of the obligation of the contracts, because it deprives the School Board of the power of dismissing teachers by merely giving them sixty days notice as provided by the contracts.

The same law-making body which adopted the Teachers' Tenure Act also passed the Statutory Construction Act a few weeks later, and it would seem to have thereby laid down its own rule for the construction of the Act. "The repeal of any civil provision of a law shall not affect, or impair an act done, or right existing or accrued . . . ." Statutory Construction Act of May 28, 1937, No. 282, Sec. 96. Of course, this enactment is in effect a mere recital of the provision in our Constitution of Pa., Art. 1, Sec. 17, which forbids the passage of any law impairing the obligation of a contract.

The real question presented under this head is whether the absence of assent on the part of a School Board calls for a holding that the statutory direction requiring it to enter into a contract in a specified form, amounts to an impairment of contractual rights within the meaning of the constitution.

All of the decisions passing upon this objection are in accord, holding that there is no impairment of contractual rights, as the contracts entered into by the School Boards were really contracts of the State acting through its subordinate agency, to wit, the School Board. These decisions of our lower courts conform to the holding of our Supreme Court in Ford v. Kendall, 121 Pa. 543, wherein it was said: "In Pennsylvania a school district is but an agent of the Commonwealth, and as such, a quasi-corporation for the sole purpose of administering the Commonwealth's system of public education; it is therefore not liable for the negligence of school directors or their employees." Of course, it has always been uniformly held that school districts are not answerable for the negligent acts of their directors or employees based upon this rule of agency, but it is disputed as to whether School Boards are mere agents of the state for all purposes. Following the doctrine of agency to its logical conclusion a School District would
have no authority to interpose a defense in a suit upon such contracts of employment. However, it is unquestionable that School District has authority to sue and be sued.

In Grigsby v. King, (Cal.) 9 P. 789, the court in pointing out that a School Board was neither a natural, nor artificial person, but rather an administrative agency created by statute and invested with only the powers expressly conferred by the legislature, said that "it was anomalous that the board should claim powers granted to it by the statute, and attack as unconstitutional, limitations imposed upon those powers by the same statute."

It was pointed out in Malone v. School Directors, (supra), that the mere fact that the greater part of the administration of the state-wide system of education was placed by the state in the hands of local school boards, and the fact that the school boards are directed to pay out of their treasuries, moneys contributed thereto partly by the Commonwealth, and partly by local taxpayers, should not detract from the board's character as an agent of the Commonwealth. It is true that two-thirds or more of the salary of a school teacher is contributed by the State, but this fact in itself is not sufficient grounds for classifying a school board as an agent.

Regardless of what ground this agency relation is based upon, it is probable that our Supreme Court will follow the decisions of our lower courts, and hold that the School Boards are mere agents of the Commonwealth for the purpose of validating the Teachers' Tenure Act, as they have previously held in order to relieve the School Districts of liability for negligent acts of their employees. This is the only ground which would justify them in overruling this constitutional objection and enable them to validly effectuate the intention of the legislature.

In Gere v. School Directors, C. P. Luz. Co., No. 273, July Term 1937, it was urged that the tenure of employment provided by the Act is for a longer time than good behavior, and thus violates Art. 1, Sec. 24, and Art. 6, Sec. 4 of the Constitution. But these sections have reference only to offices created by law and a school teacher is not an "office" within the purview of the Constitution. Koseck v. Wilkes-Barre Twp., 110 Pa. Super. 295. This case was affirmed in Koseck v. Wilkes-Barre Twp., 314 Pa. 18. Therefore, it is apparent that the objection was without merit. However, even tho school teachers are classed as "officers" within the meaning of the Constitution, the Act does not violate the provisions. Although misbehavior is not expressly stated as a cause for termination of contract, the amendment does not repeal Sec. 404 of the School Code which gives School Directors the power to adopt and enforce such reasonable regulations as they deem necessary. Disobedience on the part of a teacher of such reasonable regulations is clearly included in the term "wilful and persistent negligence" which is an express ground for termination of contract. Lyndall v. High School Comm., 19 Pa. Super. 322.
INTERPRETATION

In *Hay's Appeal*, C. P., Somerset Co., Misc. Docket, No. 93, 1937, it was pointed out that the Teachers' Tenure Act distinguishes between the termination of a teacher's contract and the dismissal or refusal to reelect such person. It was therein said: "a contract may be terminated only by written resignation of the teacher or by official notice by the board designating the cause of termination and giving an opportunity for a hearing, and the only grounds therefor are those provided by the Act; on the other hand the board may dismiss or refuse to reelect a teacher upon notice and a detailed written statement of the charges upon which its action is based, as provided in section two of the Act, and a hearing as therein provided, for any proper cause, whether or not a ground for termination of contract."

It cannot be doubted that our courts have consistently recognized such a distinction between the dismissal or refusal to reelect, and the termination of a teacher's contract, before the Teachers' Tenure Act was passed. *Gerlach v. School Dist.*, 119 Pa. 520; *Snyder v. Wash. Twp. School District*, 117 Pa. Super. 48, but whether or not the legislature intended such distinction to be made after passage of the Act is questionable. It is true that Sec. 1208 of the School Code which previously provided grounds for dismissal, has been expressly repealed by Sec. 8 of the New Act and no new grounds for dismissal are provided in the Act, but it appears to the writer that the legislature did not intend the School Board to enter into new contracts with teachers and thereby give them opportunity to dismiss the teacher for any cause. It is more consistent to adopt the view of Judge Lewis in *Storm v. School Board*, (supra), that the legislature intended that the contracts then in existence should continue in existence. It was said in *Hay's Appeal*, (supra), 'that it was inconceivable, however, that the legislature intended to strip boards of their inherent right and power to dismiss or to refuse to reelect a 'professional employe'." But, adopting the theory that a school district is a mere agent of the State, it is not inconceivable for a principal to refuse to exert all the power he possesses.

