5-1969

The Legal Authority of Local School Boards in the State of Utah With Respect to Teaching Personnel

John Claud Haws
Utah State University

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THE LEGAL AUTHORITY OF LOCAL SCHOOL
BOARDS IN THE STATE OF UTAH WITH
RESPECT TO TEACHING PERSONNEL

by

John Claud Haws

A dissertation submitted in partial fulfillment
of the requirements for the degree

of

DOCTOR OF EDUCATION

in

Educational Administration

UTAH STATE UNIVERSITY
Logan, Utah

1969
ACKNOWLEDGMENTS

I wish to express my sincere appreciation to those people whose contributions helped to make this study possible. Special acknowledgment is made to Dr. Oral L. Ballam and Dr. Terrance E. Hatch who served as advisors and gave so generously of their time throughout the preparation of this study. Gratitude is also expressed for the suggestions and assistance given by other members of the Advisory Committee, Dr. Homer M. Johnson, Dean John C. Carlisle, and Dr. E. Malcom Allred.

Thanks are also expressed to the Box Elder County Board of Education and District Staff for their cooperation and support. I am particularly indebted to two of the most efficient secretaries that a school administrator could possibly have had, Mrs. Frances Burt and Mrs. Cloette Knavel.

Special appreciation is expressed to my wife, Eva, and family, without whose encouragement and forbearance this study could not have been completed.

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ABSTRACT

THE LEGAL AUTHORITY OF LOCAL SCHOOL BOARDS IN THE STATE OF UTAH WITH RESPECT TO TEACHING PERSONNEL

by

John Claud Haws, Doctor of Education
Utah State University, 1969

Major Professor: Dr. Oral L. Ballam
Department: Educational Administration

Problem: The problem of this study was to: (1) identify those laws, court decisions, legal opinions of the Office of the Attorney General of the State of Utah, the legal opinions and policies of the Office of the State Superintendent of Public Instruction of the State of Utah, trends and extra legal practices of local school boards in the State of Utah with respect to teaching personnel, (2) organize such data into topical categories in terms of subject matter; and (3) develop some suggested guidelines and recommendations for local school board policies and legislative enactments in the State of Utah.
Summary: A portion of the summary was as follows: (1) The Office of the State Board of Education in Utah has the sole power to issue teaching certificates and may revoke them for immoral or unprofessional conduct. (2) Local school boards may require additional qualifications of certificated teachers such as areas of training, experience, and health. (3) Written contracts may be entered into with teachers for terms not to exceed five years, providing that they may be terminated for cause at any time. (4) It is not unlawful to employ a certificated teacher who is closely related to a school board member. (5) Utah has no teacher tenure laws, but local school boards may provide for tenure, continuing contracts, and orderly dismissal procedures for teachers through district policy. (6) Local school boards are financially liable for the full term of a teacher's salary. (7) Local school boards may either insure in the state insurance fund or pay compensation directly to a teacher injured on the job. (8) Immunity from legal suit of local school boards has been waived for certain of their own acts and negligent acts of teachers when performing in their official capacity. (9) Local school boards may insure teachers against individual liability if they are judged negligent in the performance of their duties.
Major recommendations: The Utah Legislature should: (1) delete outdated and obsolete statutes pertaining to teaching personnel from the Utah Code Annotated, (2) pass a Professional Negotiation and Tenure Law for teachers, and (3) make it mandatory that local school boards purchase liability insurance for the protection of teachers.

The Utah State Board of Education should: (1) withhold State Uniform School Funds from local school boards who continue to employ non-authorized, non-certificated teachers, (2) require a financial penalty of teachers who break their contracts illegally with local school boards, and (3) prohibit local school board members from originally appointing their close relatives as teachers.

The Utah School Boards Association should increase its leadership role with local school boards in such areas as legislation, negotiations, general school operation, and inservice training for newly elected school board members.

Additional areas of study suggested by this research were: (1) District court cases in Utah with respect to teaching personnel which have not been taken to the Appellate Courts, (2) Updating of the Utah Code Annotated in all respects in those statutes involving schools, and (3) Reasons why some local school boards in Utah operate extra legally.

(292 pages)
CHAPTER I
INTRODUCTION

Public education in the United States is essentially a state function. It is not specifically mentioned in the Federal Constitution, and by virtue of the Tenth Amendment, the interest of the Federal Government in public education has been somewhat indirect. All authority for establishing and controlling public education in each of the fifty states is vested in the people who exercise control through the state constitutional convention, legislative assemblies, and courts of law. It is the duty and the prerogative of the individual state legislatures to create the machinery for public school operation and control within the framework of the state constitution.

The states retain control over public education, but the actual operation of the public schools has been delegated to local school boards. These local school boards have no inherent rights, powers, or privileges in themselves; but only those which are specifically delegated to them by the state constitution and/or legislative statutes, and such implied rights, powers, and authority as are reasonably necessary to make effective their delegated and implied powers and responsibilities.
Historically, American citizens have supported this general plan for local direction of public education under state supervision as opposed to a centralized national system that exists in many other countries of the world. It has generally been assumed that the American system keeps the schools close to the people and makes it possible to provide variations in local programs which will best fit the needs of the local citizens.

Governing boards have always held a unique place in the social and institutional structure of the American nation and most states have, therefore, utilized a state board of education. These state boards have generally been delegated the power to direct, supervise, and regulate the general aspects of the state public school program.

The public schools are not only subject to constitutional, legislative and supervisory control, but to judicial control as well. The courts are concerned with interpreting legislative intent, or will, and are called upon to rule on the constitutionality of statutory provisions. Courts generally support the judgments of a local school board unless it is determined that such judgment was capricious, unreasonable, dishonest or unconstitutional. However, it is intended that local school boards have control over the public schools in their respective districts so long as they comply with state laws and the regulations of the state board of education.
A school district is the basic governmental unit through which local control of schools is effected and it possesses quasi corporate powers.

**Statement of the Problem**

Local school boards have been faced with dynamic educational problems for many years and are now confronted with profound issues related to a rapidly increasing school population, the growth and complexity of society, and issues related to teacher negotiations.

Teaching personnel have become increasingly active, in some instances militant, in working for solutions to problems that concern themselves personally and education in general. Local school boards are finding it increasingly more difficult to maintain satisfactory relationships with the teaching staff and to administer the schools within the legal framework as established or implied.

Local school board members are generally laymen, and are not familiar with legal and implied authority with respect to teaching personnel. They are also untrained in the method of legal research.

Many professional school administrators either have a limited knowledge of school law or fail to communicate such needed information to their school board members. There also does not appear to be an adequate source of information available from which one can determine the legal authority of local school boards, particularly with respect to
teaching personnel.

There are few, if any, guidelines for developing policies for school board-employee relations, and present legislation is limited and in some respects vague in terms of the responsibilities of the various agencies and persons involved with teaching personnel.

The problem of this study will be to: (1) identify those laws, court decisions, legal opinions of the Office of the Attorney General of the State of Utah, legal opinions and policies of the Office of the State Superintendent of Public Instruction of the State of Utah, trends and extra legal practices of local school boards in the State of Utah with respect to teaching personnel; (2) organize such data into topical categories in terms of subject matter; and (3) develop some suggested guidelines and recommendations for local school board policies and legislative enactments in the State of Utah.

Purpose of Study

The purposes of this study are to research the school law in selected areas of local school board authority with respect to teaching personnel in the State of Utah and to:

1. Trace the historical evolution of selected school laws and local school board practices with emphasis on the State of Utah.

2. Assemble and organize selected constitutional and statutory provisions of the State of Utah.
3. Assemble and organize pertinent decisions given by courts of the State of Utah.


5. Assemble and organize pertinent opinions and policies stated by the Office of the State Superintendent of Public Instruction of the State of Utah.

6. Identify trends in local school board operation with respect to teaching personnel in the State of Utah.

7. Identify extra legal practices with respect to teaching personnel of some local school boards in the State of Utah and discuss some implications of these practices.

8. Develop some suggested guidelines and recommendations for local school board policies and legislative enactments in the State of Utah.

**Organization and Treatment of Data**

This study is concerned with the legal authority of local school boards in the State of Utah with respect to teaching personnel. Specifically, the study will collect and organize data in the following areas: (1) certification, (2) employment, (3) tenure and dismissal, (4) benefits, (5) status and authority, (6) control of pupils, and (7) liability of teaching personnel. The data will be organized into topical categories
in terms of subject matter.

The court cases will be taken from Utah Reports, Pacific Reporter, Federal Supplement, U. S. Supreme Court Reporter, and where appropriate, other regions of the Reporter System. The Court opinions will be analyzed in terms of the powers, duties, and liabilities of the board and the judicial standards deduced. The judicial principles of the case law will be formulated and presented in the form of a connected topical narrative.

The statutory provisions relating to the school board will be extracted from the current edition of the Utah Code Annotated and School Laws of the State of Utah and arranged in the topical narrative.

The legal opinions of the Office of the Attorney General and the legal opinions and policies of the Office of the State Superintendent of Public Instruction in the State of Utah will also be included in the topical narrative.

Limitations

This study will be limited to those school laws of the State of Utah current in 1968. Information related to the historical evolution of school laws of the State of Utah in selected areas will be cited.

Only appellate or Utah Supreme Court cases will be considered in this study. Cases tried in the lower Utah Courts are not included as they have no binding effect on all school systems of the State.
The court cases selected as references in determining local school board authority in Utah will generally be limited to those cases tried in the Utah Courts. However, in some instances, court cases outside of the State of Utah will be cited when they are deemed to have significant importance to a particular area under discussion.

This study considers only the laws related to certificated school personnel, aides and other para-professional and non-certificated teaching personnel engaged in the actual teaching-learning process. School administrators and supervisory certificated personnel will be excluded.

This study is not intended to re-codify the school laws of the State of Utah or to cover all legal aspects of public school operation in relation to teaching personnel. Neither is it intended to supplant the use of an attorney by local school boards on such legal matters.
CHAPTER II

THE LEGAL STRUCTURE OF PUBLIC EDUCATION IN THE UNITED STATES

The Federal Government and Education

The Federal Constitution

The Constitution of the United States, as the basic law of the land, makes no direct reference to education. There are provisions in the Constitution, however, which are sufficiently related to education to make it difficult to determine the exact amount of authority the Federal Government has over education. The amount of legal control over education which has been assumed by the states is likely more a matter of public policy than legal authority. ¹

The Preamble to the Constitution is often cited to indicate a federal interest in education, if not some legal authority. The powers of the Federal Government are limited, however, by the Tenth Amendment to the Constitution which states, "The powers not

delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people." It has, therefore, been assumed that education is a function of government which is reserved to the individual states.

One should not assume, however, that the Federal Constitution prohibits the Federal Government from participating in/or sponsoring educational programs, nor can it be assumed that the laws passed by the United States Congress do not affect the public schools. Neither can it be concluded that laws, rules, and regulations for the control of public schools are not subject to provisions of the Federal Constitution.

Some sections of the Constitution of the United States influence, indirectly, the operation of public schools. These sections are those dealing with the so-called inherent rights of individuals wherein the powers of Congress and the states are restricted. Specifically, these sections and amendments are: Article I, Section 10, Amendment I, Amendment V, and Amendment XIV.

Article I, Section 10, of the Constitution contains a clause which prohibits a state from passing legislation "... impairing the Obligation of Contracts ..." Some problems facing local school boards relate to contracts with employed personnel and other persons or companies, such as architects, building contractors, bus companies, and suppliers of materials.
The First Amendment bars any "... law respecting an establishment of religion, or prohibiting the free exercise thereof; ..." This amendment has been the basis of many court cases regarding such issues as Bible-reading, released time for religious instruction, non-participation of pupils in school activities for religious reasons, dismissal of teachers for being conscientious objectors to war, use of public funds to transport children to parochial schools, and use of school buildings for meetings sponsored by religious groups.

The Fifth Amendment is often referred to as a constitutional provision against self-incrimination.

The Fourteenth Amendment contains the famous so-called "due process" and "equal protection" clauses. Both of these clauses have had wide interpretation in court cases involving public education in such situations as assignments of pupils to schools on the basis of race, loyalty oaths for teachers, and prohibitions against teaching certain subjects.

Despite the absence of language on public schools in the Federal Constitution, the Federal Government has always been involved in public education to some extent. The general welfare clause of the Federal Constitution, Article I, Section 8, authorizes Congress "... To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and
the general Welfare of the United States; . . . ." Congress has assumed that this clause has given it power to tax for broad social purposes.

The general welfare clause has also been interpreted by some people to give the United States Congress the power to establish and support a federal system of education. The Supreme Court would probably have to determine the constitutionality of any such authorization.\textsuperscript{2} It has been generally assumed, however, that public education was one of the functions of government which was reserved to the states or to the people.

\textbf{Federal influences on teacher preparation}

During the past decade federal programs affecting the public schools and teachers have increased considerably. At no time in our history, except perhaps the 1860-1870 decade when the land grant colleges and the United States Office of Education were established, has education occupied such a prominent place on the agenda of the United States Congress.

The Eighty-eighth Congress and the Eighty-ninth Congress have placed a high priority upon education and have appropriated funds to assist in preparing a greater number of more competent teachers for

the elementary and secondary schools. Teachers already in service have been given opportunities to increase their competencies by gaining additional training and experience. With this Congressional support of teacher-training, the Federal Government has assumed some direction and influence upon the programs it sponsored.

The National Science Foundation. The scientific knowledge and engineering skills perfected during World War II and culminating in the explosion of the atomic bomb had a profound effect upon curriculum development and the professional training of school teachers. By Congressional action in 1950, the National Science Foundation was created.

The major purposes of the Foundation were to support basic research, promote manpower talent through fellowships, and disseminate scientific information.

The educational functions that the Foundation is authorized and directed to perform are to:

1. develop and encourage the pursuit of a national policy for the promotion of basic research and education in sciences; . . .
2. initiate and support . . . scientific research potential in the mathematical, physical, medical, biological, engineering, and other sciences; . . .
3. ... award ... scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences; ... 3

In its Thirteenth Annual Report for the 1963 fiscal year, the Foundation noted that the educational programs of the Foundation, most notably the teacher institutes and course content improvement projects, had succeeded in changing the over-all aspect of education in the United States.

The Foundation provides no direct payments to local school districts or to state departments of education, but most of its payments are to colleges and universities or to nonprofit research and professional organizations. Its programs increase the supply of competent mathematics and science teachers and provide new instructional materials for use in the public schools. 4

The National Defense Education Act. The National Defense Education Act was passed in 1958 to meet certain critical national needs in American education. This Act was passed in the wake of warnings that the United States was falling behind other countries in the scientific fields and the successful Russian launching of the Sputnik.


4 Ibid., p. 40.
satellite. The immediate purpose of this Act was to augment the supply of highly-trained manpower in fields of science, mathematics, and modern foreign language to protect and promote the national security. Subsequent amendments extended coverage to virtually all areas and levels of education. Included in this Act were the following areas that relate directly to the training of additional and more competent teaching personnel:

1. Federal participation in college and university student loan funds,
2. Fellowships for graduate study,
3. Grants to . . . institutions of higher learning . . . to establish institutes for secondary school guidance in counseling personnel,

More than 1.5 million needy students have borrowed over $1.3 billion in low-interest loans (3 per cent) to help finance their education. A borrower who becomes a teacher in a public or nonprofit school, kindergarten through college, may have up to one-half of his loan cancelled. The entire obligation may be cancelled for teaching in certain "hardship" schools or teaching the mentally or physically handicapped.

—Demars, p. 64.
Grants to states of more than $170 million have helped increase the number of counselors from 12,000 in high schools to 44,000 in public schools through junior college. By the end of the 1968-69 school year, more than 22,000 counselors and teachers preparing to be counselors will have attended 703 institutes to improve their qualifications.  

More than 10,000 fellowships costing about $34.5 million have been awarded to advanced students and college teachers for intensive study in foreign languages and related geographic areas.

By the end of 1968-69, more than 100,000 teachers and other educational personnel will have attended over 2,500 institutes for advanced study to improve their qualifications.

In a ten year period of time, the National Defense Education Act of 1958 has provided more than half a billion dollars for strengthening instruction in certain "critical" subjects taught in public grade and high schools.

The Education Professions Development Act. On June 29, 1967, the President signed into law The Education Professions Development Act which consolidates many of the programs in previous legislation

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and added important new ones for teacher education. This Act broadened the base of funding for the purposes of improving the quality of teaching and helping to meet critical shortages of adequately trained educational personnel.

Among other things, this Act provided: (1) for the attracting and qualifying of teachers to meet critical shortages, (2) fellowship for teachers for careers in elementary and secondary education, and (3) assistance to institutions of higher education in the training of persons who are serving or preparing to serve as teachers, and administrators.

Despite the emphasis on local and state control of the public school system in the United States, the Federal Government throughout history has had some influence on education. In recent decades this influence appears to have been strengthened, particularly in the area of teacher training.

**The Court System**

**The Federal Courts**

A major function of the judicial branch of government is to determine the constitutionality of congressional or legislative acts. Another function is to determine the extent to which performance complies, or does not comply, with a particular law. Whether or not a law or a performance meets constitutional requirements is
determined only when a specific case is brought before the court for
decision as the courts have no authority to initiate action.

Hamilton and Mort in discussing the important role of the
courts in education stated:

... the function of the courts is to interpret legislative
enactments and constitutional provisions ... However, when it is remembered that they have the power to
interpret both the constitution and statutes, and that in so
many cases more than one interpretation is possible, the
power of the courts in directing the course of the law be­
comes apparent and power to interpret the law as it
applies to educational matters means, to a very great
extent, the power to direct the course of education ... 7

Inasmuch as education is not mentioned in the Federal Consti­
tution, it can come before the court in an indirect fashion only. Su­
preme Court cases affecting education have arisen under the First
and Fifth Amendments which deal with civil rights, the Fourteenth
Amendment which is concerned with protection of all citizens under
the law, the general welfare clause, and cases involving the powers
and functions of the states or the Federal Government.

Especially during the last quarter-century, three school re­
lated problem areas appeared: (1) conflicts in which the schools were
involved with the question of separation of church and state, and the
guarantee of freedom of speech, (2) conflicts over segregation by

7 Robert R. Hamilton and Paul R. Mort, The Law and Public
race in the schools, and (3) conflicts between individual rights and the requirements of the state.

The third classification appears to underline the acts of local school boards which have brought them into conflict with the rights of teaching personnel in the federal courts. Acts dealing with questions of state powers and functions are those concerned with such teacher rights as contracts of employment, tenure, retirement, leave of absence, and benefits for injuries and other disabilities. Such acts that touch on the "Bill of Rights" for teachers include: membership in professional organizations, the withholding of services, loyalty tests and oaths, freedom of expression, and fair labor practices.

A study of the court cases involving local school boards and teachers over the past decade, until recently, have evolved around contractual and salary arrangements. However, the individual rights of teachers, as well as students, during the last decade have been strengthened through the courts and this trend is likely to continue.

Many cases have recently been successfully prosecuted against teachers themselves for acts involving their failure to exercise proper care over children entrusted to them. Teachers are also being forced

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to assume an ever-increasing responsibility for the consequences of their acts involving negligence or failure to act within the scope of their employment.

The state courts

Each of the fifty states has its own judicial system, with a court structure similar in many instances to that of the Federal Government. Even though each court decision is binding only in the state in which it is rendered, many key decisions affect education in other states.

The state courts have repeatedly upheld the doctrine that in the United States education is a function of the state and is, therefore, fundamentally a matter of state policy. 9

State courts have been more involved in litigation concerning education than have the federal courts. Most states in carrying out their responsibilities for establishing and maintaining public school systems have passed voluminous bodies of law pertaining to education. The interpretation and challenging of school laws through the courts have produced an enormous quantity of state court decisions. Over the years almost all phases of education have at one time or another been subject of court action on the state level.

9 Pierce, p. 83.
Actions at law may be classified as criminal or civil actions. In a criminal action, an individual is charged with violating a law and a prosecution follows in the name of the government or the people for the punishment of the crime. A civil action may be brought in a court of law to enforce or protect rights of private persons, or to secure a remedy for the invasion of such rights of persons or property.

Teachers are not often involved in criminal cases, they are usually concerned with those matters that give rise to a civil action only. The same acts, however, which are grounds for civil litigation may also constitute a crime. For example, a teacher who unnecessarily places a child in fear of bodily harm and, in fact unreasonably strikes the child, has committed an assault and battery against the child in which a civil action for damages may lie.

The police power of the state is designated to limit individual rights where these rights must be controlled for the common good. Exactly where the power of the state to limit individual freedom ends and the rights of the individual to act begins are proper questions for the courts to decide. In matters affecting the constitutional rights of teachers, the Supreme Court of the United States is the final arbiter, even though such appeals begin at the state court level.
The Utah Courts. The Utah Constitution provides that:

The judicial power of the state shall be vested in the Senate sitting as a court of impeachment, in a Supreme Court, in district courts, in justices of the peace, and such other courts inferior to the Supreme Court as may be established by law. 10

Utah law declares that the courts of justice in that state are: (1) the Senate sitting as court of impeachment, (2) the Supreme Court, (3) the District Courts, (4) the City Courts, (5) the Justice Courts, and (6) the Juvenile Courts. 11

The House of Representatives has the sole power of impeachment, and the Senate sits as a court of impeachment. The Governor and other state judicial officers, except justices of the peace, are liable under Utah law for impeachment for high crimes and misdemeanors or malfeasance in office. 12

The Supreme Court of Utah and the district courts have no direct relationship to the public schools, but often conflicts arising in the public schools are decided by the state courts. Since local school districts are state agencies, they cannot be sued without their consent.

10 Utah, Constitution, Art. 8, sec. 1.

11 Utah Foundation, p. 50.

12 Ibid.
However, in Utah, sovereign immunity has been waived in order to make local school boards responsible for certain acts of negligence, and teachers responsible for their intentional torts and discretionary functions.

Action against a local school board or teacher in these circumstances where immunity from suit has been waived may be instituted in the district courts which have exclusive original jurisdiction.

District courts are created as courts of general and unlimited jurisdiction to try all matters, civil and criminal. Thus, they handle all of the major litigations within the state and are important courts in the judicial system. The judgments, orders and decrees of the district courts are subject to appeal to the State Supreme Court.\(^{13}\)

Governing bodies of first, second, and third-class cities and county seat cities in Utah are authorized to establish city courts. When city courts are established in Utah, the city judges act as the justices of the peace for the precincts involved. Cases involving felonies or indictable misdemeanors generally go to the district court after a preliminary hearing in a justices' or city court.

Civil actions that may be brought into the district court of law to enforce or protect teachers' rights may include contracts, tenure, retirement, and other various welfare matters. Criminal action against teachers may arise in areas of tort liability. Injunctions may

\(^{13}\) Ibid., p. 51.
also be sought by local school boards in the district courts against local teacher associations prohibiting certain concerted action being taken to interfere with normal school operation.

The juvenile courts in Utah have exclusive original jurisdiction concerning any child who has violated any federal, state, or local law or municipal ordinance, or any person under twenty-one years of age who has violated any such ordinance before becoming eighteen years of age.

**Influence on education.** The Utah courts have influenced education within the state, but the courts have generally refused to substitute court decisions for legislative direction. Courts have recognized the legislature as the branch of state government wherein authority exists to operate the schools. 14

The courts are concerned with interpreting legislative will or intent and are loath to substitute their own judgment for legislative intent. In cases where statutes appear to be contradictory or ambiguous, and when required to do so, the courts will rule. When litigation involves disputes between two or more parties, the courts are called upon to render judgment. The courts are also called upon to rule on

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the constitutionality of statutory provisions. 15

The courts tend to support the judgment of the local school board unless that judgment can be shown to be capricious or dishonest. They uphold the actions of school personnel so long as such actions appear to have been reasonable. The court system is so structured that appeals are permitted from the lower courts to higher courts for judicial review. While the courts are subject to human error, the judges who preside over them do, for the most part, reflect not only the word, but the spirit of the law. 16

It happens occasionally that a local school board is taken into court because someone accuses it of not literally complying with the letter of the law. Generally, the courts have given liberal interpretation to the statutes and thereby sustained administrative procedure when the laws have been substantially obeyed. 17

While the Utah courts have been liberal in their decisions where local school boards are concerned, inference should not be made that reasonable limitations curtailing administrative procedures do not


16 Ibid., p. 63.

17 Moffitt, History of Public Education in Utah, p. 337.
exist. The courts have stated repeatedly that school boards may not exceed the intent of the statute. 18

The State Government and Education

Although the Constitution of the United States makes no direct reference to education, state constitutions have specific provisions which make education a legal responsibility of the state. Much of this responsibility is delegated to local school boards and to other bodies, all of which become a part of the state system of education. States are free to exercise all leeway possible, short of violating provisions of the Federal Constitution.

The educational system in each state is based upon its constitution and statutes, and depends upon the interpretation of these, as made by the state superintendent of public education, the state attorney general, and the courts. Thus, each sovereign state determines its own educational system. Such uniformity as prevails among the several states has often been accomplished through the policies of the state board of education, the personal leadership of the state superintendents, and the work of other members of the teaching profession. Teaching personnel today are very mobile and in moving from one state to another, bring with them customs and ideas of their original regions.

18 Ibid., p. 340.
The state legislature

Most state constitutions contain language whereby the state legislature is charged with the responsibility of establishing and maintaining a system of free public schools. In the Utah Constitution, for instance, the provision reads:

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control. 19

The courts of the several states consistently interpreted such language as shown above as ascribing plenary power to the legislature, but it is always subject to the limitations of state and federal constitutions.

Constitutional and statutory language, court interpretations, and long practice makes it clear that the legislature of each state is the "big school board." Even though state boards of education and other appropriate state agencies can do much to screen and improve the proposed legislation, it finally becomes the responsibility of the legislature to decide the basic policy questions regarding schools. 20

19 Utah, Constitution, Art. 10, sec. 1.

20 Campbell, Cunningham and McPhee, p. 54.
The state legislatures generally determine, directly or indirectly, such important issues in education as the extent and manner of financial support, powers of local and state school boards, minimum qualifications of teachers, compulsory school age and enforcement thereof, textbooks to be used, and what shall and may not be taught. Such issues directly relate to the supply and quality of teaching.

