

above outlined, for either the annexing or "attaching" of property to a city, or the detaching of property therefrom. As distinguished therefrom, the provision above quoted does not refer specifically to the detachment of property but only to its annexation. Presumably the legislature intended the distinction resulting from the terms employed in the respective provisions of said section. Such construction is further supported by the proviso which follows immediately the above quoted provision:

"* * * Provided further, That at least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the township treasurer. * * *"

The latter provision patently refers to property situate within a township which is proposed to be annexed to a city in that it requires the giving of notice by the township treasurer to the owners of property as shown by the assessment rolls of the township. No comparable provision is made with respect to property situate within a city.

Such provisions are not ambiguous. I am unable to find any basis for concluding that the legislature intended to authorize the detachment of property from a city by a provision which refers only to the annexation of property to a city.

For those reasons, I am of the opinion that the cited provision does not authorize the detachment of property from a home rule city through resolution of its legislative body and approval by the township board.

FRANK J. KELLEY,
Attorney General.

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EDUCATION, STATE BOARD OF: Certification of school administrators.
SCHOOLS: Administrators.

The State Board of Education is without authority to certificate school administrators in the public schools.

No. 4143

August 9, 1963.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion on the following question:

Does the State Board of Education have authority pursuant to Act 202, P.A. 1903 to certificate school administrators?

By school administrators we understand that you intend to include superintendents, assistant superintendents, principals and assistant principals employed by school districts.

Article XI, Sec. 6 of the Michigan Constitution of 1908 provides for a state board of education empowered with the general supervision of the state normal college and the state normal schools and such other duties as may be prescribed by law.

As originally enacted, Sec. 1 of Act 202, P.A. 1903, being C.L. 1948 § 390.431; M.S.A. 1959 Rev. Vol. § 15.1111, provided as follows:

"The State Board of Education is hereby authorized and required to prescribe the courses of study for students, to grant such diplomas and degrees and issue such licenses and certificates to graduates of the several Normal Schools of the State as said State Board of Education shall determine: Provided, That there shall always be maintained in the Central Michigan and Western Normal Schools a department especially for education and training of teachers for the rural schools of the State."

Thus in its original form Act 202, P.A. 1903, *supra*, authorized the state board of education to license and certificate only the graduates of the several normal schools of the state.

Previous authority in the State Board of Education to certificate graduates of the several normal schools of the state under control of the State Board of Education to teach in the schools of the state of Michigan was conferred pursuant to Secs. 6 and 7 of Act 194, P.A. 1889. These sections were repealed by Act 130, P.A. 1941. Authority to examine and certificate other teachers was conferred upon the State Board of Education by Sec. 15 of Act 194, P.A. 1889. This statutory authority was repealed by Act 130, P.A. 1941. See also Act 175, P.A. 1897, which provided for uniformity and reciprocity between certain normal schools under the jurisdiction of the State Board of Education in the issuance of teachers' certificates to graduates of such normal schools. This act is still in effect.

Consideration must also be given to the provisions of Chap. 27, Part 2 of Act 319, P.A. 1927, as they relate to teachers' certificates. Sec. 1 of Chap. 27, Part 2 of Act 319, P.A. 1927, empowered the regents of the University of Michigan to certificate their graduates to teach in any of the schools of the state. Secs. 2 through 10 of Chap. 27 authorized the state board of education to certificate teachers in accordance with the provisions contained therein. Secs. 11 through 14 of the chapter conferred power upon the superintendent of public instruction to certificate kindergarten, primary and music teachers as provided in the aforesaid sections of the statute. Finally, Sec. 16 empowered the superintendent of public instruction to prescribe the terms and conditions under which the superintendent of schools and the board of education, or a committee thereof, in graded first, second and third class school districts employing a principal of a high school and also a superintendent of schools, were authorized to examine teachers and grant certificates.

Sec. 22 of Chapter 2, Part II of Act 319, P.A. 1927, specified that all contracts with teachers shall be in writing and no contract with any person not holding a legal certificate of qualification then authorizing a person to teach shall be valid.

The purpose of a statute fixing the validity of a teacher's contract upon

a legal certificate of qualification has been held to guarantee against the employment of teachers who were not qualified to teach. *Stoel v. Charlevoix Township Unit School District No. 1*, 351 Mich. 152 (1958).