The Act provides that the only valid causes for termination of a contract are: —immorality, incompetence, intemperance, cruelty, wilful and persistent negligence, mental derangement, violation of school laws or substantial decrease in the number of pupils. It would be difficult if not impossible for us to lay down a measure of conduct for each particular cause. Such measure will have to be gradually determined as the cases arise. As yet very few cases have been brought against teachers under the act.

In *Vasbinder's Appeal*, C. P., Elks Co., Sept. Term 1937, No. 38, the court said that whether or not a teacher is "incompetent" within the meaning of the Act must be judged not only upon the basis of his actions in the classroom, but by considering all his relations with students under him.
In *Thomas v. Dalton Borough School District*, C. P., Lack. Co., Sept. Term, 1937, No. 1834, it was suggested that the plaintiff's conduct in marrying in violation of an understanding she had with the Board amounted to "immoral deception" of the board. Although the court did not pass upon this phase of the case, it is apparent from the case that it is impossible to determine where our courts will stop in determining the measure for each particular cause.

The enumeration in a Teachers' Tenure Act of the causes for which a teacher's employment may be terminated has been held to be exclusive of all other causes, *Elwood v. State*, 203 Ind. 626, and a by-law conflicting with the act is void. *Murphy v. Maxwell*, (N. Y.) 68 N. E. 1092. Therefore, it seems that at present a School Board is now completely divested of their powerful weapon of dismissal. In *Dutart v. Woodward* (Cal.) 279 P. 493, the School Board attempted to make use of their previously exercised weapon and still not violate the Tenure Act by coercive measures, that is by assigning the teacher whom they were compelled to retain to unreasonable tasks. But the court in that case held that a teacher in such circumstances is justified in refusing to perform the task (i. e., teaching in a school where the sanitary conditions would endanger her life, or the idle and useless task of sitting in a waiting room) and that the board could not prefer charges against her under the act. If our Act is to be given effect, our courts are bound to follow the decision in that case, or else the school board will indirectly accomplish what our legislature intended to prevent them from so doing.

The Teachers' Tenure Act has been severely criticized because it did not provide that the marriage of a female teacher was a sufficient ground for termination of contract. It is believed to be unfair to the large number of qualified persons who are seeking teaching employment that the positions should be occupied by married persons, who presumably have husbands capable of maintaining them. Also it is believed by some persons that the domestic duties of a married person interfere with their efficiency as a teacher. But whether or not the legislature acted wisely in drafting the Act is no concern of the courts. The remedy of such critics is, if at all, at the polls on election day, when the people's representatives are chosen. *Jameson v. Board of Education*, (W. Va.) 81 S. E. 1126.

There is a difference of opinion as to whether the right created by a Teachers' Tenure Law is a vested right which a teacher cannot be deprived of by a later repeal of the law. In *State v. Brand*, (Ind.), 7 N. E. 777, it was held that the preferential right created could not be taken away. But in *Gastineau v. Meyer*, (Cal.), 22 P. 31, and in *O'Neil v. Blied*, (Wis.), 206 N. W. 213, the courts were of the opinion that no vested right was created. The majority of Teachers' Tenure Laws in the various states provide for a period of probationary service before a permanent status is given to the teacher. Our Act gives the permanent status to all who were teaching at the time the Act became effective regardless
of their qualifications. For this reason there is much agitation for an amendment of our Act to provide for such period of probation. Whether or not such amendment can be made, in the light of the "vested rights" which have or have not already accrued, depending upon what attitude our courts should adopt, is a matter of great concern. It was the opinion of J. McLean in _Gere v. School Directors_, (supra) that the act may be amended or repealed by subsequent legislatures.

The form of contract prescribed in Sec. 2, of our Act embraces an undertaking to teach, although there are some persons whom the act includes who are not employed for teaching, such as school secretaries or dental hygienists. The Act states that the contract of all "professional employees" should only be drawn in this prescribed form, but such would be impossible as to all these employees. However, the Act should be interpreted most reasonably and such changes as are necessary in the prescribed form should be made by the school board when contracting with employees who do not teach.

It should be noted that although it is provided in the Act that a substantial decrease in the number of students due to natural causes is a sufficient cause for suspension of a contract, no new appointment can be made while there are suspended employees available. There is nothing in the Act which prevents a school board from appointing a large number of unnecessary employees and later suspending them with the object in view of reserving control of appointing teachers many years after the term of office of the school directors has expired. More particularly, their successors in office would be bound by the Act to reappoint the suspended members before they could choose their own teachers. However, it would seem that our courts should not consider one a "professional employee" whose services were unnecessary at the time of his employment. If an appointment is not made in good faith by a school board, their act should be considered as void.

VINCENT QUINN.

THE JOINDER OF PLAINTIFFS ACT.

In the October, 1937 issue of the Dickinson Law Review a note, appearing in reference to the passage of an act in Pennsylvania providing for the joinder of plaintiffs, made the following comment:

"It is impossible to foresee all the problems of interpretation involved, but in providing for the joinder of plaintiffs in circum-