The legislature has the power to administer the public school system directly or to delegate this authority to state agencies to carry out its policies. The legislature, however, may not divest itself of legislative authority by vesting such authority in an individual officer or public body. The Supreme Court of Illinois had the following to say on this matter:

> It is clear that the General Assembly cannot delegate its general legislative power to determine what the law shall be ... However, it may authorize others to do those things which it might properly do, but cannot do as understandingly or advantageously itself ... 22

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In one of the leading cases wherein the legal authority of legislatures was stated, the Supreme Court of Indiana stated:

The authority over schools and school affairs . . . is a central power, residing in the legislature of the state. It is for the law making power to determine whether the authority shall be exercised by a state board of education, or distributed to county, township, or city organization throughout the state . . . . As the power over schools is a legislative one, it is not exhausted by exercise. The legislature, having tried one plan, is not precluded from trying another. It has a complete choice of methods, and may change its plans as often as it deems necessary or expedient . . . . 23

The power of state legislatures is exercised in making basic policy decisions regarding the public school system within a state. This power is exercised in many ways and yields every influence it can muster. It becomes essential to the operation of good schools, that local school boards understand the legal implications of all legislative action.

The several Utah Legislatures that have acted since statehood have revised the statutes and passed new laws until at present, a large body of edicts prescribe in some detail, the administration of all phases of public education in Utah.

23 Clark v. Howorth, 122 Inc. 462, 23 N. E. 946 (1890).
The Governor

The Governor of Utah is the most important single state official, and inherent in his office are certain significant powers over public education.

One of the important powers of the Governor is that of appointing members to important boards and commissions. In most cases, however, such appointments must be confirmed by the Senate, including membership on the Utah State Land Board and the Utah State Retirement Board. If vacancies occur in any one of the four elective offices of: Attorney General, Secretary of State, Auditor, or Treasurer, the Governor is required by the Constitution to fill the vacancy by appointment until the next general election. 24

The Governor has power to control state finances by: (1) vetoing a line item in an appropriation bill, and (2) supervising the budgets that are executed by state departments and agencies. The Governor also has the responsibility to report to each session of the Legislature the condition of the state, and he may recommend such measures as he may think necessary or desirable. 25

24 Utah, Constitution, Art. 7, sec. 10.

The Governor has considerable influence on the appropriations made by the Legislature to public education.

Utah's Governor, along with the Office of the State Board of Education, has attempted to play the role of a mediator during periods of serious controversy between local educational associations and local school boards. Such mediation attempts were made by a Utah Governor during a controversy between the Box Elder Education Association and the Box Elder County Board of Education in 1965, and similar controversies between the Uintah Education Association and the Uintah Board of Education in 1967, and the Carbon Education Association and the Carbon County Board of Education in 1968.

The State Board of Examiners—
Financial Department

The State Board of Examiners consisting of the Governor, Secretary of State, and Attorney General has great power over the affairs of state agencies.

The legal basis of the Utah Board of Examiners is given in the State Constitution and reads as follows:
Until otherwise provided by law, the Governor, Secretary of State and Attorney General shall constitute a Board of Examiners, with power to examine all claims against the State except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law; and no claim against the State, except for salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without having been considered and acted upon by said Board of Examiners. 26

The Board of Examiners is, therefore, a constitutionally created body charged with the duty of examining all claims against the state and has realized powers and duties which make it potentially one of the most powerful units within the executive branch of state government.

In 1941, the State Department of Finance was established to implement the functions relating to budgeting, accounting, purchasing, and expenditure control. "In 1963, the Utah Legislature changed the organization from the commission type agency to a department with an appointed head." 27

As of 1968, the Director of Finance prepares semi-monthly payrolls for state offices and employees, and semi-weekly registers for the payment of vouchers issued by state agencies. These are circulated to the individual board members for signature before payment is authorized. Generally, approval is routine. However, any item


27Demars, p. 217.
questioned by a member is deferred for consideration at a regular meeting.

No court has yet determined the authority that the Board of Examiners and Finance Department have over local school boards. However, there have been several court cases to determine the authority they have over other governmental agencies including the State Board of Education and the University of Utah.

In the first of two cases in which the University of Utah v. Board of Examiners of the State of Utah, the University contended that since it was a constitutional corporation its claims against appropriated funds were not claims against the state and were not subject to any review by the Board. The court decision was that, "... the University was a public corporation not above the power of the Legislature to control, and was subject to the laws of this state from time-to-time enacted relating to its purposes and government." 28

In February 1958, a Supreme Court decision in Utah held:

Short of capricious or arbitrary actions, the Board of Examiners and its administrative arm, the Commission of Finance, have the authority to examine and approve or disapprove of proposed expenditures, to adopt resolutions pertaining to salary schedules and personnel; and the superintendent of public instruction and the board of education are subject thereto in a manner similar to other departments of state government. 29

28 University of Utah v. Board of Examiners, 4 U. (2d) 408, 295 P. (2d) 348 (1956).
29 Bateman v. Board of Examiners, 7U. (2d) 221, 322 P. (2d) 381, (1958).
By statute, "the Commission of Finance shall exercise accounting control over all state departments and agencies and prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations." 30 The Office of the State Board of Education is authorized to apportion state funds to local school boards by directing the State Treasurer through the State Auditor's Office to apportion and distribute the amounts so determined among the several local school districts. 31

One of the major problems and issues associated with the organization and administration of education at the state level is that of fiscal independence for the State Board of Education.

The Attorney General

The Attorney General is the prosecutor or defender, as the case may be, in all legal actions to which the state or an officer or agency of the state as such is a party. 32 This office is provided for in the State Constitution. 33 He serves as a member of the Board of Examiners, Board of Canvassers, State Board of Loan Commissioners,

32 State and Local Government in Utah (Salt Lake City, Utah: Utah Foundation, 1962), p. 64.
33 Utah, Constitution, Art. 7, sec. 18.
Council of Defense, and the Utah School Employees Retirement Board.

The specific powers and duties that he performs in the area of public education are to examine and certify school bonds, give legal advice to state officials and county attorneys, and issue official legal opinions. His legal opinions, along with those of the State Superintendent of Public Instruction, hold in educational matters until such times as they are set aside by a court of competent jurisdiction or by subsequent legislation.

Summaries of opinions given by the Attorney General on school matters are published in School Laws of the State of Utah, 1965. Several of these opinions are concerned with teacher personnel.

Local school boards frequently request a legal opinion on matters of public school operation through their superintendents to the State Department of Public Instruction. The State Superintendent may provide the legal opinion from his office or refer the question directly to the Office of the Attorney General. In either case, a local board of education can assume that the legal opinion that it receives is binding upon its actions so long as a court or subsequent legislation does not set such opinions aside.

Such opinions on legal interpretation of the law are generally considered to be binding upon all school districts within the State and not merely upon the individual district that originates the request.
The local government

County and city school districts have been created by statute and are thereby state agencies, and members of the local school boards are state officials. On the other hand, municipal corporations are not primarily instruments of state policy; they are created to enable local communities to regulate and administer their own peculiar local concerns. While school boards are legally authorized to cooperate with local governmental agencies, they have few legal responsibilities to local governmental agencies.

Local governmental units are basically service agencies to local school boards and have no control whatsoever over teaching personnel. However, the county commission is directly involved in the finances of the school district from which teacher salaries are paid. The county commission is required by law to levy and collect the amount of tax for the operation of the public schools as certified by the county or city school board. The school district must reimburse the county treasurer its proportionate share of actual costs incurred in the collection of tax for the operation of the public schools.

It is not uncommon for local school boards and city or county governmental agencies to share in the cost of certain professional teaching personnel in relation to joint adult education, recreational, or library programs.
Law enforcement agencies. Both the county sheriff and local law agencies affect to some extent the local school board and teaching personnel, particularly in relation to truant or delinquent youths. The schools use these agencies to apprehend and detain students when necessary, often upon the request of the professional personnel of the district.

The State Department of Education

One of the essential tasks of government is organizing and administering education. All states have created at least minimum machinery on the state level for these purposes. The responsibility of the state in the actual administration of schools at the state level is discharged through the state board of education, the state department of education, and the chief state school officer.

Most state boards, in addition to exercising general control over the public schools of the state, formulate educational policies for the state, recommend to the governor and the legislature needed legislation, present to the governor a budget in which funds needed by the school districts of the state are set forth, distribute federal funds to the various local districts, and appoint the professional staff members to the state department of education upon the recommendation of the chief state school officer.
In many cases, the state board of education is required to enforce the regulations of the state imposed either by statute or by its own body. Particularly, is this the case in the areas of teacher preparation and certification.

**Teacher education**

The power to decide whether or not a person is qualified to teach resides with the state. Legislative provisions, state board of education policies, services of state departments of education, and advisory groups on the state level all influence teacher education.

Divisions of teacher education and certification have been established in several state departments of education. The functions of such divisions are to enforce regulations concerning teacher preparations, approve teacher preparation programs, provide professional services for upgrading teacher education, and to recommend teachers for certification by the state board of education.

Certification standards have been raised gradually during recent years and the general trend is toward longer periods of preparation extending even to five years. More emphasis is being placed upon preparation in the subject matter specialization and the continuous education of teachers.
All teachers employed by local school boards must be certified by the state board of education. However, teachers were once selected and appointed by local school boards or by committees of the local school boards without the necessity of adhering to state teacher preparation and certification standards.

Accrediting agencies

Another source of rather direct influence on the public schools is the accrediting agencies which are supported to some extent by the state boards of education. These agencies have developed over the years to create more uniformity and standardization in the kinds of programs offered and to raise the quality of education provided by the public schools. Accreditation simply means that a given school meets the criteria for a good school as determined by the agency involved.

State boards of education generally assume the leadership role in determining which public schools are to be accredited. Campbell, Cunningham and McPhee stated that James B. Conant had noted the influence of accrediting standards with respect to the enforcement of teacher certification standards and regulations. 34

34 Campbell, Cunningham and McPhee, p. 459.
Accreditation agencies have no legal authority over the public schools, but because of their influence exert considerable control. Institutions of higher learning which are accredited agree to accept all student credits from high schools which are also accredited.

Regional accrediting has developed and Utah is now included in the Northwest Association of Secondary and Higher Schools. The Office of the State Board of Education in Utah has developed criteria for the accreditation of elementary and junior high schools within the state. Most teacher training institutions in the region are also accredited by the Northwest Association as to over-all quality of teacher education.

The Utah State Board of Education

When Utah became a state in 1896, the Utah Constitution provided for a State Board of Education and charged it with the general control and supervision of the public school system. It further specified that the board membership shall be determined by election. 35

In harmony with constitutional requirements, the Utah Legislature has provided for a State Board of Education and spelled out its composition and responsibilities as follows:

35 Utah, Constitution, Art. 10, sec. 8.
The general control and supervision of the public-school system is vested in the State Board of Education. It shall adopt rules and regulations to eliminate and prevent all unnecessary duplication of work or instruction in any branch or division of the public school system and shall require the governing boards of all branches and divisions of the public school system to put the same into operation.\textsuperscript{36}

As of 1968, the Utah State Board of Education had, in addition to its policy making or regulatory board, obligations for the public school system, operational or governing board responsibilities of one junior college, two trade and technical institutes, state schools for the deaf and blind, and an adult center for the blind.

State Board of Education responsibilities. In addition to the broad powers granted by the State Constitution, many specific powers and duties have been assigned by law to the State Board of Education.

Some of the initial responsibilities accepted by the Utah State Board of Education consisted primarily of teacher certification, giving direction to the high school movement, administering of state school funds, and securing a uniform state-wide system of administration and supervision through the consolidation of districts under county boards. The numerous functions of the State Board of Education today have emerged as the operation of the public schools has grown more complex, and the need for educational services increased.

Prior to 1915, the State Board of Education employed four professional people: State Superintendent, Deputy State Superintendent, Library Secretary, and State High School Inspector. The State Board of Education has broadened the scope of its responsibilities over the years. In 1967, the State Department of Education had a professional staff of 167 and a clerical staff of 166. Much of the growth in recent years is the direct result of federally aided programs. Approximately 55 per cent of the total staff in 1967 could be attributed to federally stimulated activities.

State Board of Education membership. Early Utah settlers brought with them a concept of centralized control of schools. The University of Deseret (Utah), with its Chancellor and Board of Regents, operated much as a territorial board of education.

Since statehood, several changes have taken place in the composition, method of selection, and responsibilities of the State Board of Education. On April 5, 1896, an act was passed by Utah's first Legislature that stated:

The State Board of Education shall consist of the State Superintendent of Public Instruction, the President of the Utah University, the Principal of the State Agricultural College and two other persons of large experience and eminent professional standing to be appointed by the Governor by and with the consent of the Senate for a period of four years.37

37 Laws of Utah, 1896, c. 130, sec. 1.
By 1915, the membership of the State School Board was increased to nine. 38 Three members were ex-officio and six members were appointed by the Governor, with consent of the Senate for a six year term. 39

In 1935, a provision was made by law for a State Board of Education consisting of the State Superintendent and, "... nine other persons appointed by seven regional school board conventions; or by the governor by and with the consent of the senate ..." 40 The term of membership was for seven years. The State Superintendent became an ex-officio member of the board. 41

In 1951, the term of office for members was shortened to six years, and all qualified registered electors of the district could participate in nominating conventions with provision being made for supplementary nomination by petition.

Legislation passed in 1953 changed the term of office of board members to four years and provided for four vacancies at one

38 Laws of Utah, 1915, c. 109, sec. 1.


40 Laws of Utah, 1935, c. 56, sec. 1.

41 Historical Perspective, p. 11.
election and five, two years later.\footnote{Ibid.} As of 1968, the State Board of Education was composed of nine members, elected from seven judicial districts on a non-partisan ballot at the time of the general election.

The state superintendent of public instruction

Each state has provided for a chief administrative officer of the public school system, either by constitutional provision or statutory enactment. In general, he serves as the executive officer of the state board of education. He is generally charged with overall supervision of the public schools, the organization and functioning of the state department of education in accordance with established policy, preparation of curriculum guides and courses of study, the collection, analysis, and interpretation of educational statistics, enforcement of minimum standards, the issuance of teacher certification, approval of school building plans, preparation of budgets, submission of reports to other governmental bodies, the distribution of state funds in accordance with laws and policies and approval of standards for teacher preparation.\footnote{Pierce, p. 47.}

In many cases, the superintendent also has the power to interpret school laws and to decide controversies appealed to him.
from local school boards. An increasing function is to serve as spokesman for the public schools in matters concerned with school objectives, achievement of educational aims, and educational needs. A growing trend emphasizes his responsibility for providing continuous leadership in bridging the gap between teacher associations and local school boards.

**Utah State Superintendent.** Utah made provisions for a territorial school superintendent in 1851, following the recommendation of Governor Brigham Young. The Legislative Assembly passed the following resolution in response to this recommendation:

> Resolved by the Governor and the Legislative Assembly of the Territory of Utah, that the Chancellor and Board of Regents of the University of Deseret, are hereby authorized to appoint a Superintendent of Primary Schools, for the Territory of Utah, under their supervision and discretionary control.\(^4^4\)

From 1851-62 the Office of Superintendent was filled by appointment by the Board of Regents of the University of Deseret. The educational program of the territory during this period was a unified system from grade one through the university, under the direction of the Regents.

\(^{44}\) Laws of the Territory of Utah, 1851, "A Resolution Creating the Office of Superintendent of Common Schools."
The Office of the County School Superintendent was created by statute in 1860. The County School Superintendent was required to report the status of the district schools directly to the Territorial Superintendent.

In 1865, the law was changed to provide for the annual election of the Territorial Superintendent by the Legislature and the Superintendent was to make his report annually to the Legislative Assembly rather than be responsible directly to the Regents. 45

The law was changed in 1876 wherein the Territorial Superintendent was elected by popular vote of the people. In 1887, the passage of the Edmunds-Tucker Law by the United States Congress abolished the Office of Territorial Superintendent of Common Schools and replaced it with the Office of Territorial Commissioner of Schools. From 1887 until statehood in 1896, the Commissioner of Schools was appointed by the Territorial Supreme Court. 46

By 1890, the duties of the Territorial Commissioner of Schools included a variety of activities. A statute enacted in 1890 provided the basis for almost all of the functions necessary to give general

45 Laws of the Territory of Utah, 1865, sec. 6 of "An Act Consolidating and Amending the School Laws."

46 Moffitt, The History of Public Education in Utah, p. 75.
administrative control to the territorial schools, and with a few minor changes, the current law as of 1968 governing the State Superintendent of Public Instruction's supervisory and administrative authority remained much the same as it was written almost a century before.

Since statehood, this official has been known as the State Superintendent of Public Instruction and until 1951 was elected by popular vote of the people. In that year, constitutional amendments and related statutes provided for the State Superintendent of Public Instruction to be appointed by and be responsible to the Office of the State Board of Education.  

There have been many legislative changes dealing with the amount of salary that a State Board of Education could pay its executive officer, and it was not until 1963 that the Board was free to set the salary of the State Superintendent without statutory limitation.

Consistent with the State Constitution, legislative statutes explicitly describe the procedure for designation of a State Superintendent of Public Instruction and his duties. The State Superintendent has "... full power to investigate all matters pertaining to the public schools", and "... perform such other duties as the State

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47 Utah State Board of Education, Historical Perspective, p. II.
The Utah State Superintendent of Public Instruction is the executive officer through which the State Board of Education carries out the administration of its policies and the legal mandates placed upon it by the Utah Legislature. He also selects the members of his staff and recommends their employment to the State Board.

Included among the State Superintendent's responsibilities are the following assignments: visiting the principal schools in each district once per year, advising with local school district officials in promoting the interest of education, giving written answers to all questions concerning the school law, preparing a biennial school report to the Governor, the United States Commissioner, and others, preparing a budget for the State Department of Public Instruction, and holding annual conventions for local school district superintendents. He also serves as the legal adviser to local school boards and his decisions concerning the law, "shall be held to be correct and final until set aside by a court of competent jurisdiction or by subsequent legislation."


49 School Laws of the State of Utah, 1965, Title 3, c. 3.

As of 1968, the State Superintendent of Public Instruction in Utah was assuming an important and necessary role in mediating serious disputes between teacher groups and local school boards. Several instances had recently occurred in which he was instrumental in resolving such differences.

The local school district

Local public school districts in the United States are arms of state government established by mandates of state legislatures to ensure the rights and privileges of a free education to the people. School districts are the basic governmental units through which a state can fulfill its constitutional obligations and through which the exercise of local control of schools is effected.

A local school district consists of a geographical area, often conterminous with some other local unit of government, within which a local school board representing the citizens has responsibility for the operation of the public schools in that district. Such districts are given specific grants of power by the state, frequently including the power to sell bonds, collect taxes, and make use of the proceeds for the public schools of the district, subject only to federal, state, and local laws, regulations of the state educational department, and public opinion.
In Utah there are forty school districts and each is an arm of the State Legislature. All are required to follow specific laws and regulations enacted by the Legislature and administered by the Utah Department of Public Instruction.

The local school board. The local school board, in the framework of American government, is semi-autonomous in nature and governed by appointed or elected laymen. School board members play a very meaningful role in every American community.

Members of a local school board act in the performance of a state function, and they are state officers. They possess no inherent powers nor are any powers conferred upon them by the local community. The courts are agreed that a local school board may exercise the following powers and no others: (1) those which have been expressly conferred upon it by statute, (2) those which may be fairly implied from express grants, and (3) those which are essential to the accomplishment of the purpose for which the local school board was created.

When called upon to review the discretion of a local school board, the courts will inquire whether the board acted within the scope of its authority, whether it followed the procedure prescribed by statute, and whether it had some reasonable basis for its actions. The board's action will be overruled by a court of law when it has
acted arbitrarily, unreasonably, under an erroneous theory of the law, or without any substantial basis of fact.

A local school board must exercise the authority imposed upon it by statute where the exercise of such authority involves discretion or judgment. A school board may delegate authority to others to make recommendations, particularly in the area of the employment, compensation, and dismissal of teachers; but if a final action involves the exercise of judgment or discretion, that action must be taken by the board. The local school board does have the authority to delegate to others the performance of a purely ministerial function.

To expedite its responsibilities, the local school board must be aware of its legal authority. As the legislative body of a school district, it must adopt operational policies and procedures and be responsible as a body for their implementation.
CHAPTER III
THE LEGAL AUTHORITY OF LOCAL SCHOOL
BOARDS IN THE STATE OF UTAH WITH
RESPECT TO TEACHING PERSONNEL

Historical Perspective

Local school boards are becoming increasingly aware that the quality of education is related directly to the quality of the men and women who serve as teachers in the school systems. The American teacher had a humble origin, but through the years he has elevated his status to one of great social significance, if not one of genuine public respect and appreciation. During the colonial period individuals set themselves up as teachers and organized their own private schools. The principal credential for these early schoolmasters was the ability to read and write.

Progress in the selection and training of teachers advanced rapidly in New England and the privilege of teaching was sanctioned by civil and ecclesiastical authorities. The practice of empowering committees of laymen to examine teachers was adopted and eventually assumed by the several states under their plenary power
As a group, teachers today are much more professional than those who were teaching a century or more ago. The right to practice teaching, however, is still guarded through government or some instrumentality of government. Admission to the teaching profession comes through licensing, but admission to practice is generally dependent upon being hired by a local school board.

Teachers hold their position, receive salaries, enjoy certain rights, and have definite limitations in what they may and may not do, all because the state by enactment of statutes and courts by interpretation of laws have so decreed.

The problems connected with salaries and working conditions have always been of vital concern to public school teachers. Salaries of teachers have been considerably increased in the last decade, but are apparently still not considered high enough by many, both in and out of the professions. A chief source of teacher discontent is working conditions, except perhaps in the case of the man who is the sole support of his family.¹

Even though working conditions vary in different school systems, generally speaking, teachers have expressed discontent due to such problems as oversized classes, clerical work, severe discipline problems, lack of proper facilities and equipment, unsympathetic or inept administrators, and compulsory attendance at evening meetings. ²

The teachers of America, however, are organized and for more than a hundred years the largest single organization of teachers, the National Education Association (NEA), has been the spokesman for the majority of teachers of the nation. The second largest national organization is the American Federation of Teachers (AF of T).

While teacher associations have championed better educational opportunities for boys and girls, they have not ignored the need for higher salaries and welfare benefits. It is not uncommon for each legislative session in each state to find state teacher associations lobbying for passage of teacher welfare and increased salary bills.

Spurred on by teacher organizations and by the example of industry, local school boards have effected many improvements in salaries, fringe benefits, and working conditions in recent years.

² Ibid.
Strong local teacher organizations have also effected local school board policy in several ways, among which are: (1) voicing positions on crucial educational issues, (2) studying local problems, (3) exercising unusual strength for or against issues, (4) intervening in political affairs, and (5) supporting its own local membership for leadership for political posts.

For many years it has been customary for the representatives of teacher organizations to meet with local school boards to discuss salary and welfare matters, but the practice of teachers voting to select a bargaining agent for all professional staff members as occurred in New York in June of 1961 is of more recent origin.

It has become quite obvious to many local school boards that the actions teachers are taking through their professional organizations at the national, state, and local levels to collectively bargain bodes widespread controversy in the years ahead. The power and dissatisfaction of teachers through their organizations have already been registered against local school boards through strikes and sanctions. It appears that state legislatures may still be called upon to enact negotiation laws and the courts will continually be called upon to clarify the issues. Thus, it becomes increasingly important for local school boards to not only become fully aware of the law, but to adhere to its principles in order to provide an optimum
educational program for boys and girls in a professional and legal manner.

Utah background

The first permanent settlers in Utah (1847) were members of the Church of Jesus Christ of Latter-day Saints, commonly known as Mormons, who had strong convictions concerning the need for education. The Mormons, believing that education was essential for their salvation, established schools which reflected their basic values wherever they settled. Thus religious instruction remained a dominant objective for several decades. As other religious groups came to Utah these goals of education met with severe criticism and gradually education became more secular in nature.

Utah's first teachers were well educated for their day and time, but because of the absence of high schools and teacher training institutions in the frontier, there was soon a shortage of qualified teachers. Therefore, one of the first acts of the Legislative Assembly of the Territory of Deseret (Utah) was the establishment of the University of Deseret to train an adequate supply of teachers.

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4 Ibid., p. 18.
and provide a method of educational control. The University lasted for two years (1850-1852). However, it was re-established in 1869, and within a few years a normal school division was added which offered financial assistance as an inducement for individuals to become teachers.

Teacher ability enhanced. The ability of Utah's early teachers was not markedly enhanced until after the turn of the century. The normal schools, the Brigham Young Academy, teacher institutes, summer schools, and county and state teacher associations all contributed toward this improvement. 5

Only during short periods of time in Utah's history has there been a sufficient number of well-trained teachers to fill all teaching positions. In addition to the existing economy of the times, and both world wars, the lack of a graded school organization in early Utah contributed to the teacher shortage. 6 High schools were almost non-existent in the Territory and only a few were organized until well after Utah became a State in 1896.


6 Ibid., p. 284.
The University of Deseret, and hence the University of Utah was the only teacher training institution for several years. It was forced to admit students with very meager training for college due to the fact that few, if any, high schools or preparatory schools existed. However, at the time the University of Deseret was founded in 1850, plans were made and later implemented for the establishment of other branch institutions as conditions warranted and as the common schools needed trained teachers.

Small district schools in the several counties were the pattern of school organization in Utah for many years wherein local trustees held the right to select teachers.

With the establishment of a State Board of Education and a State Superintendent of Public Instruction by constitution and statute in 1896, the entire educational program became more centralized. The training and certification of teachers became more unified, high schools became more numerous, small school districts were consolidated and other normal training institutions were established.

Church supported training schools. Beginning with the Brigham Young Academy in 1875, the Mormons established a number of academies in Utah. While the primary objective of these church academies was to give religious instruction, in addition, many students received training which enabled them to enter teaching.
This system of academies continued until the early part of the 20th Century, during which time significant contributions were made to educating the youth of Utah.

Utah teacher organizations

Schools had been established in Utah several years before local and territorial associations of teachers were organized in 1870; however, small school districts, difficulty of communication, and limited, slow transportation were not conducive to the development of professional teacher organization.