The legislature amended Act 202, P.A. 1903, supra, by means of Act 130, P.A. 1941, in part, by adding the following sentence to Sec. 1 of Act 202, P.A. 1903, as originally enacted:

“The state board of education is hereby granted authority and required to prescribe the requirements for and issue all licenses and certificates for teachers in the public schools of the state.”¹

Act 130, P.A. 1941, also repealed Secs. 1 to 9, inclusive, 11 to 14, inclusive, and 16 and 17 of Chap. 27, Part 2 of Act 319, P.A. 1927, supra.

At the same legislative session the legislature by Act 212, P.A. 1941, also amended Sec. 4 of Chap. 5, Part II of Act 319, P.A. 1927, to impose a penalty upon any school board or board of education which shall employ a teacher who is not legally qualified by forfeiting a proportion of the primary school interest fund to which said district would otherwise be entitled as provided by law.

Act 319, P.A. 1927 was repealed by the provisions of Act 269, P.A. 1955, known as the School Code of 1955, being C.L.S. 1956 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq.

Sec. 569 of the School Code of 1955, supra, continues the requirement that the board of education of any school district shall contract only with duly qualified teachers and no contract with any person shall be valid unless such person holds a legal certificate of qualification at the time the contractual period shall begin.

Sec. 570 of the School Code of 1955, supra, imposes a comparable penalty upon the school district which permits an unqualified teacher to teach in any grade or department of the school, the penalty being the loss of a proportion of the primary interest fund.

Neither Act 319, P.A. 1927, nor Act 269, P.A. 1955, supra, mandate that superintendents of school districts possess certificates issued by the state board of education or any other body. In fact both statutes specified that superintendents of schools possess teachers' certificates or an educational background equivalent thereto. Thus, it may be concluded that superintendents of schools, under the present law, are not required to possess any certificate issued by the state board of education as a condition to employment by a school district.

The statute makes no requirement that principals or assistant principals be certificated before they may be employed by school districts.

The Michigan Supreme Court has ruled in *McLaughlin v. Board of Education of Fordson School District of City of Dearborn*, 255 Mich. 667 (1931), that a superintendent of a school district was not a teacher within a teachers' contracts statute.

The law is well settled that the legislature is presumed to have used words

¹ Sec. 1 of Act 202, P.A. 1903, was later amended, not in pertinent part, by Act 4, P.A. 1954.

subject to judicial construction in the sense in which they have been interpreted by the court. *People v. Powell*, 280 Mich. 699 (1937).

It must follow that the legislature, through amendment of Sec. 1 of Act 202, P.A. 1903 by Act 103, P.A. 1941, in empowering the state board of education to certificate teachers in the public schools, was not including therein superintendents of schools, principals or other school administrators.

My construction of the statute is supported by the decision in *Ortega v. Otero*, 154 Pac. 2d 252 (N. Mex. 1944), which defined a teacher as one who is employed for instructional purposes.

To the same effect is *State ex rel. Howard v. Ireland*, 138 Pac. 2d 569 (Mont. 1943), where the Montana Supreme Court ruled that a superintendent of schools was not a teacher within the statute empowering a board of education to employ or discharge teachers, the court holding that the superintendent of schools occupies a different position and performs different functions than that of a teacher.

A rule empowering a teacher to exercise the right of moderate restraint over a pupil was held by the court in *Prendergast v. Masterson*, 196 S.W. 246 (Tex. 1917), not to include a superintendent of schools. The court ruled that a teacher is one who teaches.

Construing the provisions of Act 202, P.A. 1903, as amended, together with the pertinent provisions of Act 319, P.A. 1927, prior to its repeal, and Act 269, P.A. 1955, as amended, in effect presently, the legal conclusion is inescapable that the state board of education is authorized by law to certificate teachers in the public schools of the state only, that is, those persons who instruct children in the public schools in the state of Michigan.

Therefore, it is my opinion that the State Board of Education is without authority to certificate administrators in the public schools under the provisions of Act 202, P.A. 1903.

FRANK J. KELLEY,
Attorney General.

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ELECTIONS: Circuit judges – effect of 1963 Constitution.

JUDGES: Circuit, election of under 1963 Constitution.

In order to comply with the various provisions of the Revised Constitution, the first regular election of circuit judges thereunder may not be held prior to the November, 1966, general election.

No. 4175

August 14, 1963.

Honorable Miles N. Culehan
Chairman, Legislative Committee
Wayne Circuit Judges
1601 City-County Building
Detroit 26, Michigan

You have requested my advice as to the general election at which the circuit judges of this state will be elected next following the effective date