

February 15, 1933

Bessie Kidd Best,  
County School Supt.,  
Coconino County,  
Flagstaff, Arizona.

Dear Madam:

In response to your request for an opinion concerning the validity of a marriage clause in a teacher's contract, I submit the following:

The Statutes of Arizona do not purport to express all the powers or restraints delegated to or placed upon a board of trustees. Therefore, the answer to your question must be found in the cases dealing with the question.

In the case of Public School District No. 11 vs. Holson, Reported in 31 Arizona 291, we find the following statement:

"We are of the opinion that the contract of employment fixed plaintiff's tenure for a term of ten months, and that the provisions of the contract attempting to authorize the trustees to dismiss her at pleasure is contrary to and violative of, the spirit and policy of the law as declared by the Legislature, and that the right to dismiss a teacher and thereby terminate her contract of employment exists only when she is shown, after an opportunity to be heard, to be unfit or incompetent to perform to perform her contract". (See also L. R. A. 1916 C P. 795).

It will be noticed in this statement of the Supreme Court that the power to terminate a teacher's contract exist only when such teacher is shown to be unfit or incompetent to perform her or his contract. And since the act of becoming married, or the status of being married, does not, in law, render one unfit or incompetent for teaching, such clause in a teacher's contract is void.

Very truly yours,

Assistant Attorney General.

PHB:H

33-52