"The specific need for organized efforts of teachers," in early Utah, "was uniquely embedded in the unsolved problems of the schools and not alone in the need for general cultural contacts . . . ." The objective for establishing education associations in Utah was then and remains today the promotion of the advancement of the efforts of school teachers. O. H. Riggs, Territorial Superintendent of the Utah District Schools, from 1874 until 1877, stated in his report concerning the Territorial Teachers Association

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8 Ibid., p. 27.
as organized in 1870 that:

The objects of this association are to secure unity of action on the part of school officers, to secure a uniform system of conducting schools, and for the mutual benefit of all connected with school work throughout the Territory. 9

Over the years, teachers have apparently become more and more convinced of the need for well-designed local and state educational associations in Utah. February 1910 was an important milestone in the history of the Utah Educational Association (UEA) as this was the time that a Constitution and Articles of Incorporation were officially approved by the membership. 10 One of the most distinguishing characteristics of Utah teachers through the years has been the unusually high per cent of teachers having membership in the local, state and national associations. 11

Annual meetings of the Utah Education Association have been the mode for more than fifty years. The purposes have been to:

1. inform the teachers on improved techniques of teaching,
2. add to their knowledge of subject matter,
3. enhance their cultural appreciations and understandings,
4. provide social contacts with other professionals, and
5. cement their interest to the purposes of the UEA. 12

9 O. H. Riggs, Biennial School Report 1874-75.
10 Moffitt, A Century of Service, p. 52.
11 Ibid., p. 71.
12 Ibid., p. 72.
The Utah Education Association had become the directing force behind local teacher groups in their pursuit of a greater voice in local school district educational matters. Local school boards in Utah were finding the UEA to be the source behind teacher strength and unity when attempts were made to negotiate with local teacher groups on local school problems.

Teacher Certification

Overview

The statutes of all states contain provisions for the certification of public school teachers. Usually, the states prescribe the qualifications which a teacher candidate must meet and delegate to some board or official the duty of determining whether the standards have been met. The board or official authorized to issue certificates may not refuse, however, to issue a certificate without a good cause.

A teacher's certificate is not a contract between the state and the teacher. It is only a license, and since it is a mere privilege conferred by the state, the state may revoke it. The term "certification" simply implies a legal device by which the state assures that all who teach shall possess certain minimum personal and professional qualifications.
Admission to the teaching profession is regulated by law, and local school boards are prohibited by law from employing unqualified teachers. The teacher is determined "qualified" under the law when he has been certified.

The courts have universally agreed that local school boards may legally demand more than the minimum requirements as ordinarily indicated by a certificate as eligibility for employment of their teaching personnel. 13

Local school boards are not legally bound to pay for services rendered by teachers who have no certificate. Were it otherwise, the law requiring that only certified teachers may teach in the state would be defeated. 14

In most states, if a teacher without a proper certificate is employed for a position, the contract of employment is not binding. However, in a few states, a teacher may be employed without holding a certificate at the time of employment if it is obtained before the date set for service to begin. 15


15 Remmlein, p. 4.
Utah background

On March 3, 1852, the Legislative Assembly of the Territory of Deseret (Utah) created school districts to be administered by local school boards. A method of teacher selection was then established as follows:

It shall further be the duty of the county court to appoint in their respective counties a board of examiners to consist of three competent men, whose duty it shall be to hear and determine the qualifications of school teachers, and all applicants of good moral character that are considered competent, shall receive a certificate to the effect signed by the board. 16

It became apparent by 1876 that the procedure for examining and certifying teachers was inadequate, and in 1880 the statute was changed which made it mandatory that the superintendent of the county was to become one of the examining board. A significant penalty in terms of loss of school revenue was then placed upon local school boards which failed to abide by the terms of the law. 17

Utah was admitted to statehood in 1896 and its Constitution gave general administrative power of the public school system to the State Board of Education, and placed the responsibility for enacting the

16 Laws of the Territory of Utah, 1852, sec. 3 of "An Act in Relations to Common Schools."

17 Laws of the Territory of Utah, 1880, c. 19, sec. 11.
laws which would provide for a system of free public schools on the Legislature. The newly created State Board of Education was authorized by the Legislature to issue state diplomas and certificates to "professional teachers." Such diplomas were valid for life, unless revoked for cause or unless the holder allowed a space of five consecutive years to pass without pursuit of teaching. The Office of the State Board of Education discontinued issuing life diplomas in 1935.

The law further stated that the normal certificates and normal diplomas as issued by the University of Utah, when endorsed by the Chairman of the State Board of Education, shall have the force of State certificates. An understanding with the University of Utah over the issuing of certificates was reached, however, in 1934, thus providing the Office of the State Board of Education with complete control over teacher certification.

Requirements for teaching certificates were upgraded, beginning in 1922. After 1942, beginning elementary teachers were

18 Laws of Utah, 1896, c. 130, sec. 1-5.
required to have four years of training as were secondary school teachers. A new bi-level teacher certification program was initiated in Utah in 1966. Teachers completing an approved four-year preparation program could continue to be issued a Basic Professional Certificate, while those extending their education to include a fifth year could qualify for a Professional Certificate provided they had taught successfully for a three-year period.

**Utah State Board of Education sole issuing agency.** As of 1934, the Office of the State Board of Education had the sole power to issue public school teaching certificates and diplomas which implied that all other requirements had been met such as moral character, personality, ability to teach, and other factors deemed to be of prime importance to the success of the public school system.  

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**Utah certification laws**

All teachers in the Utah public schools must hold a teaching certificate issued by the Office of the State Board of Education before they can legally accept employment. Certificated teachers must complete a four-year prescribed college program culminating in a Bachelor's Degree, and in order to renew a certificate additional credit must have been earned during the life of the certificate.

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Teacher certification is the primary process through which the Office of the Utah State Board of Education discharges its responsibility for the admission, preparation and in-service training of teachers. By statute, it is the duty of the State Board of Education to set the standards and to lead the way toward constant improvement of teacher education and growth opportunities for teachers in Utah.

General statutory requirements for certification. Though the legislature has delegated primary responsibility to the State Board of Education for determining teacher certification standards, the statutes spell out some specific requirements and give some overall guidelines to be used by the board.

The major legislative requirements are:

1. The candidate must "... exhibit satisfactory evidence of good moral character..." and be "... free from serious infectious and hereditary diseases and found to possess the requisite scholarship and culture." 23

2. The candidate must meet "... the scholarship, training and experience..." requirements specified by the State Board of Education, but the board must announce any changes in these requirements one year in advance of the date the change is to be implemented. 24


3. The candidate being recommended by a state supported institution must "... demonstrate a reasonable understanding of the fundamentals of history and the principles, form of government, and economic system of the United States as a basis for responsible citizenship."\(^{25}\)

4. The candidate is required to have received instruction in school health.\(^{26}\)

**Role of higher institutions in certification.** The direct handling of admissions, preparation, and continuing education of teaching personnel in Utah is primarily delegated to institutions of higher learning.

Under the "approved-program approach" to teacher certification, when an institution of higher learning in Utah has been approved by the State Board of Education for offering teacher education programs, the Board issues teaching certificates to individuals who have been recommended by that institution. Recommendations from such approved institutions indicate that the individuals have satisfactorily completed programs of study which have been approved for the preparation of teachers in the category recommended. The processes leading to approval of such teacher training programs includes visiting the institutions and evaluating their programs with


teams of professional personnel selected by and under the direction of the Office of the State Superintendent of Public Instruction. 27

Classification of certificates. Certificates, as of 1968, are of such rank and classification as the Office of the State Board of Education determined and are valid for a period of not to exceed five years. 28

The Office of the Utah State Board of Education, as of 1968, issues two general teaching certificates: a Basic Professional Certificate which was mandatory and a Professional Certificate which was permissive. Both certificates are valid for five years.

Underlying the Professional Certificate is an improvement program. The chief characteristics are: (1) a fifth year of university training in specified areas, and (2) recommendations from the local school district authorities indicating that the teacher has completed a minimum of three years of successful professional service. The Professional Certificate has not been implemented as a requirement and teachers currently certificated may continue to teach on the Basic Professional Certificate as long as that certificate is kept valid.


Each type of teaching certificate may be issued with the general endorsement of either elementary or secondary. An elementary teaching endorsement is valid in grades one through six and is valid in kindergarten when standards have been met for kindergarten efficiency. This endorsement is also valid in junior high school grades seven through nine, provided the individual has a subject major and a subject minor, or a composite subject major in subjects he is assigned to teach. 29

A secondary teaching endorsement is valid in grades seven through twelve. Specialized preparation in subject majors, subject minors, or composite subject majors is required for the secondary teaching certificate. 30

It is anticipated that only the two types of certificates, namely: "Basic Professional" and "Professional" will eventually be issued by the Office of the State Board of Education. Either of these two may be endorsed to indicate areas of specialization.

Renewal of certificates. Each certificate is issued for a period of five years and expires on June 30th of the year shown on the face of


30 Ibid., p. 22.
the certificate. A minimum of nine quarter hours of credit completed during the life of a certificate will extend it for another five year period, unless the teacher was issued a certificate prior to September 1967. Such certificates could continue to be renewed for a period of five years for a total of six quarter hours graduate credit or seven and one-half quarter hours of upper division credit. Such older type certificates, if allowed to expire for a period beyond six months, however, would require nine quarter hours for renewal. No certificate shall lapse while the holder is serving in the armed services of the United States in time of war or has been called into service in the armed forces at any time. 31

Applicants for the renewal of Professional Certificates may use prior approved combinations of college credit, research projects, travel, work experience, or other professional activities. They may also present a maximum of three quarter hours of equivalency credit earned in prior approved programs of curriculum construction on the state level or prior approved non-credit in-service study under State Board of Education standards. 32

31 Utah State Board of Education, Certification Requirements in Utah Public Schools (Salt Lake City, Utah: Utah State Board of Education, 1965), p. 16.

32 Utah State Board of Education, Standards for Certification, p. 7.
Revoking of certificates. The Office of the State Board of Education shall revoke a teacher's certificate for immoral or unprofessional conduct, or evident unfitness for teaching.33

Revocation proceedings against the accused are to be initiated after careful investigation by the Office of the State Superintendent of Public Instruction. A policy of the Utah State Board of Education as adopted September 6, 1963, outlined the procedure for hearings concerning revocation of teaching certificates. After a review of such findings the State Board of Education shall enter its written order setting forth its findings, action, and disposition of the matter. The Board may also revoke the certificates held by any individual who has had a certificate or other credential revoked or suspended in any other state.

It is the duty of local Utah school district superintendents and local school boards to report to the State Superintendent the name of any certificated public school teacher whose conduct is believed to be immoral or unprofessional or who demonstrates unfitness to teach or serve in a professional capacity in the public schools.34


34 Utah State Board of Education, Policy of the State Board of Education Concerning Revocation of Teaching Certificates (Salt Lake City, Utah: Utah State Board of Education, September 6, 1963).
A Utah Attorney General suggested the following acts for which teachers' certificates shall be revoked:

1. The conviction of a felony.
2. The conviction of a misdemeanor involving moral turpitude.
3. Sexual immorality (adultery, fornication, acts of homosexuality, indecent exposure, improper sexual conduct directed toward students or other minors.)
4. Public conduct of a profane, lewd and/or lascivious nature bringing discredit upon the individual involved and the teaching profession.
5. Public intoxication resulting in disorderly conduct.
6. Dishonorable or bad conduct discharge from the armed forces for reasons involving moral turpitude.
7. Mental or physical impairment of such a nature as to render the individual involved unable to satisfactorily carry out the duties of the teaching profession.
8. Professional incompetence. (Inability to discharge the functions of a teacher with a reasonable degree of competence.)
9. Breach of a teaching contract without good or substantial grounds.
10. Obtaining or attempting to obtain teaching certificates or credentials through false or fraudulent means.
11. Wilful refusal to comply with rules, orders, directions, etc., of superiors so as to interfere with the orderly conduct and operation of school programs.
12. Wilful neglect of duties, assignments, and responsibilities so as to interfere with the orderly conduct and operation of school programs.
13. The active and wilful advocacy of overthrow of the government of the United States or of the State of Utah by violent and forceful means, or active and wilful membership in an organization known by the individual involved to advocate overthrow of the government of the United States or of the State of Utah by violent and forceful means.
14. The wilful giving of false or misleading information to superiors with the result that the interests of the school and their programs are adversely affected.

15. Any other acts of commission or omission that may be defined as "immoral or unprofessional conduct or evident unfitness for teaching" within the meaning of Section 53-2-24, Utah Code Annotated, 1953.\textsuperscript{35}

Even though these acts were given as only suggestions by the Utah Attorney General to the State Board of Education for which teachers' certificates were to be revoked, the State Board preferred to adopt a policy of a less specific nature. However, the more specific acts as suggested by the Attorney General might well serve local school boards in determining possible teacher conduct to be judged immoral or unprofessional wherein certificates should be revoked.

\textit{Letters of authorization.} Utah has attempted for the past several years to upgrade the quality of teachers by consistently increasing the requirement for "Letters of Authorization," a teaching permit, valid for one year, that is issued for the employment of emergency teachers when local school boards could not employ fully certified professional personnel. As of April 14, 1967, \textsuperscript{35}

\begin{flushright}
\textsuperscript{35} Attorney General Suggestions, July 23, 1963.
\end{flushright}
the policy of the State Board of Education regarding the employment of emergency teachers was as follows:

After the supply of desirable certificated teachers has been exhausted.

1. A letter of authorization will be issued to a school district for the employment of a person who lacks not more than nine quarter hours (six semester hours) of credit in order to meet certification requirements for professional assignment, provided:
   (a) He holds a Bachelor's Degree and that the nine quarter hour deficiency is obtainable while the person is in service during the first year as a teacher, or,
   (b) He can provide an acceptable recommendation from the college or university indicating the earliest date at which the deficiency for graduation and recommendation for the certification can be completed.

2. Letters of authorization may be applied for and may be issued to local school districts for the employment of professional personnel in subject areas or in grade levels in which there is an acute shortage, at any time following May 1, 1967. 36

Substitute teacher requirements. There is no law in the State that requires substitute teachers to be certificated, but local school districts have frequently been urged by the Office of the State Board of Education to make every attempt to employ substitute teachers who have degrees and certificates, and who have adequate


training in subjects in which they will be placed. 38

Reciprocity. The Office of the State Board of Education, "... may issue certificates ... to persons holding certificates from other states; provided such certificates ... are found to be of equal rank with those issued ..." by Utah. 39

An out-of-state prepared applicant applying for a certificate must complete an application form provided by the Utah Division of Teacher Personnel and submit a complete official transcript of credit from an accredited institution to support the application. That is, he must be a graduate of a four-year teacher preparation program completed in an institution which was accredited by the National Council for the Accreditation of Teacher Education at the time of the applicant's graduation. He must also be recommended by the designated representative of the institution from which he graduated. The applicant must also have completed at least nine quarter hours of credit during the five years preceding his application for certification.

An applicant for certification whose preparation was completed outside the United States is required to present official papers or


transcripts which may be translated and evaluated by the United States Office of Education. 40

Trends in teacher certification

There are some indications that the following trends in teacher certification are currently developing in Utah:

1. The Office of the State Board of Education and teacher associations are working more closely together with Utah's higher educational institutions for increased quality programs of teacher preparation.

2. Increased academic preparation and successful teaching experience are being required for new programs of teacher certification.

3. Teachers are being assigned to teach in subject matter areas and/or grade levels in which they are qualified through training and experience.

4. Colleges and universities preparing teachers are meeting accreditation standards and improving teacher education programs.

40 Utah State Board of Education, Certification Standards, p. 6.
5. Teachers graduating from accredited institutions out-of-state can more easily obtain certification in Utah.

6. Reissuance of teaching certificates or issuance of advanced certificates for other than approved college credit through such professional activities as research projects, travel, or work experience is gaining increased support from the teaching profession.

7. The Office of the State Board of Education is exerting increased pressure upon local school boards to comply with certification standards.

8. Professional improvement committees are being established by local school boards for the purposes of advising teachers and upholding the standards of preparation for certification.

9. Teacher education institutions are not required to provide identical programs of preparation; thus institutions have the opportunity to provide flexibility in programming and engage in experimentation.

10. The Office of the State Board of Education is soliciting advice and counsel from other groups such as classroom teachers, school administrators, and university deans of education to establishing of an Advisory Council on Endorsement Problems and for the preliminary drafting and implementation of the new teacher certification standards.
11. The State Board of Education is more vigilant in revoking certificates for immoral or unprofessional conduct of teachers, particularly since 1950.

12. The State Board of Education is increasing qualifications for the issuance of "Letters of Authorization" for the employment of emergency teachers.

Extra legal practices respecting teacher certification

Some of the extra legal practices of local school boards in Utah with respect to teacher certification are:

1. Some local school boards are employing teachers who either do not possess a teaching certificate or who are not certificated in the particular area in which service is being rendered. 41

2. Some local school boards are permitting the rendering of service by teachers with expired certificates. 42

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41 Letter from T. H. Bell, State Superintendent of Public Instruction in Utah, Salt Lake City, Utah, May 2, 1967, to the writer.

42 Letter from N. Blaine Winters, Administrator, Division of Teaching Personnel, Utah State Department of Public Instruction, Salt Lake City, Utah, April 1, 1968, to the writer.
Overview

Local school boards, "... can have no greater concern than that of the employment of adequately prepared professional personnel to do the diverse jobs required to effectively maintain and progressively improve the public schools of any given district." 43

In selecting teachers, local school boards are granted broad discretionary powers and may prescribe qualifications in addition to those required by statute so long as such requirements are not arbitrary, unreasonable, or contrary to public policy. Discretionary powers cannot be delegated because they involve the judgment of the local school board. Thus, an administration officer of the board may interview teachers and be responsible for recommending for employment, but the actual appointment must be made by the local school board itself.

Generally, the law commits the government and conduct of the schools to the discretion of the local school board and places it beyond that of patrons in the selection, employment, and dismissal

of teachers. So long as the board employs such certified teachers as the law authorizes it to employ, patrons cannot interfere merely because they may feel that other more competent and satisfactory teachers might be found.

The law requires that the right to "hire" implies the right to "fire," but this depends largely upon the status of the employment. A local school board must show good legal cause for severing a contract that has been made for a definite period of time.

In those states where local school boards are permitted to dismiss teachers for "reasonable and just causes," the courts are agreed that a hearing is necessary before a cause can be said to exist. The general trend has been that a teacher may be dismissed for any cause that makes his removal serve the best interest of the school, but the rights of teachers against the arbitrary and unreasonable action of a school board have been carefully protected by the courts.

One of the major responsibilities of a local school board is to formulate the policies which, together with the statutes, do much to determine not only the quality of teaching personnel, but their effectiveness during employment. School district policy becomes the basis upon which the relationship of the local school board to the teaching personnel of the district is established. The problems and issues involved with the employment of teaching personnel are of
such magnitude that it would not be good procedure for local school boards to attempt to cope with these problems without the adoption of clearly defined, written policies, governing the personnel of any given school district.

Certification requirements

A teaching certificate is merely a license to teach in a given state and no absolute rights, such as guaranteed employment, are conferred by the certificate upon the holder. The continuing validity of a teaching certificate is often dependent upon the successful continuous employment in school work. The certificate, however, is usually a prerequisite to employment and one who teaches without one is considered a mere volunteer before the law. One who lacks the certificate may not recover salary for his work, for a certificate is necessary before he may legally be paid from public funds.

No person has an inherent right to be employed as a teacher in the public schools, but rather it is a privilege granted to a select number of individuals who possess the qualifications as specified by the state. Thus, an individual wishing to enter upon a career in teaching must first prepare himself to meet the specific qualifications of the state and be issued a certificate prior to taking up his work.
No individual is permitted to teach in the public schools of Utah or be employed as a supervisor or superintendent in any school district within the state and receive compensation "... out of any public funds who at the time of rendering such service or at the time of such employment is not the holder of a certificate issued in accordance with the regulations of the state board of education ... ." 44

Local school boards in Utah may require additional qualifications for employment of teachers beyond that specified by state statute. Specific requirements in areas of training, experience and health, beyond those minimum standards as set for certification are often required by some local school boards in Utah prior to offering of employment.

Contracts

The employment of teaching personnel is based upon the laws of contract, expressed and implied, and such professional and ethical standards as have been adopted by the local school boards and the teachers' associations. All teachers and local school boards are bound by the express provisions of the teacher's contract of employment; but legal difficulties arise when attempting to

determine the extent of implied contractual obligations.

From a valid contract, reciprocal obligations arise which are enforceable under the law and one whose contractual rights are threatened or ignored may seek legal aid to enforce the fulfillment of the agreement.

General provisions. All contracts for teaching services have five basic elements, the absence of any one of which will render the contract null and of no effect. These elements are as follows:

1. The contract must be between competent parties.
2. The contract must be based upon mutual assent.
3. The contract must contain a valid consideration.
4. The contract must contain rights and liabilities sufficiently definite to be enforceable; and
5. The contract must be of such a nature as not to be prohibited by statute or common law. 45

All provisions of a state constitution, state legislature statute, and board of education rules and regulations respecting the employment of teaching personnel are read, by implication, into the contract.

One of the common-law principles that appears to have universal acceptance is that when a teacher enters into a contract with a local school board, he automatically obligates himself to obey all

the laws that are applicable thereto, as well as to the local school board's rules and regulations. 46

Another general rule in this area "... is that regulations and operational policies adopted by a school district prior to making a contract with a teacher, form a part of the contract, and the teacher's employment is subject thereto." 47 In its decision, another court appeared to even go further by giving its assent that, "It also seems to be the law that a regulation adopted after a teacher contract is made becomes a part of it and the employment is subject thereto..." 48

In most states, teachers must be employed by the local school board when it is meeting as a body, and an appointment made informally by the members of the board separately approving, or even approving together, but not in a formal meeting is not binding.

Local school boards in Utah are legally authorized to, "... enter into written contracts for the employment of personnel for


terms not to exceed five years, providing that there is nothing in the terms of such contracts restricting the power of local school boards to terminate such contracts for cause at any time."49 Utah statutes are very permissive in nature as they relate to the employment of personnel by local school boards, however, certain restrictions have been placed upon local school boards.

According to the State Constitution, "Neither a religious nor partisan test or qualification shall be required of any person as a condition of admission as a teacher . . . into any public educational institution of the state."50

A local school board is not authorized to employ a person as a teacher who is mentally or physically disqualified to perform his duties successfully by reason of tuberculosis or any other chronic or acute disease. A local school board ", . . . may require any applicant for employment as a teacher to furnish satisfactory evidence that he or she is mentally and physically qualified for the duties of a teacher."51


Court decisions. A teacher's contract may ultimately be subject to interpretation by the courts which will, generally, examine the contract as a whole in its effect to determine the intention of the parties at the time they contracted. If uncertainty or ambiguity exists, the courts will interpret the terms of the contract in the light of conditions and circumstances surrounding the parties at the time the contract was executed. If an alleged infraction of the contract is determined, the court will use the test of reasonableness in examining such infraction. What may be considered reasonable in one situation, may not be equally reasonable in another. 52

Types of contracts. Generally, local school boards have attempted to include in the written contract documents all of the duties which the teacher was expected to perform. The long form of the teaching contract was amended, however, in the second quarter of the present century, and a short form has replaced it. 53 A more recent pattern of procedure has been for the adoption of a "Master Contract" by local school boards and teacher associations containing a comprehensive listing of contractual agreements. An


53 Ibid., p. 95.
abbreviated form of this contract is then issued to individual employees by local school boards, generally on an annual basis.

Some local school boards have adopted a continuing contract which remains in effect for an indefinite period. Under this procedure, the contract is automatically renewed for the ensuing year if neither party serves notice by a specified date of intention not to renew. Generally, an annual notice is given to the teacher of his assignment and salary.

In most local school districts in Utah, written annual contracts are made with teaching employees. However, a few school districts use varied forms of continuing contracts that do not require separate written forms to be prepared annually; but, generally, these school districts do send to each of their employees a yearly statement of salary and notice of their particular job assignment.

Teacher associations in several Utah school districts by 1968 had appealed to the local school boards for the adoption of a "Master Contract" containing a comprehensive listing of contractual agreement items. An abbreviated form of individual employee contracts were to continue to be issued by each local school board.
Teacher contract breaking. It has often been said that a contract between a teacher and a school board is one-sided in favor of the teacher. Technically, this is not true, since a teacher who breaks his contract with a local school board is as liable to pay damages as is an individual who breaks his contract with the district to construct a school building.

In recognition of the fact that local school boards have no practical and feasible remedy against the breaking of contracts by their employees, some local school boards in Utah have inserted various provisions in the contract. One such provision is that if an employee resigns before completing his contract that a stipulated amount is to be withheld from his final check as a penalty. T. H. Bell, State Superintendent of Public Instruction of Utah, opined that a clause calling for a forfeiture of $100 of earned salary for an employee breaking his contract with a school board was legal and based his opinion upon the premise that the forfeiture clause was a part of the contract mutually agreed to by the employee and the employer.\(^{54}\)

It is also not uncommon for Utah school administrators to insert a statement of unethical conduct into the personnel record file of a teacher employee when he breaks contracts under conditions considered to be unethical or illegal according to district policy. The Utah Education Association has, generally, supported local school districts which notify future employers of a teacher's so called, "contract-jumping."

**Nepotism**

Many states have anti-nepotism laws which are usually included in the sections relating to powers of school boards to employ teachers.

Contracts, in which a board has employed relatives of its members to perform services for the district, have been challenged in the courts as being in violation of the law wherein a person may not legally represent conflicting interests. The controversy centers around what constitutes a direct or indirect interest. On this point the cases are in considerable conflict, and unless the highest court of a state has spoken upon the question, it is not certain what the law is in that state. 55

55 Hamilton and Reutter, Jr., p. 99.
Local school boards in Utah have been subject to an anti-nepotism law since a statute was first enacted in 1931. Several changes have been made in the original law, but prior to the 1955 amendment, two interesting cases involving the constitutionality of the anti-nepotism law were before the Supreme Court of Utah. The law at that time made it unlawful for any public employee to remain in public employment where the direct power to appoint or employ an individual was vested in a board of which a relative with certain degrees of consanguinity, was a member.

