Review of Pennsylvania Legislation 1939 - Teachers' Tenure

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disapproved, to the general advantage of financially distressed Philadelphia County. *In re Dorrance's Will,* in like manner held that trust property is all taxable in the state where physically located and administered, even though co-trustees live in different states. Other states are divided as to the proper rule in such cases.

The quoted amendment attempts to reestablish the practice which prevailed prior to *In re Griscom's Will.* It has already been held unconstitutional in *Fidelity-Philadelphia Trust Company's Appeal.* The securities were located and administered in Philadelphia County and the Philadelphia court held they all were taxable there. The Philadelphia court viewed the amendment a violation of the uniformity clause of the Pennsylvania Constitution.

In exactly the same case, the Montgomery County Court has just held the amendment constitutional. The Supreme Court of Pennsylvania will have to decide the issue for the warring counties.

**Leon D. Metzger**

**XIII. Teachers' Tenure**

A major revision of the Teachers' Tenure Act of 1937, was effected by the provisions of the Act of June 20, 1939, by (1) adding to the classification of employees affected by the Act, (2) revising the causes for dismissal and suspension of professional employees, (3) establishing a method for measuring efficiency rank, and (4) changing the procedure relating to appeals from the action of a board of school directors dismissing a professional employee.

(1) The Teachers' Tenure Act of 1937 defined only the "professional employee." The amendment of 1939 adds two new classifications of employees, namely, the "temporary professional employee" and the "substitute." It is interesting to note that the term "substitute," as defined by the 1939 Act, is the first definition of the term that occurs in the school laws of the Commonwealth. The substitute

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6333 Pa. 162, 3 A. (2d) 682 (1939).
10[Since the writing of this comment, the statute has been held constitutional. Appeal of Fidelity Philadelphia Trust Co., Pa. Sup. Ct., December 28, 1939, 1940 C. C. H. Pa. Adv. Dig. 2010. Ed.]

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is entitled to no rights or privileges under the Tenure Act, but the term is defined merely to clarify the several classifications of teachers affected by that legislation. The "temporary professional employee" is in essence a probationer for a two-year period although such individual is a regular full-time teacher entitled to all the privileges of a professional employe except tenure status. Upon the completion of two years of satisfactory service, such employee automatically becomes a professional employe. These "probationers" are entitled at least twice each year to be notified by the county or district superintendent of schools of the professional quality, professional progress and rating of his or her services, "and no temporary professional employe shall be dismissed unless rated unsatisfactory, and notification, in writing, of such unsatisfactory rating shall have been furnished the teacher within ten days following the date of such rating." There is provided no appeal from a decision of the superintendent rating the services of such an employe as unsatisfactory. The Act does not effect any change in the definition of the professional employe and specifically provides in Section 3 that no professional employe under contract at the effective date of the Act is required to serve a period of probation.

(2) The causes for dismissal contained in the Teachers' Tenure Act relate only to professional employes. Section 1205, clause (a) of the School Code as amended by the Act of 1937 provided among other grounds for the termination of a professional employe's contract, that a termination might be brought about if there was a "substantial decrease in the number of pupils or students due to natural causes." Clause (b) of the same section of the Act of 1937 provided for a suspension of teachers for such cause. To clarify this conflict, the 1939 amendment deletes that provision as a cause for termination of a contract and expands the grounds for suspending teachers as contained in clause (b) of said section. Clause (b) of Section 1205 now permits suspensions not only because of a substantial decrease in pupil enrollment but also because of curtailment or alteration of the educational programs subject to certain limitation, and because of consolidation of schools. These additional causes were not provided for in prior legislation. In accordance with the provisions of the Public School Employees' Retirement Act, it is provided that every contributor who has attained the age of seventy years shall be retired at the end of the school term in which the age of seventy years is attained. Under this legislation teachers could not be required to retire until they reached the age of seventy years. The 1939 Act amends clause (a) of Section 1205 to permit boards of school directors, from the effective date of said Act until July 1, 1941, to require teachers to retire who have reached the age of sixty-eight years. Such involuntary retirement may be required on a graduated scale until on and after July 1, 1947 when teachers who have reached the age of sixty-two years may be required to retire.

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9 Section 14.
(3) In determining the efficiency rank of professional employees and temporary professional employees, it is provided by the 1939 Act that a rating system shall be established and the ratings recorded on forms to be prepared by the Department of Public Instruction in cooperation with a committee representing teachers, school directors, and school administrators. This rating of a teacher is necessary to determine whether a professional employee is subject to dismissal for incompetency as set forth in Section 1205 (a) of the School Code and to properly bring about suspensions of teachers under clause (b) of that section. By the establishment of the rating system teachers are given an efficiency rank and are subject to suspension according to their efficiency standing. For the school year 1939-1940 suspensions are based entirely upon seniority rights, but thereafter efficiency rank controls. In the event there is no substantial difference in efficiency rank, seniority privileges then prevail. It is important to note that no teacher may be dismissed for incompetency unless rating records have been kept on file by the board of school directors.

(4) A most important change is provided in clause (j) of Section 1205 relating to appeals from a decision of a board of school directors by which a professional employee may have been aggrieved. Under the Act of 1937 an appeal from the decision of the board was taken directly to the court of common pleas of the county in which the school district was located. Under the Act of 1939 the appeal is required to be taken to the Superintendent of Public Instruction from whose decision an appeal is permissible by either the board of school directors or the professional employee to the court of common pleas, provided the same is taken within thirty days after receipt by registered mail of the written notice of the decision or order of the Superintendent of Public Instruction.

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XIV. WORKMEN'S COMPENSATION

The Pennsylvania Legislature in 1939 passed certain laws relating to Workmen's Compensation with the view of correcting certain previous provisions which had been passed upon unfavorably by our Supreme Court and certain provisions which were thought to be unreasonable from the standpoint of employers. The Acts passed were Act Number 281, known as the Pennsylvania Workmen's Compensation Act, re-enacting and amending the Act of 1915, (hereinafter referred to as the Act of 1939); Act Number 284, known as the Pennsylvania Occupa-

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