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# Teacher Tenure Contracts-Discrimination Against Married Women Teachers

TEACHER TENURE CONTRACTS—DISCRIMINATION AGAINST MARRIED WOMEN TEACHERS.—Appellee, a married woman, was a tenure teacher in the schools of Michigan City, Indiana. Due to economic conditions, the school trustees adopted a new salary schedule which discriminated in amount of compensation paid married women teachers. Appellee instituted this action to collect additional compensation for her services on the theory that the schedule was void as to married women teachers. The trial court found the schedule invalid. The Appellate Court held that discrimination in fixing women teachers' salary because of marriage would be capricious to a teacher who was as competent and efficient after marriage as before; and transferred the case to the Supreme Court with a recommendation that McQuaid v. State ex rel. Sigler, holding marriage "good and just cause" for cancellation of a teacher's contract, be overruled. The Supreme Court held that the discrimination was unreasonable, but that the McQuaid case was inapplicable to the facts of the principal case.[1]

There is an honest difference of opinion on the public policy of allowing married women to teach. In England, the power of educational authorities to remove women teachers who are married has been sustained.[2] In the United States, in the absence of any statutory provisions, marriage of a woman teacher has generally been held to be not in itself grounds for discharge,[3] and under statutes giving power to discharge for reasonable grounds has usually been held not to be a reasonable ground.[4] In recent years the trend of public opinion has been against allowing married women to teach, and some statutes have been interpreted as giving school boards authority to dismiss them.[5] This trend is due, no doubt, to the economic conditions which have turned many men and single women out of work.

The McQuaid case,[6] undoubtedly the outgrowth of this public opinion, repudiated two leading Indiana decisions which held marriage in itself

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22 Temporary regulation 3801 (approved June 25, 1937).

1 State ex rel. Hutton v. Gill (Ind. 1937), 8 N. E. (2d) 818 (Sup.), 7 N. E. (2d) 1011 (App.).

2 Short v. Poole (1926), 1 Ch. 66, 14 British Rul. Cas. 641, note.

3 56 C. J. 403.

4 State ex rel. Pittman v. Barker (1934), 113 Fla. 865, 152 So. 682, 94 A. L. R. 1481; School Dist. of Wildwood v. State Board of Education (1936), 116 N. J. Law 572, 185 A. 664 (N. J. act is quite similar to the Indiana act); People v. Board of Education of N. Y. (1914), 212 N. Y. 463, 106 N. E. 307; People v. Maxwell (1904), 117 N. Y. 494, 69 N. E. 1092; Richards v. District School Board (1916), 78 Or. 621, 153 P. 482, Ann. Cas. 1917B, 226, L. R. A. 1916C, 789; State v. Board of School Directors of City of Milwaukee (1923), 179 Wis. 284, 191 N. W. 746. See also 56 C. J. 403, 88 A. L. R. 1103, and Stephenson, *Handbook of Indiana School Law* (1929), p. 181.

5 Rinaldo v. Dreyer (Mass. 1936), 1 N. E. (2d) 37; Ansorage v. City of Green Bay (1929), 198 Wis. 320, 224 N. W. 119; 24 R. C. L. 612ff.

6 McQuaid et al. v. State ex rel. Sigler (Ind. 1934), 6 N. E. (2d) 547.

not "good and just cause,"[7] and a local school board without power to make it "good and just cause" for cancellation of a teacher's contract.[8] Judge Treanor wrote a strong and convincing dissent in the case in which he pointed out that "cause" means "legal cause" in Indiana,[9] although it may be interpreted more broadly elsewhere,[10] and must bear a reasonable relation to a person's fitness for holding office and capacity to discharge the duties thereof;[11] and that in harmony with the rule of *ejusdem generis*[12] approved by the Indiana court "other causes" can include only such things as are of like kind and class with those designated by the specific words "incompetency, insubordination, neglect of duty and immorality." It is doubtful whether the marital relation fulfills either requirement under the Indiana Tenure Act.[13]

But granting that, as the McQuaid case maintains, there may be factors in a particular community having probative force in determining the policy of employing married teachers, the question as to whether or not they should be employed is not involved in the principal case. That she has other adequate means of support and there are competent single women for the position may be reasons for refusing to employ a married woman, but are they reasons after she is employed for reducing her salary below that of other teachers having the same qualifications and doing like work?