The anti-nepotism law in Utah that had gone unchanged since 1955 may best be summarized from an opinion expressed by the Office of the State Superintendent of Public Instruction, as follows:


In general the nepotism law provides that it is unlawful for any person holding any position to employ, appoint, or vote for the appointment of his or her father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, or daughter-in-law in or to any position or employment, when the salary, wages, pay or compensation of such appointee is to be paid out of any public funds. It is also unlawful for the person within the degrees of consanguinity mentioned above to accept employment. However, it is not against the law to employ a person of relationship to a board member if that person is qualified by virtue of a test, law, or certificate and certified as a qualified candidate by the agency responsible for the issuance of the certificate.

It is now the general practice of local school boards in Utah to be concerned with the anti-nepotism law when employing non-professional personnel, but in light of the above State Superintendent's ruling, professional personnel are excluded and no concern apparently exists.

**Discrimination**

Representative of the current anti-discrimination laws in the various states are those in the State of Colorado as enacted in 1957. The essence of these statutes is as follows:

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It shall be a discrimination or unfair employment practice for an employer, whether public or private, to refuse to hire, to discharge, promote or demote, or to discriminate in matters of pay against an individual, otherwise qualified; or, for an employment agency to refuse to list and properly classify, or refuse to refer such person to a known available job; or for a labor organization to refuse such a person full membership rights solely because of race, creed, color, national origin or ancestry, all as the case may be. 59

The courts will not interfere in the exercise of a local school board's discretion on employment practices, unless it can be shown that the school board has been discriminatory in its deliberations; that is, discrimination must be on the basis of race, color or creed, rather than on the basis of the individual's qualifications. 60 The burden of proof of discriminatory employment practices rests with those aggrieved. 61

Utah passed an Anti-Discrimination Act in 1965 making it a discriminatory or unfair employment practice for a local school board to:


60 Alston v. School Board of City of Norfolk, 112, F. (2d) 992 (4th Cir. 1940).

. . . refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, because of race, color, sex, religion, ancestry, or national origin. No applicant nor candidate for any job or position shall be deemed otherwise qualified unless he or she possesses the education, training, ability, moral character, integrity, disposition to work, adherence to reasonable rules and regulations, and other qualifications required by an employer for any particular job . . . . \(^{62}\)

Utah also has a law forbidding any employee to be "blacklisted" with the intent and purpose of preventing such employee from engaging in or securing similar employment. \(^{63}\) It is not clear whether this particular statute includes school personnel, however.

All local school boards in Utah have been required to adopt a resolution in accordance with Title VI of the Federal Civil Rights Act of 1964 (P. L. 88-352) which states:

. . . no person in the United States shall, on the ground of race, color, or national origin, be denied the benefits of or be otherwise subjected to discrimination under any program from which federal financial assistance from the Department of Health, Education, and Welfare is received. \(^{64}\)

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\(^{63}\) Ibid., 34-6-1, p. 503.

\(^{64}\) Policy Statement of the Box Elder County School District, Brigham City, Utah, January 27, 1965.
The Office of the Utah State Superintendent of Public Instruction issued instructions to all local school boards that prior to the disbursing of additional Uniform School Fund moneys, various evidences of compliance under federal regulations were needed to be adopted by the local school boards. Such regulations are as follows:

1. A signed resolution of compliance with Title VI, Civil Rights Act of 1964 (P. L. 88-352) and all requirements imposed by Title 43, Sub-Title A, part 17.
2. A statement of procedure used to inform students and other participants that the school district was in compliance with Title VI of the Civil Rights Act.
3. A plan of machinery for handling complaints and procedures for allowing appeals.

Teacher aides

In the past several years, there has been an enormous growth in employment by local school boards of aides to classroom teachers. In some places aides' duties are as simple as serving as monitors in the lunchroom; in other places, as important as grading papers or taking part in the actual instructional process.

In the employment of teacher aides and other non-certificated auxiliary personnel, the basic objective appears to be to extend the professional service of the educator and enhance his professional

status. The philosophy that seems to dictate the use of aides contends that if the teacher is freed to teach, he will be able to use more fully those professional competencies for which he was trained.

The paid aides become a regular part of a school staff. In employing aides, a local school board generally makes commitments due any teacher, sets aside an appropriate portion of its budget for salary and other benefits and promises a certain degree of job security. The local school board, "... can require of a teacher aide what it requires from any employee, a high degree of responsibility to group discipline, punctuality, regular attendance, and sudden changes of responsibility in emergencies."66

Teacher aides generally work under the direction or supervision of professional educators on tasks which are of a non-instructional or instructional nature depending upon their qualifications and assignment. The aide is to be an assistant and responsible to a member of the professional staff in charge of the service.

It appears that teacher aides should also, "... be entitled to the same legal rights and protection as teachers and be subject to the same liability if they are acting in the position for which they

were employed and under proper supervision."

As one of its 1967-68 objectives, the Teacher Education and Professional Standards Committee of the Utah Education Association in conjunction with the Office of the Utah State Board of Education, undertook a study of para-professional assistants to teachers and of other categories of auxiliary personnel working in the public schools. The objective of the study was to prepare guidelines for the selection, preparation and employment of such personnel. Copies of the tentative report were circulated to the local school district teacher organization presidents in February, 1968, for their consideration. Some of the criteria included in this report for the use of teacher aides in the Utah public schools were:

1. The professional educator has primary responsibility to children whereas the primary responsibility of the teacher aide is to the professional.
2. Assignments clearly professional should not be delegated to a non-professional person.
3. Aides should be well-groomed, in good health, mature in behavior, dependable, willing to accept responsibility, relate well to children and adults, and be able to accept and follow directions effectively.

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4. Educators should exercise professional judgment in the proper utilization of teacher aides rather than develop a detailed list of duties that aides might legitimately perform which may tend to become quite restrictive and inflexible.

5. Teacher aides should receive some inservice or preservice type training.

6. Professional personnel need extensive orientation and preparation relative to effective and efficient utilization of the services available from aides.

7. Teacher aides should be accorded such legal rights and protection as are given to regular teachers. 68

The use of teacher aides and other auxiliary personnel in the public school classrooms of Utah increased sharply since the 1965 Elementary and Secondary Education Act was passed. 69

Several local school boards in Utah were beginning to experiment with a new type of staff structure by 1968, where staff moneys were redeployed to add various tutorial assistants, clerks, and other types of teacher aides. The various kinds of aides employed in the Utah public schools seemed to fall into such general categories or classifications as service, clerical, and instructional assistants. Generally, they were paid a salary of varying amounts by the local school board, but some volunteer aides were utilized without compensation. The local school district liability insurance program,

68 Ibid., pp. 2-10.

69 Ibid., p. 10.
usually, included coverage for only those aides being compensated.

As of 1968, licensing or certification of teacher aides was not being recommended in Utah. It was, however, being recommended that they be registered with the Office of the Superintendent of Public Instruction for information, but not credentialling. It was further recommended that the Utah State Board of Education should:

1. periodically follow-up to determine the extent to which its guidelines for the selection, preparation and utilization of auxiliary personnel have been implemented and adhered to by local school boards, and
2. that it should assume leadership in securing financial support for the aide program as a part of the state’s school finance structure.70

Due to the differentiation in staffing that was emerging in the Utah public schools, a new look was being taken at certification by representatives of the Society of Utah Superintendents and the teacher training institutions of the State under the direction of the Office of the State Superintendent of Public Instruction.

Utah's State Superintendent of Public Instruction in 1968, Dr. T. H. Bell, was a strong advocate for the development of a new instructional system and continually urged local school boards throughout the state to adopt all, or a portion of this concept wherein aides and other non-professional, non-certificated personnel would

70 Ibid., p. 10.
be employed to augment and enhance the services of professional teachers. A typical statement of State Superintendent Bell was as follows:

Research of job analysts indicate that many routine and special tasks performed by teachers ought to be shifted to a lower level of responsibility occupying the attention of assistants working under the supervision of teachers. This will free teachers to do more effectively those things that only capable and skilled teachers ought to be doing. 71

Substitute teachers

Personnel to take over the classroom duties temporarily when the regular professional teacher is absent, seem always to be in demand. Such substitute teachers come from many sources and with varying backgrounds and preparation. Generally, they are individuals who have either returned to the home or other employment after originally qualifying for a teacher's certificate, or those who failed to complete their necessary academic training to become fully certificated teachers.

Almost every school district is required to employ substitute teachers during the regular school year. Generally, they are paid considerably less for their services than are regular, full time, certificated teachers.

Utah law does not require substitute teachers to be certificated. However, the Office of the Utah State Board of Education has allowed local school boards to employ non-certificated and/or non-authorized personnel for a period of time not to exceed two-months.72

In light of teacher walkouts, sanctions, strikes, or other conditions in which large numbers of substitute teachers are needed, there may become a need on the part of local school boards to seek some certification criteria for substitute teachers. Teachers associations may also encourage the Office of the State Board to study this matter in the future.

It is not uncommon for some local school districts in Utah to sponsor pre-service or in-service type training for their substitute teachers. A few local school districts employ additional certificated teachers who are assigned the duties of substituting for regular classroom teachers during the regular teacher's absence, particularly at the elementary level.

Trends in teacher employment

There are some indications that the following trends in teacher employment are developing in Utah:

1. Local school boards are issuing written, annual contracts for the employment of teachers.

2. Local and state teacher associations are working for adoption of "Master Contracts."

3. Local school boards and professional associations are discouraging "contract-jumping" by teachers.

4. It is being recognized by all concerned that contractual agreements are as binding upon the teacher as upon the local school board.

5. Less discrimination is being shown in the employment of teachers with respect to race, color, creed, and national origin.

6. Anti-nepotism laws are not considered applicable in the employment of local school board member's relatives as teachers if the prospective teacher is certified according to state requirements.

7. The employment of an increasing number of non-professional aides in order to free teachers to more fully utilize their professional competencies is gaining support.
8. Local school boards are more selective in the employment of substitute teachers and place greater emphasis on pre-service and in-service programs for such personnel.

9. Local school boards and professional associations are recording unethical teacher conduct with respect to contracts.

10. A local school board will not offer employment to a teacher under contract to another school board without first obtaining that school board's permission.

11. Local school boards are becoming less restrictive in demanding compliance with a code of behavior by teachers employed by that board when the code is contrary to the teacher's own personal standards.

12. Local school boards are according teacher aides additional recognition and status through increased salary and fringe benefits somewhat similar to professional teaching personnel.

Extra legal practices respecting teacher employment

Some of the extra legal practices of some local school boards in Utah with respect to the employment of teaching personnel are:

1. Some teachers are being released from contract upon the teacher's request, without formal board action.\(^{73}\)

\(^{73}\)Letter from T. H. Bell, State Superintendent of Public Instruction in Utah, Salt Lake City, Utah, November 8, 1968, to writer.
2. Some local school boards are extending oral or written contractual agreements with teachers beyond the five year limitation established by law. 74

3. Some local school boards are discriminating in teacher employment where only those of a dominant religious faith and/or race, and those whose personal habits are congruent with the general mores of the communities were recruited. 75

4. Some local school boards are assigning teacher aides to instructional type duties generally considered by the Office of the State Board of Education to be professional in nature. 76

5. Some local school boards are blacklisting certain teaching personnel deemed to be unprofessional or unqualified by neighboring school districts. 77

6. Some local school boards are continuing or initiating, which may appear to be an unwise policy, the employment of a member of the immediate family of a local school board member as a teacher. 78

74 Ibid.
75 Ibid.
76 Ibid.
77 Letter from Daryl J. McCarty, Director of Research, Utah Education Association, Murray, Utah, November 8, 1968, to writer.
78 Ibid.
Some local school boards are employing uncertificated, unauthorized substitute teachers in one particular position beyond two months. 79

Teacher Tenure and Dismissal

Overview

A traditional objection to teaching as a lifetime career, prior to the late nineteenth century, was that it offered the teacher little job security. Under common law, a local school board could refuse to renew a teacher's contract for any reason or for no reason at all.

Approximately three-fourths of the states have some variation of tenure, continuing contract, or fair dismissal legislation. Tenure legislation changed the common law right of local school boards to dismiss teachers at pleasure, and substitute a permanent basis for contracting.

A tenure law is defined as a statute which:

1. Provides for continuing employment of a teacher who had acquired tenure status so long as service rendered remains satisfactory, and
2. Includes a procedure to be followed in case of dismissal. 80

79 Letter from N. Blaine Winters, Administrator, Division of Teacher Personnel, Office of Utah State Board of Education, Salt Lake City, Utah, November 12, 1968, to writer.

80 Nolte and Linn, p. 116.
Tenure legislation has been consistently upheld by the majority of the courts. The legislature, having power over schools and school employees, has plenary power over the question of teacher tenure based upon satisfactory service. Even where the legislature has failed to exercise its power to pass tenure legislation, a local school board has been held to have the power to adopt a resolution providing for tenure for its teachers. 81

In the absence of a statutory provision to the contrary, authority of a local school board to employ school personnel presupposes the authority of dismissal. "The right of dismissal thus given to a local school board is absolute and cannot be bargained away or limited by contract." 82 However, the statutory terms favorable to the employee are written or assumed to be written, into the contract and cannot be circumvented by any act of a local school board. 83

It is generally held that the purpose of tenure laws is to protect school employees, to aid in the maintenance of a competent staff, and to improve the school system. Tenure laws do give school

82Gillan v. Normal Schools, 88 Wis. 7, (1894).
personnel security in their positions, but they do not give them immunity from removal if the local school board follows legal procedure.

Two kinds of tenure laws have been developed; one provides for permanent tenure after a period of probationary service, and the other is a continuing contract which requires the local school board to notify a teacher by a specified time should his services not be desired for the coming year.

Dismissal under probation

Practically all tenure laws require newly appointed teachers to go through a probationary period before acquiring tenure status. Even though a probationary period varies from one to five years, it is most commonly three. During the probationary period, annual contracts are customary; and probationary teachers may be dismissed at the end of any school year. Some tenure laws permit local school boards to dismiss a probationary teacher at any time during the probationary period, even during a school year. Generally, it is becoming necessary for local school boards to state a reason and to provide for a hearing before dismissing teachers, even on probation.

In recent years, the generally accepted practice has been to employ probationary teachers under a spring-notification continuing
contract. Thus, throughout the probationary period, teachers are automatically re-employed each ensuing year unless they are notified by a specified date in the spring of the year to the contrary.

Utah has no tenure laws as such, but several local school boards within the State have adopted tenure policies for their employees. Generally, school personnel within the State are considered on probationary status for a three-year period during which time they may be dismissed by the local school board for cause. Probationary employees are not accorded the same orderly dismissal procedural rights as are those employees considered to have achieved a more permanent status.

Local school boards in Utah have been authorized by statute to remove their appointed school officer employees at their pleasure and Utah Attorneys General have from time-to-time been asked for legal opinions concerning the authority of local school boards to terminate employees contracts under various conditions.

It was opined by such authority that a school board could legally provide within an employee's contract that employment may be terminated by marriage, but unless the contract specifically

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85 Attorney General Opinion, No. 95, March 10, 1932.
granted the board such authority, a teacher could not be removed solely upon the ground that she was a married woman. 86 It was further stated that school boards had the right to dismiss employees who were guilty of grave misconduct. 87

Dismissal under tenure

At the end of the probationary period, teachers acquire tenure status, usually upon the recommendation of the school district superintendent and appointment by the local school board. After a teacher acquires tenure status, dismissal is legal only for certain causes and after certain procedures.

The causes for justifiable dismissal may be enumerated in the statutes of states which have tenure laws or outlined in board policy where no statutory tenure laws exist. The tenure status of a teacher, therefore, depends upon the provisions of that particular tenure law or local school board policy under which he is employed.

The teacher who has attained tenure has a vested right to employment in the school district and cannot be deprived of this right, except through the exercise of due process of law. Before dismissal the tenure teacher is entitled to notice, with a statement


87 Attorney General Opinion, No. 60, December 18, 1927.
of the charges, and a hearing before the school board under the terms of an "orderly dismissal procedure." Tenure teachers are in effect employed under a continuing contract; and they are entitled to a succession of contracts for an indefinite period of time during good behavior.

Local tenure as established by local school board resolutions is enforceable, so long as it is not changed by a subsequent resolution of the board, provided the board does not violate the general law of the state regarding the employment of teachers. 88

In absence of a Utah statute granting tenure to school employees, the only way that employees can obtain tenure is by express provisions of a contract or by policies, rules, or regulations adopted by a local school board prior to the making of a contract and which would have, by implication, become a part of a contract. This particular condition was borne out by a recent court case in Utah. A teacher brought action to enjoin a local school board from refusing to allow her to continue as a teacher. Inasmuch as there were no state laws granting tenure and the local board had neither policy nor rules and regulations granting tenure to teachers of the plaintiff's class, the court refused to enjoin the local school board

as requested, holding that the board had the right to decline to re-
appoint the teacher for any reason or for none. 89

Orderly dismissal procedure

Tenure laws provide, with varying degrees of specificity, for
an orderly dismissal procedure which must be followed before a
tenured teacher may be dismissed. Such an orderly dismissal pro-
cedure generally has four distinct elements, three of which must be
explicit in the statute, the fourth being reasonably implied from the
first three.

The first element is notice to the employee that dismissal is
being contemplated. The second element is a statement of charges.
The third element is a hearing. The fourth element is an appeal
procedure open to a teacher in the event of dismissal following the
hearing. 90

In most states, if the local school board is satisfied that the
charges have been sustained, the teacher facing dismissal has
always received the right to appeal to the courts, except that the
first recourse may be to the state department of education, or its

89Rees v. Murray City Board of Education, 6 U. (2d) 196,
310 P. (2d) 387 (1957).

90 Hamilton and Reutter, Jr., pp. 65-66.
Utah boards of education, and teacher associations, have long been interested in programs of recruiting and retaining a competent teaching staff, and in devising ways and means by which personnel could be dismissed in an orderly manner when such dismissals become necessary or desirable. Local school board members in Utah and officers of the Utah Education Association jointly devised a program dealing with issues of tenure and dismissal. A substantial number of the local school districts have approved this program as a policy. It has generally been accepted that school teaching personnel in Utah considered for dismissal should have the opportunity for a hearing and appeal.

**Trends in teacher tenure and dismissal**

Trends appearing in local Utah school board operation with respect to teacher tenure and dismissal are:

1. Dismissing teaching personnel from their teaching positions by local school boards is becoming increasingly more complicated and difficult. Cases of dismissal that once went relatively unnoticed and unchallenged now become highly publicized and generally include investigations and hearings extending beyond the

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91 Atkinson and Maleska, p. 379.
individual school district level.

2. Benefits of tenure in local school districts are being taken for granted by many teaching personnel even in the absence of local school district tenure policies or a state tenure law. Assumptions are being made that an orderly dismissal procedure must be followed by all local school boards when dismissing a teaching employee regardless of length of service or adoption of a formal tenure policy.

3. More complete records are being kept on each teacher which may prove helpful in substantiating a local school board's position if dismissal becomes necessary.

4. Even during probationary periods, with or without specific tenure laws or board policies, provisions are being made for supervision and remedial helps to teachers.

Extra legal practices respecting teacher tenure and dismissal

Some of the extra legal practices of some local school boards in Utah with respect to tenure and dismissal of teaching personnel are:

1. Some local school boards are not providing an orderly dismissal procedure for teaching personnel which may be declared by the courts to be an indication of arbitrariness on the
part of school boards when dismissing a teacher. 92

2. Some local school boards are refusing to abide by statute by continuing to employ inefficient and incompetent teaching personnel. 93

3. Some local school boards are releasing or attempting to release teachers from their contracts without according to them all of the contractual rights expressly provided within the agreement, or within the policies of the school district. 94

Teacher Benefits

Overview

In order for local school boards to recruit and retain quality teachers, various wage and non-wage benefits have been provided for professional personnel. Benefits for teacher’s services include not only salaries, but such items as leaves, insurance, and retirement benefits.

92McCarty (Letter).

93Ibid.

Teachers are interested not only in the wage benefits which come to them as a result of their services, but also, in the non-wage benefits which affect their earnings and economic status. Non-wage benefits have become an important and integral part of the teachers' contract, not only because they generally come to the teachers tax free, but they are often more acceptable by the public than increases in salaries.

**Salaries--basis for classification**

All local school boards and teachers are usually interested in and concerned about the way school funds are administered with relation to salaries. The expenditure made by a local school district for teachers' salaries generally represents the largest percentage of the budget. The procedure and basis for classification for paying teachers are now subject to negotiations between teacher groups and school boards.

It is a well established principle of law that local school boards are legally vested with the power to fix salaries, and when they act in good faith, and within statutory limitations, their control over teachers' salaries is not susceptible to challenge.  

\[95\text{Nolte and Linn, p. 139.}\]
So long as local school boards comply with pertinent statutes, they may utilize any method of assigning salaries that appears to be reasonable in relation to the work assigned.\textsuperscript{96} Courts do not give attention to the wisdom of the classifications, but only to any alleged arbitrariness in the classifications or the administration of the schedule.\textsuperscript{97}

The Supreme Court of California has stated this general principle as follows:

\begin{quote}
It must be conceded that, within the limits fixed by the School Code, the Board has discretionary control over the salaries of the teachers. . . . However, it must also be conceded that the legislature has enjoined on such Boards, within reasonable limits, the principle of uniformity of treatment as to salary for those performing like service with like experience.\textsuperscript{98}
\end{quote}

It seems clear that there is no legal bar to a local school board establishing salary classifications provided such classifications are not applied in a discriminatory manner. Even though the method of classification of personnel may be left to the local school board, authorities are in agreement, however, that a differential in salary based solely upon race, religion, or sex, and not upon a material

\textsuperscript{96}Hutton v. Gill, 212 Ind. 164, 8 N. E. (2d) 818 (1937).

\textsuperscript{97}Hamilton and Reutter, Jr., p. 50.

\textsuperscript{98}Fry v. Board of Education, 17 Cal. (2d) 753, 112 P. (2d) 229 (1941).
difference in training, qualification, experience, abilities, or duties is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. 99

Schedule provisions for classifying teachers are either objective or subjective and the courts have been inclined to allow wide discretion by local school boards in establishing schedule classification. 100

The "merit" factor. The courts have recognized that individual differences are not to be precluded as a basis for salary classification for teachers.

Although merit plans have not been generally accepted throughout the United States, local school boards desirous of recognizing individual differences among teachers, have devised various plans to compensate for these differences. As long as the standards controlling the merit plan appear to be on some reasonable basis, a court will not substitute the judgment and disturb the exercise of the local school board's power. The courts have held a plan to be reasonable where a school system had a schedule providing periodic salary increases to teachers who earned additional college credits

99 American Jurisprudence, Schools, sec. 120.

100 Hamilton and Mort, p. 370.
and reductions for those who did not obtain such credits. 101

A subjective method of determining teacher effectiveness was judicially upheld in California in 1950, when teachers whose services were not satisfactory did not get salary increases. 102

A public school merit rating study program was carried out in Utah from 1953 to 1961. This study was recommended by the Utah Public School Survey Commission and formally initiated by a special session of the 1953 Legislature. A School Merit Rating Study Committee was then created and given the responsibility of determining the feasibility of teacher appraisal and incentive pay for Utah school personnel.

During the period of study, five "pilot" Utah school districts participated, but only one of them ever reached the point of providing merit increments on its salary schedule. One significant outcome of the study, however, was the development of guidelines which any group considering merit rating may find helpful. 103

101 Rible v. Hughes, 24 Cal. (2d) 437, 150 P. (2d) 455 (1944).
103 E. T. Demars (ed.) Utah School Organization and Administration (Salt Lake City, Utah: University of Utah Printing Service, 1964), pp. 149-150.
Funds for the study and implementation of the merit program were discontinued by the 1961 Legislature. While many reasons may have been given for the discontinuance, excessive administrative costs and teacher skepticism, with respect to the amount of "objectivity" that could be achieved in the evaluation of teacher performance were among the basic reasons given. The willingness of the general public to pay for meritorious teacher service was also questioned.

Extra pay for extra work

The question of whether teachers are entitled to extra pay for extra work required of them has come before the courts. A board of education in New York passed a resolution requiring teachers to give service outside of regular classroom hours. The courts said in ruling in favor of the board:

The hours of service of its teachers may not necessarily coincide with the hours of classroom instruction. . . . The duty assigned must be within the scope of teachers' duties. Teachers may not be required, for instance, to perform janitor service, police service . . . school bus driving service, etc. These are not "teaching duties." The board may not impose upon a teacher a duty foreign to the field of instruction for which he is licensed or employed. 104

Some local school boards include an "elastic clause" in the contractual agreement, in which teachers agree to perform, in addition to the general instructional duties, such other reasonable duties as the board, superintendent, or principal may so direct.

Some local school boards are beginning to provide, in teachers' contracts, extra pay for extra work, and the legality of such practices has not been questioned in a court of law.¹⁰⁵

Many school districts in Utah make special provisions in their salary schedules to pay teachers additional compensation for extra time because of their teaching assignments. These additional salary compensations are usually granted to athletic coaches, music and drama teachers, teachers of special education, and counselors. Several Utah school districts are beginning to pay their teachers extra for supervising school activities also.

_Sex and dependency allowances._ About one-third of the states have so called "equal pay" laws expressly prohibiting salary differential on the basis of sex. In 1952, a question arose as to the legality of "dependency allowances," in Massachusetts, which has such a law, wherein extra pay was provided by a local school board to married teachers who were the sole support of a spouse, a child, 

¹⁰⁵Nolte and Linn, pp. 147-148.
or children. Even though the court refused to void the resolution, it did say that the local school board was ". . . treading upon dangerous ground. . . ." and that ". . . school committees are not charged with the task of ironing out the inequalities of life or setting up a system of social welfare."106

A few local school districts in Utah apply various forms of "dependency allowance clauses" in their salary schedules. Basically, such clauses allow the head of the household additional salary consideration for a dependent spouse and dependent children over and above that which is paid to an unmarried or female teacher who is not the sole provider. Even though the Utah Education Association theoretically accepts the premise of "equal work for equal pay," it has taken no action to curtail the use of dependency clauses in the few local school districts in which they are operating, as of 1968.

Two Utah Attorneys General were questioned on the authority of local school boards to pay salaries to teachers under a salary schedule which pays more money to a teacher with dependent children or other dependents than it did to a teacher without dependents. They replied as follows:

Any rule or regulations adopted by a school board which pays salaries in whole or in part based upon the number of dependents of a teacher is unreasonable and discriminatory and is therefore void. 107 We have found no case in point on the question placed. While an argument can be advanced that the matter is primarily one of policy, we believe that where public funds are being expended, the legality of paying dependency allowance to teachers over and above their salaries is questionable. 108

Salary schedules

The procedure for paying teachers has been worked out on the basis of salary schedules which are an outline of pay rates based upon the amount of education and training which teachers have had, and the length of their service. As the amount of training and experience increases, the teachers’ position on a salary schedule tends to rise until a maximum is reached. The amount of increases for additional education and for each year of service tends to differ between local school districts. The amount of increment or value of each step on a salary schedule tends to differ even more.

In the absence of a statute to the contrary, a board of education may provide for schedules which classify teachers according to salaries to be paid. The adoption of a salary schedule, however, by a board of education does not vest the teacher with a right to

increments contained in the schedule. Such increments are merely a declaration of policy, and do not constitute grounds for court action by a teacher, inasmuch as salary schedules are subject to revision at the discretion of a school board. However, after contracts for the ensuing year have been issued, or after the ensuing school year has begun in the event that contracts are not issued annually, modification of salary schedules downward is an impairment of an accrued right of teachers and would probably be declared illegal.

State laws sometimes require that local school boards adopt salary schedules, but place no restrictions as to their nature. In two-thirds of the states, statutes either require minimum salary standards which must be paid to teachers with certain stated amounts of preparation, or a single minimum salary for all teachers which the district must pay in order to get its portion of state-aid funds. In other states, the state-aid formulas influence the amount boards can pay teachers, but do not set a minimum amount for individual salaries.


110 Remmlein, p. 98.

111 Ibid., p. 97.
One of the characteristics of teachers' salary schedules in Utah is that teachers are paid according to a single salary schedule which means that all teachers with the same amount of education and the same number of years of service receive the same salary within a particular school district.

Several Utah school districts have adopted the "index and percentage" guides for all salary steps of the schedule that shows relationship to the Bachelor's Degree minimum. An index guide facilitates revision of the dollar amount schedule for each current year. As soon as the B.A. minimum is fixed, all other steps are computed by multiplying this base salary times the appropriate index. With the B.A. minimum at 1.00, several Utah school districts by 1968 reached an index of 1.68 in approximately 13 years.

A study has recently been completed by James F. Sheya to determine the preferences of Utah teachers regarding the basis or determinants for a salary schedule. Twelve hundred of the approximately 12,000 elementary and secondary school teachers in thirty out of forty school districts were contacted for responses to a questionnaire.

Some of the conclusions and recommendations reached in this study were as follows:
1. Teachers felt strongly that the dimensions of job-assignment deserved more careful consideration in the calculation of remuneration.

2. Teachers felt that greater recognition should be accorded a planned program of graduate training culminating in an advanced degree than an accumulation of credit hours acquired through pressure or convenience.

3. Teachers accorded a value to career completion and to identification with a local community beyond that recognized by present practices.

4. Teachers did not favor salary determination based upon discriminatory factors such as family dependency.

5. In the development of future salary schedules, serious consideration should be given to the dimension of teacher load.

6. Some attention should be given to the possibility of extending salary recognition to all years of professional experience.\[\text{112}\]

**Granting teaching experience.** It is the prerogative of a local school board to evaluate experience received outside of the local school district when placing teachers new to that district on the salary schedule. One particular court stated that a local school board did not need to grant any credit for experience outside its system. If it did grant such credit, it could do so on the basis of an examination of each individual case, or according to fixed rules, or by a combination of both methods. The board policy would have to

be administered fairly and without discrimination, however, once it was adopted. 113

Granting credit on a local district salary schedule for any types of previous educational experiences varies from district-to-district in Utah. Generally, a limit is placed upon the amount of previous teaching service credited on a salary schedule prior to initial employment by each local school district. However, some local school districts continue to give credit on salary schedules for military and other similar type experiences. Generally, the school districts facing the greatest teacher shortages appeared to be the most liberal in such practices.

Questions have arisen concerning the requirements under Utah law relative to local school boards granting teaching experience on salary schedules for time spent in the military forces. The answer to this inquiry indicated that this action was an administrative decision of a local school board and that there were no statutes in Utah which allowed experience in the military forces to be used as a basis for increments on a teachers' salary schedule. 114


114 Attorney General Opinion, No. 315, June 12, 1945.
Liability for payment. Teachers' salaries have been consistently held by the courts to be a primary contractual obligation of local school boards, and must be paid in preference to all other claims against public funds held in their trust. There are conditions, however, under which teachers may not receive their salaries. One such condition was substantiated by a court in Pennsylvania that ruled teachers were not entitled to their salaries during a period of suspension by a school board. It has generally been understood in Utah that if a teacher was once suspended by the local school board and later reinstated, that the teacher was to be reimbursed for the period of suspension.

The weight of authority appears to support the rule that a teacher may not be penalized salary-wise because of temporary interruptions due to closing of the school. Some school boards make provisions in their written policies covering deductions from wages when schools are closed because of epidemics, loss of building, or observation of the recognized holidays.

The Utah law specifies that local school districts shall provide a school term of nine months in order to participate in state school

115 Nolte and Linn, p. 139.

Publishing of salary schedules. The publishing of the local school district employees' salaries was initially a controversial issue in Utah; but since 1959, this problem has been resolved by the addition in the law of the phrase "... except that the names of individuals receiving salaries shall be deleted when the district salary schedule is published in full." 122

In answer to a question of whether a board of education is required to release the salaries of public school teachers to an individual who has requested them, the State Superintendent of Public Instruction had the following to say:

If a person comes to the office for the purpose of receiving information, he should have access to the records. If he desires a certified copy of certain material, he should receive it, or he may make his own copy without removing the records from the office. 123

The Utah Code Annotated, 1953, specifically states that, "Every citizen has a right to inspect and take a copy of any public writing of this state except as otherwise provided by statute." 124

It further explains that, "Every public officer having the custody of a public writing which a citizen has the right to inspect is bound to


give him, on demand, a certified copy of it on payment of legal fees therefor. 125

**Bonuses.** The question has arisen in Utah concerning a local school board's authority to confer bonuses upon its employees. One Utah Attorney General opined that such authority did not exist, but that contracts could be changed by mutual agreement of both parties in the event that conditions under which the contracts were originally drawn had changed. 126

**Leaves of absence with pay**

Local school boards are authorized to provide in their policies for leaves of absence of teachers from their duties in such instances as maternity of the teacher, illness or death in the family, professional improvement, and health reasons. 127 Of course, local school board policy cannot be in conflict with state statutes in such matters.

The practice of making deductions from the teacher's salary for absences occasioned by sickness or personal injury seem to be

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125 Utah, **Code Annotated**, 1953, Vol. 9, 78-26-3, p. 228.

126 **Attorney General Opinion**, No. 313, November 17, 1944.

disappearing. In the absence of statutes to the contrary, a local school board may choose to carry insurance covering sick leave, or adopt a wage continuation plan for the period of a teacher's absence due to sickness or injury.

Statutory provisions in some states require specific standards of health of its teachers. Even when the state laws are silent, the general powers of local school boards are sufficiently broad to enforce regulations regarding the health of its teachers, especially with regard to communicable diseases. Sick leave with pay is usually permitted teachers whose personal health may either be injurious to themselves or to others.

All school districts in Utah make sick leave benefits available to teachers, but they do have widely differing programs. Programs for the number of annual days of sick leave with full pay vary from five days to an unlimited number. Many school districts allow their teachers to use sick leave to attend ill members of their immediate family, also.

The list of types of leaves with pay to which teachers may be entitled is long and varied. In Utah, leaves with pay may be given for jury duty, community service, personal reasons, or for sickness or death in the immediate family. Generally, all Utah school districts allow teachers to attend workshops and conventions for professional improvement without suffering a salary deduction. All
Utah school employees who are members of the organized military reserve are to be allowed full pay by their school boards for all time not in excess of fifteen days per year spent on such official duty. 128

**Leaves of absence without pay**

Unless prohibited by state statutes, local school boards may also permit a teacher to be absent from his duties with partial or no pay.

The courts have ruled that deductions from salary for unauthorized leaves of absences must be "ratable deductions," that is, they should be in direct proportion to a teacher's salary that the teacher's time of absence from duty bears to the entire time of duty. 129

Most local school boards in Utah grant "sabbatical" leave to teachers for professional study after they have completed a given number of years of service in the district. Some sabbatical leave recipients receive a portion of their regular salary and others do not.

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Utah teachers may not be given a leave of absence with pay to serve in the Legislature. However, occasionally Utah school boards adjust a teacher's contract so that the full salary may be earned in an extended period of time allowing the teacher a leave of absence without pay while serving in the Legislature.

Other leaves of absence are permitted teachers by local school boards in Utah which may include maternity leave and/or other one-year type absences for any of many reasons. Reinstatement at the end of a leave generally depends upon the terms of the agreement at the time the leave is granted. Usually, it includes reinstatement of previously earned sick leave and previous position on the salary schedule.

Insurance

A new trend in providing greater non-wage benefits to teachers by local boards of education includes insurance provisions.

The legality of the local school board's purchase of group life or other group insurance for teachers is not clearly defined by statute in most states. Such an exercise of local school board power has been declared legal in one particular state. In the


131 Nohl v. Board of Education of City of Alburquerque, 27 N. M. 232, 199 Pac. 373 (1921).
absence of a statute expressly providing for such expenditure, it is unlikely that the courts would permit school boards to pay group insurance premiums for teachers, unless it could be shown that such fringe benefit payments promote a school purpose. \textsuperscript{132}

Utah law authorizes local school boards to purchase group insurance for their employees which may be of several different types, including hospitalization and surgical benefits, as well as death indemnities, and/or salary indemnities. \textsuperscript{133} School districts may pay all or part of the premium and require the employee to pay the balance, if any. Local school boards throughout the State of Utah have purchased insurance programs for their employees which varied in the types and amounts, as well as in the portion of the premium paid by the local school board.

The Office of the Utah State Superintendent of Public Instruction was asked if it were legal for a school district to provide group insurance and hospitalization benefits to educators after they retire and the answer given was that:

\textsuperscript{132} Nolte and Linn, p. 164.

Any reasonable coverage or benefits which may be negotiated with insurance companies by the local school board would appear to be a proper aspect of unemployment benefits and would in no way be a payment of benefits which would be illegal as a gift or a gratuity.134

Other types of insurance including mutual funds, auto and other property, and salary indemnity are available to members of the Utah Education Association and dependents on a voluntary basis at the member's own expense.

**Tax sheltered funds**

A few local school boards in Utah have given their teaching employees an additional opportunity to build an estate beyond the usual retirement and social security benefits by allowing teaching employees to participate in a "deferred payment" retirement program through the purchase of tax sheltered mutual funds and annuities.

The usual procedure is for a school board to become the contracting agent with a broker who in turn invests teachers' funds in stocks. A teacher makes a determination of the amount he wishes to be deducted from his annual salary for such investment purposes. Such an amount is to be invested on a tax deferred basis wherein state and federal income taxes are not paid on the amount invested until such time as it is withdrawn from the mutual fund company.

A recent ruling by the Office of the Utah State Superintendent of Public Instruction stated that, "The Internal Revenue Service has approved the deferred payment program and this program should merit consideration of all people in public education for the benefits that will accrue to them." 135

The Utah State Superintendent of Public Instruction had the following to say on tax sheltered funds:

This provides an opportunity for school boards to offer some very valuable fringe benefits to... teachers at no additional cost to the school district. The tax benefits and the reduction potential in the management fee through volume purchasing of a total school district group are opportunities for employees that should help school districts to attract and hold qualified key personnel... Now that the tax sheltering question has been settled I am fully in support of the program as a voluntary investment opportunity for school employees. 136

Retirement

There has been more legislation related to retirement than to any other personnel policy and much of it has dealt with technicalities which have led to a substantial amount of litigation. 137

135 Letter from Walter D. Talbot, Utah State Deputy Superintendent for Administration, Salt Lake City, Utah, July 16, 1968.


137 Hamilton and Reutter, Jr., p. 57.
Retirement laws vary greatly from state-to-state, but generally they provide for contributions by the teacher through deductions from his salary, to which is added a stated sum by the state, to be paid the teacher upon retirement. Some state laws make membership in the retirement system compulsory while others put it on a voluntary basis for school teaching personnel.

The constitutionality of retirement laws has been uniformly upheld against all objections when it appears that some services have been rendered by the teacher after the enactment of the laws.\(^{138}\)

Generally, courts will not permit the allowance of those already retired to be changed to their disadvantage. Courts have sanctioned changes in retirement systems, but when a change was made that would have eventually cut off the allowance of a retired teacher, the Supreme Court of Utah declared it unconstitutional.\(^{139}\)

Every regular full-time teacher in the public schools of the United States was covered by a state or local retirement or pension system by 1950.

**Utah background.** In Utah school districts, teachers contribute to a fund which provides retirement benefits when they retire.

\(^{138}\) Hamilton and Mort, p. 464.

\(^{139}\) Newcomb v. Ogden City Public School Teachers' Retirement Commission, 121 Utah, 503, 243 P. (2d) 941 (1952).
Additional amounts are contributed to this fund by the local school board which receives its matching portion through the State Uniform School Fund. Teachers in Utah, as of 1964, had retirement programs which incorporated benefits from a state retirement system, as well as benefits from social security.

The first state-wide school retirement system in Utah was established in 1937, and in 1945 the Utah School Employees' Retirement System was extended to cover all school employees. In 1953, a program combining benefits of the Federal Social Security Act and the state retirement program was extended to most members, and each full-time school employee in Utah was required to be a member unless excluded by membership in another state-supported retirement system.

The Utah Legislature, in 1953, made provisions to give additional supplemental support to those who had retired between 1937 and 1953, and the 1967 Utah State Retirement System provided a modest protection cost-of-living increase to those who previously retired.

"In 1961, the staff of the Utah School Employees Retirement System and the Utah Public Employees Retirement System were combined, though the boards of each were not combined." 140 Since 1963,

140 Demars, p. 218.
one board and one staff have operated the state retirement system for all public employees.

The 37th Legislature of the State of Utah passed the Utah State Retirement Act and repealed as of June, 1967, "... sections 1 through 36, Chapter 29 of Title 53, Utah Code Annotated, 1953, as amended, designated as the Utah School Employees' Retirement Act..." and, "... sections 32 through 73, Chapter 1 of Title 49, Utah Code Annotated, 1953, as amended, designated as the Utah Public Employees' Retirement Act...".141

The Utah State Retirement Board was designated by the Legislature as the administrator of this system. Not only did this new act consolidate the school and the public employees' retirement programs, but additional benefits to public employees were made possible, beginning July 1, 1967.

Membership in the Utah State Retirement System is compulsory for full-time public school employees as well as other governmental employees who have been either elected or appointed. Members make a contribution at the rate of 4 per cent of their total salaries. This rate is to be increased a quarter of a per cent each two years until it reaches a maximum of 5 per cent in 1975. Employers make

contributions equal to those of members.

A refund of that portion that he has paid-in, plus interest can be obtained when a member permanently terminates his covered employment. A member who has withdrawn his contribution may re-deposit if later rehired by any unit of government covered by the system.

**Retirement age.** The normal retirement age in the forty local Utah school districts was age 65 as of July 1968 with only one exception. Generally, July 1 was the cutoff point at which a determination was made for reaching the retirement age of 65. It was not uncommon, however, for some local school districts to continue to employ teaching personnel beyond their 65th birthday on a year-to-year basis. Most school districts accepted the age of 70 as the mandatory termination of all professional services, however.

Retirement allowances under the Utah School Employees Retirement System were reduced approximately 6 per cent for each year of retirement prior to age 65. There, however, was no compulsory retirement age by state law, except as established by an individual local school board. In order to qualify for service retirement in Utah, a teacher must have had at least:
4 years of service at age 70 and thereafter,
10 years of service at age 65 through 69,
20 years of service at age 60 through 64, or
30 years of service at age 55 through 59.

Retirement plans. Benefits in retirement plans are generally
of three kinds; (1) superannuation or service retirement allowances,
(2) disability retirement allowance, and (3) death benefits.

A choice of one of four retirement plans is available to a
member in Utah at the time he retires. The plans are as follows:

1. Provides a maximum retirement allowance to be
   paid to the retired member for the remainder of his
   lifetime. No monthly payments are provided for
   the beneficiary except the check covering the month
   in which the retiree dies.

2. Provides for a slightly reduced allowance to the
   retiree, and upon his death, the balance in his
   contribution account, after deducting the annuity
   payments made to him, is paid to the retiree's
   beneficiary or estate. Beneficiary may be changed
   at any time.

3. Provides a reduced allowance payable to the retired
   member during his lifetime, and upon his death the
   same amount is payable to the beneficiary designat-
   ed at the time of retirement.

4. Provides a reduced allowance payable to the
   retired member during his lifetime, and upon his
   death one-half the same allowance is payable to
   the beneficiary designated at the time of retire-
   ment. 142

142 Utah State Retirement Office, Highlights of the Utah State
   Retirement System (Salt Lake City, Utah: Utah State Retirement
Disability benefits. If a teacher becomes disabled and cannot continue his teaching, provisions are made for his retirement.

In Utah, a teacher must have had at least 10 years of creditable service and be mentally or physically incapacitated for service before applying for disability retirement. Benefits are based upon the applicant’s years of service and salary.

Death benefits. Many state laws provide fixed amounts as death benefits either in addition to/or in lieu of refund of the member’s own contributions plus interest. Most retirement laws also provide several options to a teacher when he retires wherein he may provide survivors benefits for his dependents.

Beneficiaries of members of the Utah State Retirement System are entitled to one of four possible death benefits, depending upon the status and service record of the member before he died, and the beneficiary designated. If a teacher dies before meeting the qualifications for retirement, his accumulated contributions are paid to his estate or to a named beneficiary.

At the time a member of the Utah State Retirement System retires, he may choose either a $500 or a $1000 supplemental lump sum death benefit as a part of his retirement program. The cost of this benefit is deducted from the member's monthly allowance.

143 Nolte and Linn, p. 164.
Social Security

It was not until 1950 that teachers became eligible for coverage under the Federal Social Security Act.

In 1960, about two-thirds of the teachers in the United States had both retirement-system membership and social security coverage. In some states social security coverage was adopted "on top" of the existing retirement plan and is known as "full supplementation." In other states the existing retirement plan was amended at the time social security coverage was adopted, although they are operated separately, and became known as "coordination." In a few states the legislature determined by formula the amount of retirement income it wanted its teachers to have and provided that the retirement system would pay the difference between social security benefits and that amount. This plan is known as the "offset method."

Social security benefits to teachers in Utah are entirely separate from state retirement under the "coordination" plan.

Social security provides a number of valuable benefits, including:

1. monthly allowances for the widow and the children of deceased workers,
2. death benefits for beneficiaries,
3. retirement allowances for male workers beginning at age 65 and for female workers beginning at age 62.
4. for women at age 62 who are wives of workers age 65 or over,
5. for totally disabled workers.\textsuperscript{144}

As of 1968, the Social Security Act required school employees to contribute at a rate of 4.4 per cent up to a maximum salary of $7800. Local Utah school boards contribute a matching amount which they receive through the State Uniform School Fund.

\textbf{Workmen's compensation}

A state may enact a statute requiring that all public employees, including teachers, shall be subject to the compensation provisions of the state Workmen's Compensation Act. According to the weight of authority, such statutes are constitutional inasmuch as such expenditures are for "school purposes."\textsuperscript{145}

Utah has a Workmen's Compensation statute that includes local school boards as employers subject to its provisions.\textsuperscript{146} School boards, however, may insure in the state insurance fund or pay compensation directly to an employee as prescribed by this statute.\textsuperscript{147} Local school boards are liable to school teaching

\textsuperscript{144} Demars, p. 302.
\textsuperscript{145} Nolte and Linn, p. 163.
\textsuperscript{146} Utah, Code Annotated, 1953, Vol. 4, Replacement, 35-1-42, p. 575.
\textsuperscript{147}\textit{Ibid.}, 35-1-48, p. 612.
personnel sustaining personal injuries in the course of their employment for the amount awarded to them by the Industrial Commission, and such amounts are payable out of funds raised by taxation for the support and maintenance of the schools if the local school board does not pay into the state funds.\textsuperscript{148}

The Workmen's Compensation Law stipulated the rate and period of time for financial consideration that a school teaching employee was to receive when disabled as the result of an accident during the course of employment,\textsuperscript{149} and the 1967 amendment increased the amounts of such financial considerations.

Several conditions under workmen's compensation have been the cause of court cases in Utah which have resulted in some areas being clarified. The key factors in determining workmen's compensation coverage for an employee killed or injured outside of the state are that he be hired or regularly employed in the state and that the injury be received as a result of an accident arising out of, or in the course of his employment.\textsuperscript{150} With a few exceptions, the

\textsuperscript{148}Woodcock \textit{v.} Board of Education of Salt Lake City, 55 U. 458, 187 P. 181 (1920).


\textsuperscript{150}Allen \textit{v.} Industrial Commission, 110 U. 328, 172 P. (2d) 669 (1946); Attorney General Opinion, No. 511, November 15, 1966.
court has maintained that an employee on the way to/or from work
is not within the scope of the Workmen's Compensation Law. However, if the employee were required to pass through a danger-
ous situation to reach his place of employment, the court extended
the scope of the law, and similarly, if the employee was engaged
in a special errand for his employer. Furthermore, the court, in
dictum at least, has approved of the doctrine that recovery may
be allowed for injuries sustained while traveling to and from work if
the mode of transportation is provided by the employer.

The local school boards in Utah generally insure with the State
Insurance Fund of Utah in order to financially protect their employees
against personal injury according to the standards of the Workmen's
Compensation Law.

When school employees become eligible to receive workmen's
compensation they also remain eligible to receive compensation for

151 Fidelity and Gas Co. v. Industrial Commission, 79 U. 189,
8 P. (2d) 617 (1932); Covey-Ballard Motor Co. v. Industrial
Commission, 64 U. I, 227 P. 1028 (1924).

152 Cudahy Packing Co. v. Industrial Commission, 60 U. 161,
207 P. 148 (1922).

153 Kohn Bras v. Industrial Commission, 75 U. 145, 283 P.
1054 (1929).

154 North Point Consol. Irrigation Co. v. Industrial
Commission, 61 U. 421, 214 P. 22 (1923).
accumulated sick leave benefits from the local school board. A local school board may only retain those funds specified to be paid to an employee under the Workmen's Compensation statutes when it continues to pay its injured employee his regular salary beyond his accumulated sick leave period. 155

Unemployment compensation

Utah statutes include the Utah Employment Security Act of 1941 which has been amended over the years. This act provided, among other things, for an unemployment compensation fund to be distributed to those who become unemployed. Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of every state. The Utah Legislature, therefore, determined that for the welfare of the citizens of the state, it should establish and maintain a free public employment office and for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons. 156

155 An oral opinion expressed by the Office of the Utah State Superintendent of Public Instruction, July 25, 1968, to writer.

Under this act, eligible employers pay into the Industrial Commission a percentage of the wages paid by him. Eligible employees who become unemployed for a specified period of time can then receive unemployment compensation.

Under the present Utah law "... teachers who customarily engage in teaching and students while enrolled in school, or during school vacations..." are not eligible for unemployment compensation.

Variation among Utah school districts

There are considerable variations among local Utah school districts in teacher benefits. Some variations are:

1. In the types and amounts of group insurance provided teaching personnel. Hospitalization, surgical, and extended medical benefits are provided in most school districts, but only a few school boards provide death benefits for their professional employees.

2. In that portion of the cost for such insurance paid by the school board. The amount paid varies from 50 per cent to 100 per cent.

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3. In the leaves of absence with pay. The number of sick leave days granted per teaching employee annually is from five days per year to a limit cumulation of twenty total days, and to unlimited annual allotment to unlimited cumulative sick leave. The number of days granted for bereavement vary from none to five days per incident. Sabbatical leave varies from none to one-half of the annual salary. The number of special days of annual leave also varies from none to twelve days per year.

4. In extra pay for special teaching assignments. Such assignments as athletic coaches, speech and dramatics teachers, guidance personnel, and special education instructors generally receive some extra remuneration for extra services in most school districts. Music, speech-hearing, driver training, and other similar instructors also receive some special financial consideration in various amounts in several local school districts.

5. In the length of teacher's contracts, the number of days of school, and credit allowed for teaching experience. The number of days of teacher's contracts varies from 180 to 190. The number of days in a school year are from 180 to 185 even though the minimum as set by the Office of the State Board of Education is 180 days. The maximum years credit for teaching experience outside the district and/or state granted by a particular local school
board varies from three years to full credit for all such teaching experience.

6. In teachers' additional pay for extra curricular activity supervision. This varies from none to $10 per event.

7. In extended year programs as sponsored by local school districts. Some school districts sponsor few, if any, such programs while other districts employ several teaching personnel for the full summer. The pay for such teacher services varies from approximately 50 per cent to 100 per cent of that received on pro-ratio basis of the regular school year salary.

8. In the number of school boards adopting index salary schedules. Less than one-half of the local Utah school districts had adopted an index salary schedule for the 1967-68 school year. Such districts varied from a ratio of 100 to 1.28 in eight steps to a ratio of 100 to 1.68 in 12 steps for the B. S. Degree.

9. In the number and differentiation of salary lanes above the Bachelor's Degree. The number of lanes vary from one to three and the number of credit hours in each category also varies.

10. In those granting credit on a salary schedule for any type of previous experience except regular teaching as a prerequisite for a position on the salary schedule. Some boards continue to grant such experience for military and travel.
11. In providing dependency allowances in addition to the regular teacher's salary. Few school boards continue to do so. The maximum amount that any one local school district provided per employee is $588 in 1967-68.