It is recognized everywhere that permanence of tenure is no assurance against changes in salary,[14] but cases uniformly hold that such change must be based upon a reasonable and natural classification of those affected thereby,[15] and that there must be no discrimination between the members of any particular class.[16] The Indiana Court has held that for a classification to be reasonable there must be some inherent and substantial difference

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[7] School City of Elwood v. State ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471, 81 A. L. R. 1027.

[8] Kostanzer et al. v. State ex rel. Ramsey (1933), 205 Ind. 536, 187 N. E. 337.

[9] State ex rel. Manning v. Mayne (1879), 68 Ind. 285; Roth v. State ex rel. Kurtz (1902), 158 Ind. 242, 63 N. E. 460.

[10] Rinaldo v. Dreyer (Mass. 1936), 1 N. E. (2d) 37. Cause here defined as *such cause as seems to it* (board) *sufficient.*

[11] School City of Elwood v. State ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471, 81 A. L. R. 1027.

[12] Summarized in Yarlett v. Brown (1923), 192 Ind. 648, 653, 138 N. E. 17, 19.

[13] The Indiana Tenure Act provides that indefinite contracts of permanent teachers may be cancelled for incompetency, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause but may not be for political or personal reasons. Teacher Tenure Act, Acts 1927, ch. 97, sec. 2, p. 259; Acts 1933, ch. 116, sec. 2, p. 716; Burns '33, sec. 28-4307 to sec. 28-4312.

[14] Abraham v. Sims (Cal. 1935), 43 P. (2d) 1029; Fidler v. Board of Trustees (1931), 122 Cal. App. 296, 296 P. 912; People v. Chicago (1917), 278 Ill. 518, 116 N. E. 158; State ex rel. Anderson v. Brand (Ind. 1937), 5 N. E. (2d) 531; 56 C. J. 387, 422.

[15] Bolivar Township Board of Trustees of Benton Co. v. Hawkins (1934), 207 Ind. 171, 191 N. E. 158, and cases cited.

[16] Phelps v. Board of Education of Town of West N. Y. (U. S. 1937), 57 S. Ct. 483.

germane to the subject and purpose of the legislation between those included within a class and those excluded.[17]

The Indiana Act provides for changes in salary schedules from year to year,[18] and that experience, scholastic average and success grades be considered in the salary schedule.[19] Clearly the legislature had in mind a separation of teachers into classes, and attaching thereto certain compensation; and that is the interpretation Administrative Boards have put upon the language. It necessarily follows that the classification must be upon some basis having a reasonable relation to ability to impart knowledge or to perform duties in a schoolroom. A classification which places married women in a different and lower class than unmarried women with the same qualifications and doing the same work certainly has no relation to the value of teachers' services, and is certainly not a reasonable and natural one. It is impossible to know in advance that one's efficiency will become impaired by marriage, and any rule which assumes that persons do become less competent by marriage is unreasonable and purely arbitrary.[20] There is less basis for discrimination because of marital relation than because of sex; yet public policy demands that there be no discrimination between the salaries of men and women performing like services, and some states have enacted laws prohibiting such discrimination.[21]

Clearly the purpose of the Trustees in the principal case was to cause Appellee to resign; and if their policy was upheld, the purpose of the Tenure act, which was to prevent removal of capable and experienced teachers at political and personal whim of officeholders, and to limit plenary power of local school officials to cancel contracts,[22] would be destroyed. Upholding discrimination because of marital status leads the way to other discriminations, and soon no one could hold a tenure position by relying solely on professional qualifications and personal competency.

M. J. W.