Trends in teacher benefits

Trends appearing in local Utah school board operation with respect to teacher benefits are:

1. An increasing number of local school boards are providing death and salary indemnity insurance for teachers and their dependents.

2. Some local school boards are allowing teaching personnel a per day rate bonus for unused accumulated sick leave upon retirement.

3. A greater number of accumulated days for sick leave is being allowed.

4. More local school boards are allowing days of absence with pay for personal business.

5. Local school boards are accepting the responsibility and sponsorship of allowing teaching employees to participate in a "deferred payment" retirement program through the purchase of tax sheltered funds.
6. Teachers are being employed after the retirement age of 65 on regular salary or part-time work is being provided where-in they could earn a maximum of $1680 per year and also receive social security benefits.

7. Some teachers are being allowed to retire before age 65 at no loss of pay for medical reasons due to an accumulation of 180 days of sick leave.

8. Teachers are being permitted to retire before the usual age of 65 years due to the flexibility in the Utah law.

9. Local school boards are including additional pay in teachers' contracts for special teaching assignments in several areas, and paying teachers extra for supervision of school activities.

10. The number of days included in a teachers' contract for the base salary is increasing.

11. The school year is being extended with additional salary remuneration for certain teachers for curriculum development, educational improvement, and summer teaching.

12. An index system in salary schedule construction is being adopted by some local school boards.

13. Credit is being given on the salary schedule for prior experience beyond teaching in the public school.
14. Teachers' salaries are being based on other classifications beyond that generally included in the single salary schedule.

15. Some local school boards are stressing to a greater degree the concept of "equal pay for equal work" and eliminating such discriminatory factors as family dependency payments.

16. The maximum potential salaries of teachers with B. S. Degrees are being limited and the amount for additional graduate training and advanced degrees is increasing.

17. Some local school boards are eliminating the penalizing of teachers salary-wise due to temporary interruptions wherein schools are closed.

18. The possibilities for making public the salaries of individual teachers are lessening.

19. Some teachers are being paid a portion of their regular salaries during sabbatical leave.

20. The financial retirement benefits to teachers is increasing and the age for qualifying for retirement is being reduced.

21. Some local school boards are including more non-wage benefits in contractual agreements, particularly in the areas of insurance, leaves and retirement.
Extra legal practices respecting teacher benefits

Some of the extra legal practices of some local school boards in Utah with respect to teacher benefits are:

1. Some local school boards include a "dependency clause" in their salary schedule policies; a practice which has been declared legally questionable, not only by two of Utah Attorneys General, but by some courts within the United States. 158

2. Some local school boards are granting bonuses to teaching personnel which have not been provided for under formal contract. 159

3. Some local school boards are not providing citizens the proper mechanisms to inspect business matters of the school district as is provided by law. 160

4. Some local school boards are not abiding by the salary schedule as negotiated with the local teacher association wherein the local school board does not employ all teaching personnel "on guide" but continue to allow certain teaching experience, college

158 Policy of the Box Elder County School District, Brigham City, Utah, 1967.

159 McCarty (Letter).

160 Ibid.
credit, and degrees as salary determiners not included in written policies. 161

5. Some local school boards deduct from a teacher's regular contracted salary the amount he received due to an accident from the Workmen's Compensation Fund for the period of time that the teacher is receiving full salary under the sick leave provision of board policy. 162

6. Some local school boards do not publish the salary schedules of all of their professional employees as specified by law. 163

7. Some local school boards requiring their teaching personnel to become members of the Utah Educational Association or the Educators Mutual Insurance Company as a prerequisite to participation in the district sponsored health and accident insurance policy without either paying such membership fees, or applying a like-amount to other insurance. 164

161 Ibid.
162 Ibid.
163 The Morgan County News (Utah), September 20, 1968, p. 1; Box Elder News (Brigham City, Utah), August 29, 1968, p. 4.
164 Letter from L. C. Miles, Jr., General Manager, Educators Mutual Insurance Association, Murray, Utah, October 23, 1968, to writer.
8. Some local school boards fail to make up the days of school to a total of nine months as required by state law and/or 180 days as set by the Office of the State Board of Education in order to qualify to participate in Uniform School Funds due to temporary interruptions wherein schools are closed. 165

9. Some local school boards apply undue pressure on professional employees to refrain them from joining local, state, and national teacher associations. 166

**Teacher Status and Authority**

**Overview**

The employment of a teacher is actually a delegation of the state's responsibility to local school boards which technically make the teacher a state employee. In legal theory the teacher is a public employee, and not a public officer exercising discretionary and quasi-judicial power by virtue of his office. 167

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165 The Salt Lake Tribune, September 29, 1968, p.3; The Deseret News (Salt Lake City, Utah), September 30, 1968, p. 4.

166 McCarty (Letter).

The state does not dictate to a local school board whether or not it may employ a particular person as a teacher, but it does provide an outline of conditions to be met before a person may be considered for employment. The first such state requirement is certification.

When the certification requirement is met, however, there are still other direct and indirect statutory conditions that a teacher accepts when signing a contract. Some of these requirements are direct stipulations from statutory listings; others are more indirect items by virtue of the state's sanction of the rules and regulations as specified by local school board policy. 168

The status of a public school teacher is contractual in nature, i.e., to determine his status one must look to his contract of employment. The contractual agreement between the teacher and the local school board in connection with the district administrative policies, are also important aspects in the formulation of a teacher's legal status.

Even though the teacher must accept a contract under the conditions imposed upon him by state statutes and local school board rules and regulations, he still has much legal authority and freedom under both "common" and "case" law to function as a

168 Demars, pp. 239-240.
Ethics

One distinguishing characteristic of a profession from that of an occupation is its adherence to a set of principles or code of ethics which governs the behavior of its members. A code of ethics defines standards of practices and describes the responsibilities to which the membership of a group is committed.

The first code of ethics for the teaching profession was adopted by the Georgia Education Association in 1896. Today almost all local and state teacher education associations have adopted such codes. The National Education Association (NEA) adopted its first code in 1929 and its present code was adopted in July 1968.

The NEA Code seeks to guarantee that the teacher will not be punished for "unprofessionalism" so long as he observes the stated limits. The teacher's position is also deemed by the Code to require that his freedom of action be limited to protect the legitimate interests of others who may be adversely affected by unprofessional conduct.

It has been further stated that the NEA views its Code as a means for bringing about teacher participation in school district actions which question the professional propriety of a teacher's conduct. The NEA continues to urge local school boards, as well as
individual teachers, to refer allegations of professional impropriety to the ethics committee of its professional local and state associations for consideration. 169

A code of ethics has little value unless it can be enforced and some state associations have set up procedures for studying cases of violation. They have also determined methods for reprimanding, censuring, suspending, or expelling members guilty of violation.

The Utah Education Association (UEA) has made studies of circumstances and issues involved in grievances. Opinions have been sought on the ethics of the particular case in question and attempts have been made to resolve the difficulties and issue reprimands where necessary. The Ethics Committee of the UEA may recommend to its Board of Trustees that a member be suspended or expelled for cause. The Board of Trustees may in turn recommend to the Office of the State Board of Education that a teacher's certificate be revoked.

Many local school boards in Utah are working more closely with the Professional Relations Committee of the local and state teacher associations in order to avoid many conditions which could ultimately cause serious concern to both groups.

Membership in professional organizations

Prior to the passage of the National Labor Relations Act in 1935, the courts upheld local school boards in prohibiting teachers from joining labor unions. In Chicago in 1917, and in Seattle in 1930, the courts upheld the boards' rulings against teacher membership in unions. The court in the Chicago case said that the school board's rule against union membership for teachers was upheld because, "... it was inimical to proper discipline, prejudicial to the efficiency of the teaching force, and detrimental to the welfare of the public school system." 170

In the Seattle case, the court found that the school board rule prohibiting teachers to have membership in the American Federation of Labor was "... not a denial of a constitutional right of a person to follow his chosen profession." 171

Even though the federal public policy favoring collective bargaining in the National Labor Relations Act did not include teachers after its passing, local school boards appeared to exhibit


171 Seattle High School Chapter No. 200 of the AFT v. Sharples, 159 Wash. 424, 293 Pac. 994 (1930).
a more lenient attitude toward membership in teachers' organizations.\textsuperscript{172}

There is little doubt today that certificated school employees have a right to organize and to join employee organizations even though this right has been questioned in the past. The right to join employee organizations is based on the Constitution of the United States. The First Amendment forbids Congress to make any law abridging "... the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The Fourteenth Amendment forbids any state to "... make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state ... deny to any person within its jurisdiction the equal protection of the laws." Local school boards are agencies of the state and, therefore, have no rights to do what is forbidden to the state.

This right of professional school employees to form and join employee organizations has been reinforced by statutes in thirty-one states. However, there have been and still are in some states, limitations placed upon the rights of public employees to form

\textsuperscript{172}Nolte and Linn, p. 187.
organizations for their mutual benefit. 173

The limitations on the right of teachers to form and join employee organizations, both associations and unions, are exceptions today. It seems unlikely that teachers would be again placed in the category of policemen and firemen under the public safety argument in the future as they have in the past. 174

The laws of Utah are not entirely clear as to the legal authority of public school teachers to join occupational organizations. It, however, has become common practice for them to join occupational organizations as they may so choose.

Most school teaching personnel in Utah belong to local, state, and national professional organizations, even though they defeated a resolution in an election calling for a mandatory unified membership during the annual Utah Education Association Convention in October 1968.

Utah teachers are generally represented by the Utah Education Association and the National Education Association, particularly during periods of serious welfare controversy with local school


boards or state administration. All school teaching personnel are generally represented by their local professional association officers during periods when contracts are being formalized each year with local school boards. Labor unions as such had not achieved any membership among the teachers in Utah, as of 1968.

Utah law makes it the duty of every labor organization or labor union within the state to register with the Industrial Commission of the State of Utah. The Utah Education Association, however, has not been required to register as a labor organization or labor union.

Another statute of Utah makes it mandatory for a school district to deduct a sum at the rate not exceeding 3 per cent per month from a school employee's wages and to pay the same to a labor organization or union or any other organization of employees as assignee. Under this particular statute, it has become common practice for local school districts in Utah to make such membership deductions as requested by their teaching personnel to be paid to their various local, state, and national professional organizations.

Professional negotiations

Professional negotiations is a relatively new term in the literature of education and may be viewed as performance of the mutual obligations of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.

Professional negotiations may, also, be viewed as just an orderly step in the steady evolution of democratic school administration. The slowness of this evolution may have had something to do with the sudden burst of demands of school employees for more active participation in the formulation of school policies.

Early in this century, public employees were not considered to have any rights of collective action; but, following World War II, the nature of public service changed. Probably the most significant breakthrough came with the President's Executive Order No. 10988, issued in 1962, establishing the right of federal employees to organize and to negotiate with their employing units of government regarding personnel policies and working conditions. Emerging alongside this movement were the gropings of teachers for greater recognition and participation in the affairs of the local school district.
There was sufficient evidence in the postwar years and on into the early 1950's that the unrest among professional school personnel was climbing. Various resolutions on professional negotiations have been adopted by the National Education Association beginning as far back as 1938. In 1960, the first resolution on professional negotiations reached the floor of the NEA Representative Assembly, but it was not adopted by the delegation. The first resolution on professional negotiations was officially adopted by the NEA Representative Assembly in Atlantic City in the summer of 1961. However, subsequent changes have been made in this particular resolution.

Professional negotiation laws that are being enacted by state legislatures will govern the relationships between educational employees and their governing boards. Such laws, with varying names, were on the books in fourteen states as of November 1967. These states were: Alaska, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, Nebraska, New York, Oregon, Rhode Island, Texas, Washington, and Wisconsin. In addition, a negotiation statute was introduced in the 1967 sessions of the state legislatures in several other states, but without enactment.

It appears that negotiation legislation will definitely be introduced in future years in several additional states. It must, also, be recognized that collective negotiations are emerging and will continue to emerge in many states where there is no statute specially authorizing and/or regulating collective negotiations in public education. 178

The Research Division of the National Education Association completed a study on the legal status of the teaching profession's negotiation with school boards, and the following brief statement on several major points of the study was made:

1. It is settled that teachers have a right to form and join professional organizations and unions at the present.

2. The courts have not upheld the closed or union shop per se in public employment. . . . No state statutes were found which provide the closed and the union shop for teachers . . . .

3. The judicial view at present is that public employees may not strike. Several states have no-strike statutes applicable to public employees. Therefore, if it is thought desirable to permit teachers to strike, legislation would be necessary to provide it. . . .

4. School boards, in some instances, may refuse to discuss matters with representatives of professional organizations or unions. Therefore, if it is desired that school boards be forced to hold discussions with professional organizations, legislation . . . would be of great assistance. . . .

5. It is usually easier to amend present law than it is to enact new laws. 179

As of 1968, Utah had not enacted a formal negotiation law for teachers. Some local school boards, nevertheless, had granted such privileges through district policy.

Utah statute, however, did specifically declare that employees had the right to negotiate for terms and conditions of work with their employers and that an employee had the right, if he desired, to associate with others in organizing and bargaining collectively through representatives of his own choosing without intimidation or coercion from any source. 180 The term "employer" in this particular section of the law was defined to include any person acting in the interest of an employer, directly or indirectly, but shall not include the United States or any state or political subdivision thereof. 181 It can thereby be inferred from this section of the general labor laws in Utah that it was not the intention of the Legislature to give public school teaching personnel the legal right to


demand negotiation rights from their particular local school board.

It appeared that the Utah Education Association, however, was planning to introduce a bill during the 1969 legislative year requiring negotiation privileges with local school boards. Local school boards were faced with the decision of whether to assist in writing such a bill or to oppose such a bill in total.

What is negotiable. The question of just what is negotiable between teachers and local school boards has become the subject of much controversy. Some hold that all matters are negotiable; textbook selection, building construction, sequence of curriculum, and the selection of instructional materials are but a few examples. Others contend that negotiable matters should be restricted to salaries, benefits, and working conditions.

Professional negotiation agreements to date have tended to designate rather broadly the subjects considered appropriate for negotiations. Most agreements go far beyond what normally has been envisioned as "welfare" concerns. The American Association of School Administrators (AASA) has stated that negotiations, in good faith, may well encompass all or some aspects of policy governing such items as:
curriculum, inservice education, personnel policies, teaching assignments, transfers and promotions, recruitment of teachers, discharge and discipline of teachers, provision of physical facilities for teachers, grievance procedures, recognition of the negotiating team, lunch and rest periods, salaries and wages, welfare benefits, class size, leave of absence, expiration date of negotiable agreement and other mutually agreed upon matters which directly affect the quality of the educational program.182

The AASA believes, however, that some items are not negotiable and that a school board may refuse to bargain about non-negotiable subjects without violating its agreement to negotiate in good faith. A school board should not negotiate any items which would violate existing school laws. For example, it could not agree to negotiate on the following:

... to operate a school system less than the minimum number of days required by state law, to permit employees to strike in violation of state law, to violate applicable code of ethics, the selection of legal counsel to the board of education, the determination of the financial and pupil accounting system to be employed by the board, and the selection of the superintendent of schools.183


183 Ibid., p. 40.
Right to strike. Most employees in the United States in private industry are guaranteed the right to strike. This principle originated in the National Labor Relations Act of 1935, and was revised and clarified in 1947. Among the teaching force, however, the right to strike is not recognized. Teachers may not include in the bargaining agreement a clause that it is permissible to engage in concerted action such as a strike, work stoppage, or a collective refusal to enter upon their duties. 184

The rights of teachers to assemble and speak freely are constitutional rights, but they must yield when they conflict with a higher public interest. Few cases involving the rights of teachers to strike have reached the courts, but it is well established from the legal actions taken that they do not have this right, unless it is specifically provided by law. 185

Dr. Forrest E. Conner, Executive Secretary of the American Association of School Administrators, had the following to say concerning strikes:

184 Norwalk Teachers' Association v. Board of Education of Norwalk, 138 Conn. 269, 83 A. (2d) 482 (1951).

185 Nolte and Linn, p. 186.
Teacher strikes, or the withdrawal of service, whether or not taking place in conjunction with sanctions, are illegal. There are statutes in 15 states prohibiting various types of public employees, often including teachers, from striking. There are no statutes which provide that teachers may strike. In the absence of statutory provisions, the judicial view has traditionally been that public employees do not have the right to strike. The AASA endorses the proper and considered use of sanctions by a professional organization. It does not condone teachers' strikes under any condition.

Of the sixteen states that had some form of negotiation laws, as of August, 1968, seven states expressly prohibited strikes and no mention of strikes was made in nine states.

In spite of no strike laws and court decisions that teacher strikes are illegal, work stoppages, and walkouts that may be classified as strikes among teachers, continue across the country. Teacher strikes affected 85,000 teachers in 1967-68, and the leaders of the National Education Association and American Federation of Teachers have predicted 300 to 400 teacher strikes in 1968-69.

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The National Education Association reversed its traditional anti-strike position during its annual convention in Minneapolis in July, 1967. The new policy urged that, "... every effort should be made to avoid the strike as a procedure..." for ending disputes between teacher groups and school boards. However, it recognized that, "... under conditions of severe stress, causing deterioration of the educational program, and when good faith attempts have been rejected, strikes have occurred and may occur in the future..." The policy states, "In such instances, the NEA will offer all of the services at its command to the affiliate concerned to help resolve the problem." These services were to include funds, legal advice, and the use of field representatives.189

Sam M. Lambert, Executive Secretary of the NEA on August 1, 1967, stated that when school conditions threaten the safety and welfare of children and teachers, teachers may be justified in taking drastic action. His further comments were:

The NEA will not encourage strikes, but if one occurs after all good efforts fail, we will not walk out on our associations.  

Professional sanctions. Sanctions have become another device used by professional organizations in achieving their demands and are defined as follows by the NEA:

As used by a professional education organization, sanctions mean censure, suspension or expulsion of a member; severance of relationship with an affiliated association or other agency; imposing of a deterrent against a board of education or other agency controlling the welfare of the schools; bringing into play forces that will enable the community to help the board or agency to realize its responsibility; or the application of one or more steps in the withholding of services.

At least two local school districts in Utah have individually faced the threat and application of "sanctions" as applied by the State Education Association. In speaking of the teacher strike problems elsewhere in the Nation's school districts, an editorial in a Utah newspaper stated the following:


In contrast with these situations elsewhere, Utah is fortunate. But, Utah knows from experience it faces the same threat of mass action to close the schools, and also that, despite "no strike" pledges of the unionized or organized public school employees, and despite laws or other prohibition against school strikes, the problem of settling teacher grievances except at the expense of youth remains totally unsolved.\textsuperscript{192}

The State of Utah was the first entire state to have had sanctions applied against it by the National Education Association. A brief historical sketch of Utah's experiences in such matters may be summarized in the following editorial appearing in a state newspaper:

In May, 1964, the Utah Education Association called a two-day "recess" in the public schools of the state. The action followed the refusal of former Governor... to act upon recommendations of a school study committee to increase school funds considerably. The UEA members voted to return to work, but requested and obtained the first National Education Association boycott against a whole state. It called on out-of-state teachers not to accept employment in Utah until the financial problems were resolved. The boycott was lifted the following year after the Legislature and Governor... had approved an additional 24.6 million dollars for the biennium.\textsuperscript{193}

\textbf{Political rights}

Public school teachers are frequently subjected to restrictions on their freedom to engage in political activity, both nonpartisan and


partisan, outside of school. A series of recent court cases, all with nearly the same identical facts, have indicated that this form of political activity of a teacher will receive substantial protection against hostile school boards.\textsuperscript{194}

The position of a public school teacher is such that his participation in political matters will generally be censured by some members of the public. Hamilton and Mort had the following to say on such matters:

> Teachers should not be deprived of their rights as citizens to participate in the selection of public officers. Indeed, it would seem that they should, by virtue of their training, take the lead in such matters. To forbid participation deprives the community of what should be able leadership. It is unfortunate that teachers now provide such leadership at their peril . . . . On the other hand, the schools as such should not be used by any person or group for political purposes.\textsuperscript{195}

In 1939, Congress enacted the Hatch Act which prohibited federal employees from engaging in normal political activities. In 1940, it was extended to state and local employees who were employed in connection with any activity which is financed in whole or in part by the government. Thus, the 1940 Act covered vocational education


\textsuperscript{195} Hamilton and Mort, p. 404.
teachers and certain other teachers. In 1942, the Hatch Act was
again amended to delete its application, generally to teachers.
School teachers now are exempt from the political activity re-
strictions under the Hatch Act.

Unwritten laws (mores and social pressure) sometimes re-
strict teachers' political activities. These restrictions are not
based on law. "Perhaps there are a few restrictive local school
board regulations; if brought before a court such regulations would
need to meet the measure of reasonableness."196

**Holding political office.** Every qualified citizen, including
teachers, duly elected has a right to hold legislative office, but the
difficulty arises in connection with his absence from the class-
room.197 Therefore, in actual practice, a teacher must often
choose between serving in a political office and teaching school.

Laws of the various states do not agree on whether teachers
are precluded from holding legislative office; for example, the
Oregon Constitution does not permit it,198 but the California
Constitution does.199

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196 Remmlein, p. 185.
197 Nolte and Linn, p. 181.
198 Monaghan v. School District No. 1, Clockamar County,
   211 Ore. 360, 315 P. (2d) 797 (1957).
An Arkansas court ruled that the local school board may not suspend a teacher for a mere rumor that he plans to enter a race for a public office; but an Indiana court held as reasonable a local school board rule that a teacher must take a mandatory leave of absence during his political campaign, and during his term of office, if elected.

Utah teachers may not be given a leave of absence with pay to serve in the Legislature. Payment of any additional compensation to a legislator, beyond that specified in the Constitution would be contrary to law. However, the position of a school teacher is not an office of profit or trust, therefore, he is eligible to be a member of the Legislature. When the Legislature is not in session there is no legal objection of his returning to his position as a school teacher.


201 School City of Chicago v. Sigler, 219 Ind. 9, 36 N. E. (2d) 760 (1941).


204 Attorney General Opinion, No. 362, April 15, 1949; No. 373, March 31, 1950.
There is no Utah statute which in and of itself would make the function of a school teacher incompatible with the duties and responsibilities of a county commissioner. Unless the contract with a board of education calls for the full time of a school teacher, and the time he is required to spend as county commissioner would not interfere with his duties and responsibilities under his contract with a local board of education, that element would not disqualify him to serve as a county commissioner as well as a teacher. 205 It is, however, not legal for a school teacher in Utah to be a member of a local school board in the same district in which he is teaching. 206

Campaigning for another. Even though campaigning for another is usually not so time consuming as seeking political office for one's self, courts have ruled that teachers are not privileged to campaign for another during school hours. For example, one California court upheld a school board's ruling to suspend a teacher for unprofessional conduct who encouraged his students to have their parents vote for a particular political candidate. 207 A Florida court,

205 Attorney General Opinion, No. 300, May 25, 1944.


however, refused to interfere with the teacher’s right to engage in political activity during non-school hours. 208

− Academic freedom

Resentment has often been created among teachers when attempts have been made to control what they shall teach as well as their freedom of thought and expression both inside and outside of the classroom.

The United States Supreme Court has dealt with the problem of academic freedom specifically in but a single case, even though this problem has been mentioned by it in other cases. 209 This particular court case concerned a guest speaker of the University of New Hampshire who refused to be questioned concerning his lectures and who was jailed for contempt. The court reversed the sentence due to its ruling that there had been an invasion of the lecturer’s liberty in the area of academic freedom and political expression.

The National Education Association conducted a study in 1939 under the title, The Limits of Academic Freedom, which indicated

208 Adams v. State, 69 So. (2d) 309 (Fla. 1954).

that while few teachers were being dismissed, demoted, or otherwise disciplined for exercising free speech, the majority of teachers dealt cautiously with controversial subjects for fear of punishment. This would appear to indicate that there are practical limits to academic freedom and evidently many teachers steer away from classroom discussion of topics that may arouse the public.

It should be noted that few difficulties have been encountered in the area of academic freedom by teachers of good taste and sound scholarship.

According to one New York court, academic freedom is not a license that permits careless handling of the truth, and it does not permit libel or similar practices.

Teachers should have the right to state their views on any issue if all sides of the question are presented in such a way that students are in a position to formulate their own opinions. In the United States the teacher's fundamental obligation is to enlighten rather than to advocate. A teacher should have the right to state


211 Ibid.

his views before a class calmly and judiciously, but always with the stipulation that they represent his opinions only, which need not be accepted by members of the class.

**Controversial issues.** The curriculum content of courses taught in the public schools is either prescribed by law, or by state boards of education regulations, or by local school boards, or a combination of these. When the curriculum is so prescribed, parents cannot compel the local school board to modify the state standards for their own children; nor can local school boards avoid such minimum standards or discontinue such prescribed courses.

In the absence of a state prescription, local school boards have discretion as to courses offered and in absence of a state-adopted or locally prescribed course of study, teachers have some discretionary authority in the outline of their courses.

It appears that some of the most controversial school subjects to teach include religion, sex, politics, and economics. The one most controversial curriculum question in the public schools has to do with sectarian education. Since the use of public school funds for sectarian education is expressly unconstitutional in many states, and impliedly unconstitutional in most other states, many court cases have resulted over the past in this area.
The legality of Bible reading in the public schools reached the Supreme Court of the United States in the famous Doremus Case, but it was not settled on its merits, thus little was actually settled.

In 1963, the Supreme Court of the United States declared Bible-reading in the public schools to be unconstitutional, but this decision was contrary to the majority rule in state courts.

Another United States Supreme Court case opined that a measure of cooperation between schools and churches in religious instruction programs will be sustained as constitutional.

Utah is among the twelve states whose constitution prohibit sectarian instruction or influence in the public schools. In Utah, it is unlawful for teachers in the public schools to teach, "... any partisan, political, atheistic, infidel, sectarian, religious or denominational doctrine." Teachers are not, however, prohibited, "... the giving of any moral instruction tending to impress upon the minds of the students the importance and necessity of good manners, truthfulness, temperance, purity, patriotism, and

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Criticizing school officials. A teacher is often uniquely situated to expose poor administration of a school system. When he is dismissed for publicly doing so, he may seek refuge in two First Amendment doctrines recently developed by the Supreme Court. First, the dismissal of a teacher under these circumstances may violate the policy of encouraging debate on public issues, and second, the vagueness and excess breadth of the statutory provisions on which such dismissals are often based. 217

Teachers guilty of criticizing their superiors have been released from their positions for "insubordination," "immorality," "unprofessional conduct" or some other catchall grounds found in state tenure laws. Even though courts have upheld local school boards on such dismissal, they have indicated that they would look with great disfavor on statutory grounds of dismissal which, "... are capable of such sweeping applications...", and which, "... may suffer the infirmity of overbreadth." 218


A decision with important implications for all teachers upholding their right to criticize their school system and those who run it was made unanimously by the Supreme Court on June 3, 1968. Other court cases concerning the right of teachers to express themselves about the school system and school officials are pending in several states, namely: New Jersey, New Mexico, Oklahoma and Florida. It appears that the Supreme Court case decision (1968) has freed teachers to speak out more loudly than ever and to even be less reluctant to take sides in school board elections. 219

Loyalty oaths. Those who would overthrow a government would undoubtedly begin by gaining control of the means of education. Therefore, because of the close relationship between public education and national security, public interest has been aroused lest subversive groups infiltrate the school system and work within to undermine the government.

Among other things, a teacher may not join organizations which are inimical to the public will or which advocate the overthrow of the government by force. Academic freedom, normally allowed a teacher, cannot become license to teach that which is contrary to public policy or in violation of social mores.

Generally, when a teacher is discharged for subversive type of activities, litigation is brought against a local school board for depriving him or her of one or all of the basic constitutional freedoms as provided through the First Amendment in the "Freedom of Speech" clause, the Fifth Amendment which states that no one, "... shall be compelled in any criminal case to be a witness against himself..." and the Fourteenth Amendment that reads that no state shall, "... deprive any person of life, liberty, or property without due process of law...

Statutes requiring teachers to sign oaths of loyalty had been adopted in thirty-three states by 1962, similar to that in Colorado, which provides:

I solemnly swear (or affirm) that I will support the Constitution of the State of Colorado, and of the United States of America and the laws of the State of Colorado, and of the United States, and will teach, by precept and example, respect for the flags of the United States and of the State of Colorado, reverence for law and order and undivided allegiance to the government of one country, the United States of America. 220

Various loyalty cases have reached the United States Supreme Court level. In one such case, it was ruled that a teacher who refused to testify before a Congressional Sub-Committee and was

220 Colorado Revised Statutes, sec. 123-17-14 (1953).
subsequently dismissed had been illegally discharged. On the other hand, the teacher who refused to answer questions put to him by his superintendent concerning his past membership in certain organizations was legally dismissed for refusal to so testify.

The courts have almost universally upheld loyalty requirements against all challenges. Several cases have gone to the Supreme Court of the United States where principles have been laid down involving loyalty requirements imposed upon public employees, including teachers.

One of these principles is that no one has a "right" to public employment; if he accepts public employment he must be willing to accept the requirements. The state may fix reasonable methods for screening out disloyal employees. However, it is a denial of due process of law if the loyalty requirement penalizes one who innocently joined a group and then withdrew upon learning that it was subversive.


223 Remmlein, p. 59.
When the matter of "sciente," (meaning that a defendant knowingly becomes a member of a subversive party) is definitely or reasonably implied in a loyalty law, it has been upheld in the courts. An Oklahoma loyalty requirement was declared unconstitutional by the court because it contained no "sciente" clause. 224

Reduction in salary, demotion and transfer

The question of salary reduction often arises with transfers to other assignments, but the situation varies from state-to-state, with no consistent nationwide pattern apparent either in the statutes or judicial interpretations. 225

When individual teachers or small groups have been singled out for reductions in salary, the courts have generally concluded that such local school board actions constituted demotions, and were, therefore, not allowable unless for just cause. In assigning teachers to positions other than their original contracted assignment, or in reducing their salaries, the local school board must not act in an arbitrary or unreasonable manner. 226


226 Nolte and Linn, p. 144.
A court case arose in Colorado in 1958 wherein an interpretation was sought relative to the authority of a local school board to transfer an employee and reduce his salary. The school district eliminated the position of administrator-teacher held by the plaintiff, and offered the plaintiff a teaching assignment at a greatly reduced salary. The court held that a school board may transfer its employees, but that such rights were limited. It may not change the employee's position on the salary schedule to cause a reduction in pay, unless prior service was unsatisfactory. The court ruled in this case that the local school board's actions were unlawful. 227

Three separate actions by three local Utah school boards between 1965 and 1968 to demote and/or transfer professional personnel within their districts resulted in much state-wide publicity and in one particular instance a case that was still pending in the courts.

One case dealt with the transfer of a principal to a position of a teacher. After considerable community involvement and investigation on the part of a state teacher organization and the Office of the State Board of Education, the local school board's decision to make such a transfer was finalized.

The second situation was the transferring of two principals to principalships considered to be of less importance in size and location. In this instance the local school board was accused of making such transfers as punitive action against two principals who refused to sign and return their annual contracts to the district office as did all other principals of the district, but rather pooled them with the teachers of the district during a period of negotiation controversy. The result was that salary negotiations were delayed and serious controversy ensued which resulted in the Governor, the Office of the State School Board, the Office of the State School Boards Association and the Utah Educational Association all becoming involved in attempting to resolve the matter. The two principals remained re-assigned and negotiations were finally completed just prior to the opening of school, but the morale and working relationship between the local school board and teaching personnel of the district appeared to have been greatly impaired.

A third case was in connection with the attempts of a local school board to dismiss a teacher who refused to be transferred from one school to another. The teacher contended that the proposed transfer was a reprisal against him because he had asked the local school board for detailed information concerning federal aid to education in the district. The Fifth District Court Judge issued a
temporary restraining order against the local school board to retain the teacher in his position. A suit was still pending as of 1968 wherein the teacher was seeking special and general damages against the local school board alleging that it had denied him his tenure status and had seriously affected his rights under the teachers' retirement fund by not offering him a new teaching contract for the ensuing year. 228

Other teacher rights

Rights to redress of grievances. The statutes of almost every state outline the procedure appeal from a decision of the board of education and unless expressly prohibited, appeal is available from a local school board decision directly to the lower courts. Courts, however, will not reverse local school board's decisions unless there has been an abuse of its discretionary power. "The courts will recognize the teacher's rights, but it will not interfere in the normal operation of the schools where the local school board acts in good faith and within its powers." 229


229 Nolte and Linn, p. 199.
Acting as an agent. There is no law in Utah to restrict local school boards from purchasing supplies or equipment from a businessman who is also one of its teachers, but it has been declared illegal for a teacher to act as an agent for a company to sell the company's products to the students of his school.

A Utah statute prohibits a teacher in any school in the state from acting, "... agent for any author, publisher, bookseller, or other person to introduce ... any articles whatever into any district in which ..., he is officially employed.

Being a witness. Utah teachers cannot seek exemptions from acting as a witness on trials on the grounds that they are teaching school, regardless of the locality of the school or the detriment the school board will suffer through the subpoenaing of the teacher.

Utah laws make no provision for either confidential or privileged communications for those who make disclosures to school

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231 Attorney General Opinion, No. 165, June 10, 1936.


teachers. A Utah Attorney General has opined that except for a certified psychologist who may be employed by the school system, no other school employee is entitled to honor any communication as privileged communication when directed by process of law to testify. 234

Teachers in the military. Utah school boards are limited to some extent in their authority to deal with public school teaching employees, particularly, those in the state militia or any branch of the federal military, naval, or marine service. Such school employees, under statute, are entitled to certain privileges from their local boards of education, regardless of whether they are in the organized reserve of the United States military service or become involved in active service or duty. School boards are not to be prejudiced by reason of such absences with reference to promotion or continuance in employment. The Utah statute reads:

Upon the termination of military service, such persons are to be restored to such position or to a position of like seniority, status, and pay providing the person makes application for restoration of his position within forty days after he is relieved of such training, service, or duty. 235


This particular act has been declared constitutional in two court cases within the state. 236

It apparently was the intention of the legislature for local school boards to treat persons in the armed forces as being on a leave of absence and that they should not be penalized in any way for the period they were absent due to military service. 237

An Attorney General's opinion on whether the Utah Code Annotated, 39-3-1, applied to school teachers taken into military service through the Selective Service Act, was as follows:

It is my opinion that this section applies only to the public officer or employee who, at the time the section was enacted, was a member of the national guard, the naval militia or who was in some reserve status with the army, navy, or marines, and who was or will be called, inducted or ordered into federal service. Therefore, a school teacher taken into military service through the Selective Service Act would not be entitled to the benefits of this section. 238

A Utah Attorney General's Office had been requested to give legal opinions concerning school employees' rights under state


238 Attorney General Opinion, No. 275, January 4, 1943.
retirement. He opined that teachers called into the military service were still members of the retirement system until forty days after termination from service.239

Right to work. There are at least 20 states that have so-called "right to work" provisions in statutes or constitutions prohibiting various labor-management agreements that require membership in a labor union as a condition of attaining or retaining employment. Some of the "right to work" laws were not intended to apply to public employment wherein in other states the laws have been made applicable to public employees.

Utah passed a Right to Work Law in 1955 that gives teachers the right to join, or not to join teacher organizations. The law states:

It is hereby declared to be the public policy of the State of Utah that the right of persons to work, whether in private employment or for the State of Utah, its counties, cities, school districts or other political subdivisions shall not be denied or abridged on account of membership or non-membership in any labor union, labor organization or any type of association; further, that the right to live includes the right to work. The exercise of the right to work must be protected and maintained from undue restraint and coercion.240

239 Attorney General Opinion, No. 268, June 9, 1942.

In this same section of Utah law, it further states that,

"Nothing in this act shall be construed to deny the right of employees to bargain collectively with their employer by and through labor unions, labor organizations, or any other type of association,"241 and it defines "employer" as a school district.242 Even though this section of the law appears to imply that teachers do have the right to organize and bargain collectively with school boards, they cannot be compelled to join an occupational organization in order to obtain and hold a job.

Trends in teacher status and authority

Trends appearing in local Utah school board operation with respect to teacher status and authority are:

1. There is an increasing involvement of teachers in political activity and in their holding positions of public trust while at the same time remaining employees of a local school district.

2. There is a greater stress by local and state teacher associations and local school boards to adhere to a code of ethics during the period of employment.


3. Teacher membership is being unified in the local, state and national teacher associations.

4. Negotiating between local school boards and teacher representatives on benefits and working conditions is increasing.

5. There is an extending of the subjects considered appropriate for negotiations between local school boards and teacher associations.

6. There is an increased use of sanctions, walkouts, work stoppages, strikes and withholding contracts by teacher associations against local school boards.

7. There is a greater involvement of local and state teacher associations in the transfer of professional personnel within a school district, particularly where salary reductions are involved.

8. There is emerging a militancy of teacher associations which appears to be leading to improved compensation for teachers and better working conditions for teaching.

9. There is a greater recognition that as teachers take on more characteristics of professional associations, the role of the local school board will become more difficult.
10. Teachers are becoming more professional and proficient in coping with a growing body of knowledge in content areas and in the teaching and learning process.

11. There is greater recognition of the increasing importance of inservice educational programs for teachers.

12. Professional association leaders are recognizing the importance of developing teacher militancy to strengthen their association.

13. Teachers are being accorded the same rights to speak-out on public issues as any other member of the general public.

14. Teachers are being granted greater academic freedom in classroom discussion.

15. There is becoming a greater public acceptance for the enactment of statutes pertaining to professional negotiation rights of teaching personnel.

Extra legal practices respecting teacher status and authority

Some of the extra legal practices of some local school districts in Utah with respect to teacher status and authority are:
1. Some local school boards are continuing to pay teachers who serve as legislators for the time spent away from their teaching assignment. 243

2. Some local school boards are transferring and/or demoting professional personnel wherein such actions may appear to be capricious and arbitrary. 244

3. Some teachers continue to receive a form of remuneration from commercial companies whose products are being purchased by students. 245

Teacher Control of Pupils

Overview

The discipline and control of pupils have changed considerably over the decades. In colonial times, children were required by law to submit to the will of the parents, no matter how harsh and unreasonable such parental discipline might be and the father ruled the family with almost unlimited authority.

243 McCarty (Letter).


The chief seat of instruction in the early American colonies was the home. As education gradually shifted from the home to the state school system, courts of law have been called upon to define the relationship of the teacher's standing in place of the parent. The term "in loco parentis," (in place of the parent) has come to have meaning in the common law, based upon the courts description of the relationship which exists between teacher and pupil in the public schools. This legal term provides that the teacher may exercise only those powers which are just, proper, and necessary for the welfare of the child under a particular circumstance. The teacher, in the "loco parentis" relationship, may control the pupil in matters relating to school and education only, but this control may extend to pupils outside school hours when the good name and respect of the school authority are involved.

As a parental substitute, the teacher is subject not only to the standard of reasonableness, but to state statutes, and rules and regulations of local school boards in all actions involving pupil discipline and control. If a teacher is not restricted by rule or law, and his demands on pupils are not unreasonable, he has the common law right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which the pupil shall conduct himself.
Much of the control and disciplining of pupils by teachers falls within the common law. It is virtually impossible for the legislature or the local school board to deal with the control of each individual pupil; it evolves upon the teacher to exercise his judgment in such matters. The rule appears to be that the teacher, standing in place of the parent, has that authority which a reasonable parent might exercise under similar circumstances, unless there is a board rule or statute limiting such authority.

The teacher's discipline of a pupil, in order to be reasonable, must take into account the age, sex, size, strength, and general health of the pupil. Courts will assist local school boards and teachers in enforcing reasonable school rules in a reasonable manner, but they will not condone malice, anger, arbitrary, or capricious actions on the part of the teacher in controlling his pupils. 246

Right to control pupils

The powers on the part of local school boards and their employees to control pupils and their punishment for violations of school rules are held to be implied or necessary. 247 Most school

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246 Boyd v. State, 88 Ala. 169, 7 So. 268 (1890).

247 Nolte and Linn, p. 217.
boards have not only found it desirable, but necessary to include rules pertaining to pupil punishment and control in their written policies.

The *Corpus Juris Secundum* gives the following explanation of a teacher's position with regard to the controlling of students.

As a general rule a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education, and is subject to such limitations and prohibitions as may be defined by legislative enactment. 248

The courts generally will think of the individual pupil and may not recognize that the annoyance the teacher feels in a particular instance is multiplied many times in a school day. Remmlein had the following to say:

A teacher does not have the moral right to become angry with a child . . . . Punishment should never be motivated by anger or malice. If anger or malice can be proved, the other principles of common law with regard to reasonable punishment of pupils are of no avail as defense. 249

Local school boards in Utah have adopted policies pertaining to student discipline. A typical local school board policy is as follows:

248 *Corpus Juris Secundum*, 79, 493.

249 Remmlein, p. 271.
Students who attend school are under the obligation to abide by the rules and regulations established by the school and the board of education. Students are reminded that in effect teachers and school administrators stand in loco parentis with respect to control over students and as such have the authority delegated by the parent to discipline and make correction for offenses made against good order and effective conduct of the schools. 250

Right to control pupils outside school hours. A teacher may discipline a pupil for an act committed outside school hours when the act tends to destroy respect for the school or one of its faculty. In an early Vermont case, where a teacher gave a boy a whipping for making disparaging remarks to him in the presence of another student, away from the school, the court said:

Where the offense has a direct and immediate tendency to injure the school and bring the master's authority into contempt, as in this case, when done in the presence of other scholars and of the master, and with a design to insult him, we think he has the right to punish the scholar for such acts if he comes again to school. 251

Conduct outside of school that has deleterious effect upon the school may take many forms. The most common offenses are immorality, fighting, showing disrespect for school authorities, use

250 Policy statement of the Box Elder County School District, Brigham City, Utah, 1967.

of profane language, and abuse of smaller children. All of these have been held to be acts for which pupils could be punished.252

The test of the right to control pupils by school authorities does not seem to be when or where the offense occurred, but rather the effect it will have on the welfare of the school.

**Corporal punishment.** Law dictionaries define corporal punishment as "physical" chastisement, such as whipping as distinguished from fines, imprisonment, and other types of punishments. As a general rule, unless prohibited by statute or local school board ruling, the teacher has the authority to inflict corporal punishment upon his pupils.

Only the state of New Jersey has a law prohibiting the use of corporal punishment by school teachers on their pupils. In nearly all of the states, however, local school boards have enacted policies which define the teacher's right to inflict corporal punishment. Such policies, however, do not wholly prohibit corporal punishment, but establish specific procedures for the exercise of this power. Courts have been inclined to decide in favor of the teacher and the local school board, unless there was evidence of malice, brutality, or permanent injury to the pupil.253

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252 Hamilton and Mort, p. 519.

253 Nolte and Linn, p. 219.
The State of Utah has no law respecting the use of corporal punishment in the public schools. Therefore, the common law which places the teacher "in loco parentis" applies and the teacher is given the right to do what any reasonable parent would do under like circumstances in disciplining the student. In a recent court case in Utah, a teacher was charged with an assault and battery. The city court decided the case in favor of the student, but the case was appealed to the district court where the decision was reversed. 254

Suspension and expulsion. Students may be suspended or expelled for the violation of reasonable rules; however, the interpretation of reasonableness may make it difficult to predict how the courts will hold in particular cases. 255

The statutes of some states contain limitations on school boards in their power to suspend or expel. Generally, such statutes are to the effect that before a pupil may be expelled he must be informed of the charges against him and be given the right to a hearing. Other state statutes provide that a student may not be expelled until all other reasonable means of reforming him have


255 Hamilton and Mort, p. 513.
been exhausted. 256

Legally, only the local school board has the authority to suspend or expel students, but circumstances may arise upon which the action of a teacher in suspending a pupil without recourse to the local school board is necessary for the welfare of the school. It has been held that a teacher may suspend a student temporarily, 257 but the final determination of whether the suspension shall remain in effect, be modified, or the pupil expelled permanently, rests with the local school board. 258

A local school board in Utah has the authority to expel a pupil for violating school rules, and it has the legal power to take from the pupil the privilege of continuing his free public education. However, for expulsion, the pupil must have violated a reasonable rule or regulation.

A Utah statute concerning incorrigible children reads as follows:

256 ibid.
258 Hamilton and Mort, pp. 514-515.
All children in any school district between eight and eighteen years of age who in defiance of earnest and persistent efforts on the part of their parents or teachers are habitual truants from school, or while in attendance at school are vicious, immoral or un-governable in conduct, shall be deemed incorrigible, and it is the duty of the board of education of each school district to inquire into all such cases and report them to the juvenile court for such district, whose duty it shall be to prosecute such cases as incorrigibles. 259

Legislative enactments have also permitted local school boards to excuse from compulsory attendance any minor who has reached the age of sixteen years who continues to have a negative attitude toward school regulations and school discipline.

The suspension or temporary removal of students from the school pending later action by the local school personnel or the local school board has become generally accepted in Utah as a means of disciplining students, particularly on the secondary school level. Often this type of discipline is combined with the request for parents to visit the school, before readmittance of the student, where causes for such action can be mutually discussed.

It has been assumed in Utah that the authority to expel or exclude students from school on a more permanent basis, rests exclusively with the local school board.

Student classification and grading

Local school board authorities have the power to classify and grade pupils as, in their discretion, will be for the best interest of the schools. Parents have no legal right to demand that their students be enrolled in any particular class or group. The authority to grade and classify students, however, is subject to the sole condition of reasonableness.

Teachers of all grades are required by local school boards to assist with the preparation of student cumulative records containing such information as names and addresses of parents, attendance, test data, and teacher's comments.

A teacher is sometimes placed in the precarious position of having to make statements about students which can be construed as defaming his reputation. The law recognizes that the teacher must be free to state candidly his opinions, observations, and beliefs about his students, and "As may be expected, the teacher, under certain circumstances, has a qualified privilege of communication." When a teacher makes a publication which is prompted by a duty owed another, the statement is generally considered 

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260 Ibid., p. 509.

261 Nolte and Linn, p. 189.
privileged, if made in good faith and without malice."\textsuperscript{262}

Considerable freedom is generally allowed teachers to classify and grade their students. Generally, teachers give considerable thought and study to establishing a satisfactory classification and grading system in conformity with local school board policies.

Testing programs are of critical importance to teachers in classifying students to participate in particular programs such as remedial, special education, or advanced placement. Teachers are prone to working out a system for both classifying and grading so as to be as objective as possible.

\underline{Trends in control of pupils}

Trends appearing in local Utah school board operation with respect to teacher control of pupils are:

1. Local school boards are evaluating more carefully and frequently their policies respecting pupil control, suspension, expulsion, and classification and grading.

2. Many local school boards are prohibiting the use of corporal punishment as a means of disciplining students.

\textsuperscript{262}\textsuperscript{262}

\textit{Ibid.}, p. 190.
3. There appears to be a greater number of emotional outbreaks, clashes of personality, and tendency of students and parents to demand what they consider their individual rights.

4. Many local school boards are adopting what they consider to be reasonable rules governing the conduct of pupils, both in school and off school grounds, during school hours that appear necessary for the general discipline, morale, and welfare of the school.

5. Some local school boards are delineating their statutory rules and regulations for teacher control and discipline of pupils.

6. Local school boards are receiving a greater number of parental challenges of the rights of school boards to expel students for violation of rules which the parents and pupils consider unreasonable.

7. There appears to be a greater reliance upon the schools and the courts to combat juvenile delinquency and less reliance on the family.

8. Even though the trend does notloom large on the horizon, there is an increasing indication that the courts are ruling more often in favor of the student and parent, as against the local school board and teachers, in such instances as the rights of
married students to attend school, and participation in extra curricular activities, tuition and other special fees as prerequisites to school admission, withholding diplomas, refusal to transfer credit, saluting the flag, segregation, corporal punishment, student dress, paying for damaged property, permitting police officers to take a student from school for purposes of questioning, and injury to students while under teacher supervision.

9. Some local school boards are finding an increase in parents' criticism of teachers when malice and ill will are not involved.

Extra legal practices respecting teacher control of pupils

Some of the extra legal practices of some local school boards in Utah with respect to teacher control of pupils are:

1. Some students are being expelled from school by school administrators without official local school board action.\(^{263}\)

2. Some local school boards are permitting the withholding of credits and diplomas due to non-payment of fees.\(^{264}\)

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\(^{263}\) Bell (Letter)

\(^{264}\) Ibid.
3. Some local school boards have adopted rules and regulations prohibiting married students from attending day school and/or from participation in extra curricular school activities. 265

4. Some local school boards have failed to adopt rules and procedures outlining both statutory and district policy rights of teachers regarding discipline of students. 266

5. Some local school boards have adopted rules and regulations limiting the constitutional rights of students. 267

6. Teachers are continuing to use corporal punishment wherein some cases of permanent damage to pupils occur. 268

Teacher Liability

Overview

It is well established that a local school board is not liable for the negligent acts of its teaching personnel, committed while on official duty for the school system, unless its immunity has been

265 Ibid.
266 Ibid.
267 Ibid.
268 Letter from L. C. Miles, Jr., General Manager, Educators Mutual Insurance Association, Murray, Utah, November 11, 1968, to writer.
modified or abrogated by the legislature or a court decree. Some states have attempted to abrogate the common law immunity of local school boards and a few states such as: New York, Washington, California, Illinois, and Utah have provided by law for a waiver of sovereign immunity. In a few states where legislatures have failed to act, notably in Wisconsin, Minnesota and Pennsylvania, the courts have denounced the theory of sovereign immunity and hold the governmental agencies, including school districts, liable for their torts. This trend to make governmental agencies liable will likely continue.

Nolte and Linn have stated that:

Local school boards in most states are now permitted to appropriate money for the payment of liability insurance premiums. Even in those states where the law is silent on the legality of such an appropriation, and where the common law principle of non-liability of school districts is the rule, many boards of education are purchasing liability insurance and in some cases save harmless insurance for their employees, even though the appropriateness of the expenditure may be challenged.

269 Holtyrz v. City of Milwaukee, 17 Wis. (2d) 26, 115 N. W. (2d) 618 (1962).

270 Nolte and Linn, pp. 242-243.

271 Ibid., p. 245.
Hamilton and Mort have also stated that:

Theoretically . . . , since a school district is immune from suit the insurance company would also be entitled to assert this immunity as a defense to an action against it. This accounts for the common practice of inserting in district liability policies a provision that the insurance company shall not assert the district's immunity if an action should be brought against the company on the policy. 272

Immunity from tort liability which local school districts have enjoyed did not extend to the district's teaching personnel. The individual teacher was subject to liability for torts arising out of his own negligence, although acting in official capacity. The injured party, failing to be allowed by law to bring action against the local school district, may seek relief by instituting suit against the employee.

The extent to which a teacher is liable for injuries sustained by a pupil depends upon the common-law principles of negligence. School teachers have no special immunity because they are public employees; in fact, they may be held even more accountable than the ordinary person.

Some injuries are caused by what law calls a "pure accident;" that is, it was unavoidable, unforseeable, and no one was to blame. Other injuries are caused by another person's negligence. If a

272 Hamilton and Mort, p. 291.
teacher’s negligence can be proved he can be held for damages in a tort action; if the teacher can prove that there was no negligence, but the injury was caused by a "pure accident," there is no recovery of damages. 273

In cases involving negligence, the courts have generally sought to determine what a reasonable and prudent man would have done under the circumstances, then apply this norm to the acts of the person alleged to have acted negligently. A case in point arose in a New York school where a physical education instructor allowed two boys untrained in boxing to fight. One of the boys was fatally injured and the court held that the instructor was negligent and personally liable for the injury. 274

Sometimes a pupil suffers an injury while the teacher is absent from the classroom and the question then arises as to whether the absence of the teacher renders him liable for the injury. Courts seek a casual relationship between the teacher’s absence and the injury; for a charge of negligence to lie, the teacher’s absence must be the proximate cause of the injury. 275

273 Remmlein, p. 277.


Utah Government Immunity Act

The 1965, Utah State Legislature passed The Utah Governmental Immunity Act, commonly known as the "Tort Liability Law" to become effective July 1, 1966. This Act waived the immunity of local school boards for certain of their own acts and negligent acts of employees performed in their official capacity.

The enactment of this legislation increased the availability of redress from wrongs committed by governmental entities and their employees. The Utah statute appeared to create a broad spectrum of governmental liability, but its breadth left gaping areas for construction and refinement.

It has generally been held that governmental employees were personally accountable for their imprudent or wilful conduct which injures society. Contrary to the fears of school teaching personnel in Utah, the new act may reduce the number of suits brought against them individually. Since suit is now possible against a governmental entity as an alternative to suing an individual employee, plaintiffs will possibly be inclined to sue the more prosperous entity.

Although a provision in the act bars any action against an employee once a judgment is obtained against a school board, it would still appear to be possible to obtain judgments simultaneously against both the local school board and against its employees.

The exact dimensions of this law cannot help but be blurred when the Legislature suddenly created a broad area of governmental liability when traditionally there had been immunity from suit. As the Immunity Act receives judicial implementation and legislative modification in Utah, many areas of the statute will become more specifically defined, and governmental entities will possibly become more comfortable and less threatened under the law.

Due to the recency of the Act, and lack of sufficient experience with tangible situations, it would be difficult to state specifically how the law would be interpreted as it applied to school teachers' responsibilities. The Utah Attorney General stated some general opinions, however, among which were the following:

If a child is injured playing football, no liability should attach. But, if the coach knew or should have known that that particular child was, for instance, recovering from a serious illness, immunity would be waived for suit based on the coach's negligent performance of his duties. Similar examples could be found in the school lunch program, field trips, etc.

With regard to discipline in the classroom, there is no change resulting from enactment of the Utah Governmental Immunity Act. The Act in no way extends the liability of individual government employees. It merely
specifies under what circumstances the state will not be liable in Tort for the acts of its agents, and where it will. The teacher's liability, if any, would be the same before and after the Act takes effect. 277

As of 1968, the Attorney General's Office was engaged in an extensive appraisal of the problems likely to arise from the enactment of The Utah Governmental Immunity Act, and it appeared that several state constitutional questions must be resolved, as well as a multitude of other problems. 278

Areas of board responsibilities. The provisions of the Utah Law make local school districts responsible for injuries:

1. Resulting from negligent operation of a motor vehicle by any school employee.

2. Caused by a defective, unsafe, or dangerous condition on school grounds or in school buildings.

3. Proximately caused by a negligent act, or omission of the employee committed within the scope of his employment.

Claims against school districts or their employees will come as a result of an injury. The Utah Law has defined:


278 Ibid.
The word injury to mean death, injury to a person, damage to/or loss of property, or any other injury that an individual may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent. 279

The Utah Law also waives immunity from suit of local school boards as to: (1) any contractual obligation, and (2) the recovery of any property.

"Essentially, the Utah Law has attempted to make the state responsible for negligence, and individuals responsible for intentional torts and discretionary functions." 280

Negligence at law may be defined as any conduct which falls below standard for the protection of others against unreasonable risk or harm and may be acts of commission or of omission. The first test to determine if there has been negligence is the test of foreseeability which attempts to determine if a reasonable prudent person could have foreseen the harmful consequences of his act. In disregarding the foreseeable consequences, liability for negligent conduct may result. 281


281 Remmlein, pp. 277-278.
The Utah Legislature has attempted to make a distinction between negligent acts and intentional torts. Hatch stated that the California Law Revision Commission:

\[282\text{ Hatch, p. 46.}\]

\[\ldots\text{ has generally reflected the view that the public officer or employee who is guilty of an intentional wrong should quite properly be solely responsible for his misconduct, and that his employer should be immune.}\]

The distinction between a negligent tort and an intentional tort may be difficult to determine, however, and may simply be a matter of degree dependent upon the mental condition or attitude of the individual. Apparently, it is extremely difficult, at times, for a court to determine just who should properly bear the loss sustained from an injury, the injured person, the public employee, or the taxpayers as a whole as represented by a local school board.

Exclusion from board responsibilities. The Utah Governmental Immunity Act lists many exclusions wherein immunity is not waived for liability suit against a local school board.

The following are exceptions pertaining to negligent acts or omissions of the employee committed within the scope of his employment which are most applicable to local school districts wherein immunity is not waived:
1. Failure to perform or failure to exercise a discretionary function.
2. Assault, battery, liable, slander, infliction of mental anguish, invasion of rights or privacy.
3. Failure to make inspection or by reason of making an inadequate or negligent inspection of any property.
4. Misrepresentation, whether negligent or intentional. 283

Immunity is also not waived for hidden or concealed latent type defective conditions in school buildings and on school property, 284 or the operation of emergency vehicles. 285

Insurance protection. Giving local school boards authority to provide liability insurance, not only for themselves, but for their employees as well, affords the necessary coverage of all tort liability, regardless of how the complaint may be phrased.

The Utah Governmental Immunity Act provides that a local school board may maintain a reserve fund, or purchase liability insurance to pay claims or judgments. 286 The law also permits a local school board to insure any, or all of its employees against

283 Hatch, p. 45.
285 Ibid., 63-30-7.
individual liability for injury or damage committed in the scope of employment regardless of whether the local school board is immune from suit. 287 No insurance may be purchased or renewed under the law, however, except upon public bid wherein the contract is let to the lowest and best bidder. 288

Utah law provides that insurance be purchased in minimum coverage of $100,000 for injury to one person, and $300,000 for injury to two or more persons in any one occurrence. Property damage insurance is not to be purchased in less amounts than $50,000 for injury to/or destruction of the property of others in any one accident. 289 If judgments or awards are made against a school board which exceed such minimum amounts for bodily injury and property damage, the court shall reduce such liability to a sum equal to such minimum requirements unless the local school board has secured insurance in excess of such minimum requirements. 290

Most local Utah school boards have purchased liability insurance which includes coverage to pay the damage against

287 Ibid., 63-30-33, p. 122.
288 Ibid., 63-30-32, p. 122.
289 Ibid., 63-30-29, pp. 121-122.
290 Ibid., 63-30-34, pp. 122-123.
teachers who are judged by the courts to be negligent in the performance of their duties. However, some insurance policies purchased by local school boards do not cover teaching personnel in corporal punishment suits. Teachers who are members of the Utah Education Association (UEA) are covered by a $10,000 liability insurance policy while on the job, however. Such coverage gives teachers defense protection under corporal punishment cases. It had recently been made possible through the UEA for local teacher groups to increase such coverage to a maximum of $50,000 by paying an additional premium from their local funds. Approximately one-half of the local school district teacher groups within Utah had obtained the maximum coverage as of the 1967-68 school year.

Eye protection law

The Utah Legislature enacted a law which took effect on May 11, 1965, that made it mandatory for every pupil, teacher, and visitor in any public or private school who participated in certain industrial education, physics, and chemistry laboratory activities to wear industrial quality eye protective devices while participating in activities which may endanger personal vision. It was further directed that a local school board shall furnish such devices for pupils, teachers, and visitors to these laboratories. However, the local school board was permitted to purchase such eye protective
devices in large quantities and sell them at cost, rent, or loan, so long as such devices met the specified standards. Teachers are generally held responsible by their local school boards for the implementation of this law.

Student insurance

Most local school boards in Utah require all students participating in competitive athletics to carry accident insurance. Local school boards generally encourage all students to purchase insurance for accidents resulting from school related activities.

It has become a common practice among local school districts in Utah to offer a form of insurance to students as written by various commercial companies. Such insurance usually is nominal in cost and gives some financial protection to the student and his parents against injury and/or death from the time he leaves home for school and until he arrives home after school. Special insurance programs have been written by some companies for the more hazardous types of extra-curricular activities. Often the individual school will share the initial premium cost with the students who participate in competitive athletics.

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It now appears that local Utah school officials have an additional incentive to encourage greater participation in the student insurance program, for it seems logical to assume that where this type of insurance reimburses the parents for the basic costs involved in school accidents and injuries that parents would be less prone to resort to litigation under The Utah Governmental Immunity Act.

The problem that seems to exist, however, in the area of student insurance is that such policies limit the benefits to specific amounts that will be paid to the beneficiary under certain circumstances. Frequently, the benefits received do not fully reimburse the parent for the charges involved following an accident. School officials and parents face the necessity of securing a student insurance coverage of greater maximum benefits, but at the same time, keep the initial per student cost at a rate that parents will generally support.

Transportation of pupils and adults

In the State of Utah, a teacher driving a vehicle for a state agency consistently is asked to pay an extra premium on his policy for the "rider." Many local Utah school boards purchase blanket liability coverage which protects employees driving an automobile
whether it is their own or district owned when used for authorized school activities. However, it is generally understood that the individual's own personal automobile liability insurance would become the "prime carrier" in case of an accident and that the blanket policy of the local school district would only give him supplemental coverage.

Utah is one of the states which has the "guest statute" provision wherein the rider who shares rides and no charge is made is considered to be a guest and to be in the car at his own volition. The owner of the car, under normal circumstances, is not liable if the guest is injured while riding in his automobile. However, even if the person is a guest and the driver is wilfully and wantonly negligent, liability may result.

**Liability waivers.** Sometimes local Utah school boards require written parental consent before permitting a student to be transported to certain off-campus type activities. In relieving the teacher or the school district of tort liability, these parental permission slips have little or no legal value as the parent cannot abrogate his responsibility for the safety of the child by "signing it away." The only value of the permission slip, in addition to its 292 Nolte and Linn, p. 257.
public relations worth, lies in the knowledge that the parent knows of the activity, and has indicated permission for his child's participation.

**Medical treatment of pupils**

Medical treatment for pupils, under most circumstances, is the prerogative of the parents and in the absence of an emergency, school teachers are not permitted to substitute their judgment for that of a parent in matters related to how a given medical condition should be treated. When a student becomes ill at school, or is injured, it is the duty of the teacher to call the school nurse, or the child's parents for medical treatment by the family physician. Failure to provide promptly for the child's safety may result in a charge of negligence against the teacher. Teachers should not attempt medical treatment of more than a first-aid nature, except in case of emergency. 293

**Trends in teacher liability**

Particularly, since the enacting of the Utah Governmental Immunity Act of 1966, local school boards in the state have operated their school systems somewhat differently than they had when they

were immune from liability suits. Trends appearing in local Utah school board operation with respect to teacher liability are:

1. Greater care is being given to assuring adequate protection against law suits for negligence acts or omissions of teaching employees. Consultants were employed, in many instances, to not only prescribe insurance policy protection programs, but to supervise the general in-service type education of all teaching personnel in areas of safety, supervision and school law.

2. Some local school boards are offering credit-type courses without personal cost to teachers in such areas as first aid, water safety, and use of the trampoline.

3. Some local school boards are removing playground and other physical fitness type equipment considered hazardous.

4. Some local school boards are increasing student supervision requirements where teachers were concerned.

5. Some local school boards are initiating liability waivers as a prerequisite for a student to participate in field trips or athletic events.

6. Some local school boards are stressing the purchase of student insurance for more adequate coverage of all school type accidents.
7. Some local school boards are making a special effort to eliminate safety hazards on the school premises.

8. Some local school boards are attempting to schedule several kinds of liability exposures into a single insurance policy.

9. Many local school boards are including school employees in the comprehensive general liability insurance policy of the school district.

10. A few local school boards are eliminating those school activities of questionable educational value which have inherent, extremely dangerous conditions.

11. Some local school boards are attempting to eliminate the use of privately owned automobiles for transporting students to school activities and requiring the use of school buses.

Extra legal practices respecting teacher liability

Some of the extra legal practices of some local school boards in Utah with respect to teacher liability are:

1. Teachers are continuing to prescribe treatment and perform medical services beyond the nature of simple first aid. 294

294 Miles (Letter).
2. Some local school boards are making mandatory the requirement for parents to sign liability waivers before students are allowed to be transported to off-campus type activities in order to reduce chances for law suits due to injuries. 295

3. Adequate eye protection devices are not being provided in accordance to Utah law; and teachers are not insisting that such devices are properly worn. 296

4. Teachers are continuing to transport students to-and-from school activities without adequate liability insurance coverage. 297

5. Some local school boards are not following what may appear to be wise procedure by providing insurance for teachers as a protection, particularly, in corporal punishment suits. A few local Utah school boards are not providing any type of liability insurance for their teaching personnel. 298

295 Bell (Letter).

296 Ibid.

297 Letter from Royal Gelder, Insurance Consultant, Salt Lake City, Utah, November 8, 1968, to writer.

298 Ibid.
CHAPTER IV
SUMMARY, IMPLICATIONS
AND RECOMMENDATIONS

The Problem and Procedure

The purpose of this research project was to study the legal authority of local school boards in the State of Utah with respect to teaching personnel. Within this framework the study was designed to: (1) trace the historical evolution of selected school laws and local school board practices with emphasis on the State of Utah, (2) assemble and organize selected Utah constitutional and statutory provisions of the State of Utah, (3) assemble and organize pertinent decisions given by courts of the State of Utah, (4) assemble and organize pertinent legal opinions of the Office of the Attorney General of the State of Utah, (5) assemble and organize pertinent opinions and policies stated by the Office of the State Superintendent of Public Instruction of the State of Utah, (6) identify trends in local school board operation with respect to teaching personnel in the State of Utah, (7) identify extra legal practices of some local school boards in the State of Utah and discuss implications of these
practices, and (8) develop some suggested guidelines and recommendations for local school board policies and legislative enactments in the State of Utah.

The data were organized into broad selected areas, as: (1) the legal structure of public education in the United States, and (2) the legal authority of local school boards with respect to teacher certification, employment, tenure and dismissal, benefits, status and authority, control of pupils, and liability.

The material is presented in a topical narrative form and analyzed in terms of powers, duties, responsibilities, and liabilities of local school boards in the area of teaching personnel. The historical evolution of Utah school law and present practices of local school boards within the state are also noted.

Material was gathered primarily from the following sources:

1. Court cases were taken from Utah Reports, Pacific Reporter, Federal Supplement, U. S. Supreme Court Reporter, and where appropriate, other regions of the Reporter System. The court opinions were analyzed in terms of the powers, duties and liabilities of local school boards, the judicial standards deduced and the judicial principles of the case law formulated.

2. Statutory provisions relating to local school board authority were extracted from the current school law taken

3. Legal opinions of the Office of the Attorney General and the legal opinions and policies of the Office of the Utah State Superintendent of Public Instruction were taken from the Utah Code Annotated, 1953, and from records and publications of the Office of the Utah State School Board.

4. Statements were selected from authorities in school administration and particularly those recognized as authorities in school law.

Summary

Teacher certification in Utah

1. Each teacher in the public schools must hold a teaching certificate issued by the Office of the State Board of Education before he can legally accept employment.

2. Certificated teachers must complete a four-year, prescribed college program culminating in a Bachelor's Degree.

3. In order to renew a certificate every fifth year additional credit must have been earned.

4. Since 1934, the Office of the State Board of Education has had the sole power to issue public school teaching certificates which implied that all other requirements had been met
such as moral character, personality, ability to teach, and other factors deemed to be of prime importance to the success of the teacher in the public school system.

5. Local school boards may require any certificated teacher applicant to furnish satisfactory evidence that he or she is mentally and physically qualified for the duties of a teacher.

6. The Office of the State Board of Education can revoke a teacher’s state certificate for immoral or unprofessional conduct, or evident unfitness for teaching.

7. An attempt has been made to upgrade the quality of teachers by consistently increasing the requirements for Letters of Authorization that have been issued for the employment of emergency teachers when local school boards could not employ fully certificated professional personnel.

8. The Office of the State Board of Education issues two general teaching certificates; a Basic Professional Certificate which is mandatory and a Professional Certificate which is permissive. The latter certificate requires five years of teacher preparation.

9. Each type of teaching certificate may be issued with the general endorsement of either elementary or secondary, as well as special endorsements in areas of proficiencies.
10. Each teaching certificate is issued for a period of five years and expires on June 30th of the year shown on the face of the certificate.

11. A minimum of nine quarter hours of credit completed during the life of a certificate will extend it for another five year period, unless the certificate was issued prior to September 1967.

12. The older type certificates (those issued prior to September 1967) unless allowed to expire for a period beyond six months, may continue to be renewed for a period of five years for a total of six quarter hours graduate credit or seven and one-half quarter hours of upper division credit.

13. Applicants for the renewal of the Professional Certificate may use prior-approved combinations of college credit, research projects, travel, work experience, or other professional activities.

14. The direct handling of admissions, preparation, and continuing education of teaching personnel is primarily delegated to the institutions of higher learning by the Office of the State Board of Education under the "approved program approach" to teacher certification.

15. There is no state law that requires substitute teachers to be certificated.
16. The Office of the State Board of Education may issue teaching certificates to persons holding teaching certificates from other states provided such certificates are found to be of equal rank with those issued in Utah.

17. An out-of-state prepared teacher applying for a certificate must be a graduate of a four-year teacher preparation program completed in an accredited institution.

Teacher employment in Utah

1. Additional qualifications such as areas of training, experience, and health may be required by local school boards for the employment of teachers beyond those specified by statutes.

2. When a teacher enters into contract he automatically obligates himself to obey all the laws that are applicable thereto, as well as to the local school board's rules and regulations.

3. A court will interpret the terms of a contract in the light of conditions and circumstances surrounding the parties at the time the contract was executed.

4. A contract is just as binding upon a teacher as it is upon a local school board.

5. Local school boards are legally authorized to enter into written contracts for the employment of teachers for terms not to exceed five years, providing that there is nothing in the terms of
such contracts restricting their power to terminate such contracts for cause at any time.

6. The State Constitution prohibits religion or partisan test or qualifications from being conditions of admission as a teacher into the public schools.

7. Local school boards are not authorized to employ a teacher who is mentally or physically disqualified to perform his duties successfully.

8. A "Master Contract," containing a comprehensive listing of contractual agreements, is being adopted by some local school boards.

9. In most local school districts, annual written contracts are issued individually to teachers wherein other districts have adopted a continuing contract which remains in effect for an indefinite period.

10. Some local school boards stipulate in the teacher's contract that an amount is to be withheld from his final check as a penalty if it is not completed.

11. The State anti-nepotism law does not declare it unlawful for a local school board to employ a person of relationship to a board member if that person is qualified by virtue of a test, law, or certificate and certified as a qualified candidate by
the agency responsible for the issuance of the certificate.

12. Utah passed an Anti-Discrimination Act in 1965 making it a discriminatory or unfair employment practice for local school boards to refuse to hire, discharge, promote, or demote a teacher because of race, color, sex, religion, ancestry, or national origin.

13. Teacher aides are being employed in several school districts to be assistants and responsible to a member of the professional teaching staff.

14. The Office of the State Superintendent of Public Instruction strongly advocated the employment by local school boards of non-professional, non-certificated personnel to augment and enhance the services of professional teachers.

15. Non-certificated substitute teachers may only be employed for a period of time not to exceed two-months in any one specific substitute teacher assignment.

Teacher tenure and dismissal

1. A tenure law is defined as a statute which: (a) provides for continuing employment of a teacher who has acquired tenure status so long as service rendered remains satisfactory, and (b) includes a procedure to be followed in case of dismissal.
2. Under tenure, the three most common legal reasons for dismissal are immorality, inefficiency, and insubordination.

3. An orderly dismissal procedure generally consists of: (a) notice to the teacher that dismissal is being contemplated, (b) a statement of charges, (c) a hearing, and (d) an appeal procedure open to a teacher in the event of dismissal following the hearing.

**Teacher tenure and dismissal in Utah**

1. There are no tenure statutes in the State of Utah, but many local school boards have provided for tenure, continuing contracts, and fair dismissal procedures for teachers through district policy.

2. Teaching personnel are generally considered on probationary status for a three year period during which time they may be dismissed for cause, and are not accorded the same orderly dismissal procedural rights as are those teachers considered to have achieved a more permanent status.

3. It is becoming a practice for local school boards to state reasons and provide hearings before dismissing teachers.
Teacher benefits

1. It is a well established principle of law that local school boards are legally vested with the power to fix salaries if they act in good faith, and within statutory limitations.

2. As long as local school boards comply with pertinent statutes, they may utilize any method of assigning salaries that appears to be reasonable in relation to the work assigned.

3. The courts have recognized that individual differences are not to be precluded as a basis for salary classification for teachers.

4. The legality of providing extra pay for extra work in a teacher's contract has not been questioned in a court of law.

5. The adoption of a salary schedule by a local school board does not vest the teacher with a right to increments contained in the schedule.

6. It is the prerogative of local school boards to evaluate experience received outside of the district when placing new teachers in its system on a salary schedule.

7. Courts have consistently held teachers' salaries to be the primary obligation of local school boards and that they must be paid in preference to all other claims against public funds held in their trust.
8. Local school boards, unless prohibited by state statutes, are authorized to provide in their policies for leaves of absence with pay or with partial pay, or no pay.

9. The constitutionality of retirement laws has been uniformly upheld against all objections when it appears that some services have been rendered by the teacher after the enactment of the laws.

Teacher benefits in Utah

1. A public school merit rating study program for teachers was carried on in the state from 1953 to 1961, and even though it was piloted in five school districts, it was discontinued due to claims of excessive administrative costs, teacher skepticism in regard to the amount of objectivity achieved in evaluation of teacher performance, and the apparent unwillingness of the general public to pay the meritorious teachers.

2. Many school districts pay teachers additional compensation for extra time due to their teaching assignment, and/or for supervising school activities.

3. A few school districts apply various forms of dependency allowance clauses in their salary schedule, even though two Utah Attorneys General have questioned the practice.
4. Most school boards pay teachers according to a single salary schedule which means that all teachers with the same amount of education and the same number of years of service receive the same salary within a particular school district.

5. Several school districts have adopted the index and percentage guide for salary steps on the schedule which shows relationship to the Bachelor's Degree minimum amount.

6. Granting credit for teaching on a salary schedule varies from district-to-district.

7. Local school boards are liable for the full term of a teacher's salary unless conditions in the contract state differently and unless the local school board has otherwise exceeded its statutory authority.

8. Salary schedules for teachers must be published annually.

9. The law specifically states that citizens have the right to inspect and make copies of any public writing unless otherwise prohibited by law.

10. All local school boards have purchased various types of group insurance for teachers, as authorized by law.

11. A few local school districts have given teachers an opportunity to purchase tax sheltered mutual funds and annuities.
12. All local school boards make sick leave benefits with pay available to teachers, but in varying programs.

13. Other types of leaves with pay accorded teachers include leaves for jury duty, community service, some personal reasons, sickness or death in the immediate family, and participation in the organized military reserve up to fifteen days per year.

14. The State grants leaves to teachers without pay for such absences as serving in the legislature, participating in the organized military reserve beyond fifteen days per year, maternity leave, and sabbatical leave under certain conditions.

15. Teachers and other public employees are combined in one compulsory retirement program which is administered by the Utah State Retirement Board.

16. The normal retirement age for teachers is 65 years, even though it is not uncommon for school boards to continue to employ some teachers beyond their 65th birthday on a year-to-year basis.

17. Retirement benefits are: (a) superannuation or service retirement allowances, (b) disability retirement allowances, and (c) death benefits.

18. Social security benefits for teachers are entirely separate from state retirement benefits.
19. The state has a Workmen's Compensation statute that includes local school boards as employers wherein the local school board may insure in the state insurance fund or pay compensation directly to an employee as prescribed in statute.

20. The Utah Employment Security Act excludes teachers from participating in the benefits of the Act.


Teacher status and authority

1. In legal theory, the teacher is a public employee. He is not a public officer exercising discretionary and quasi-judicial power by virtue of his office.

2. Prior to the passage of the National Labor Relations Act of 1935, the courts upheld local school boards in prohibiting teachers from joining labor unions; and even though this Act did not include teachers, local school boards have appeared to exhibit a more lenient attitude toward membership in teachers' organizations since its passage.

3. It seems now that teachers can maintain membership in associations unless specifically prohibited by statute or board rule.
4. Sixteen states as of August, 1968, had enacted some form of professional negotiation laws.

5. Even though the right to strike by the teaching force in the United States has not been recognized by 1968, several teacher strikes, work stoppages, and collective refusal to enter into their duties have occurred.

6. The Executive Secretary of the National Education Association on August 1, 1967, stated that even though the NEA would not encourage strikes, it would not walk out on its state associations.

7. Professional sanctions are another device used by professional organizations in achieving their demands.

8. Nearly all of the recent court cases indicate that the political activity of a teacher would receive substantial protection against local school boards which are hostile.

9. School teachers are exempt from the political activity restrictions under the Hatch Act.

10. Every qualified citizen, including teachers, duly elected, has a right to hold political office, but often a teacher must choose between serving in such political office and teaching school due to the need of his being absent from the classroom.

11. Courts have ruled that teachers are not privileged to campaign for another during school hours.
12. A New York court has stated that academic freedom normally allowed teachers is not a license that permits careless handling of the truth, but it is a freedom to do good and not teach evil.

13. Courts have ruled that a teacher has the same right to speak out on public issues as any other member of the general public.

14. Teachers may not join organizations which are inimical to the public will or which advocate the overthrow of the government by force.

15. Even though thirty-three states, as of 1962, required teachers to sign oaths of loyalty, the matter is far from settled, and the question of just what is considered constitutional or unconstitutional in such state requirements is far from being answered.

16. The local school board must not act in an arbitrary or unreasonable manner in assigning teachers to positions other than their original contracted assignment, or in reducing their salaries.

Teacher status and authority in Utah

1. Even though the State law is not clear as to the legal authority of public school teachers to join professional
occupational organizations, it has become common practice for them to do so.

2. The Utah Educational Association is not required to register with the State Industrial Commission as a labor organization; but local school boards are required to deduct organizational dues from a teacher's wages as required by law if the local school board is so requested by the teacher.

3. As of 1968, the State had not enacted a formal negotiation law.

4. The first entire state to have had professional sanctions applied against it by the National Education Association was Utah.

5. Utah teachers may not be given a leave of absence with pay to serve in the Legislature.

6. There is no State statute which in and of itself would make the function of a school teacher incompatible with the duties and responsibilities of a county commissioner.

7. It is not legal for a school teacher to be a member of a local school board in the same district in which he is teaching.

8. It is unlawful for teachers in Utah to teach any partisan, political, atheistic, infidel, sectarian, religious or denominational doctrine within the public schools.
9. Teachers are not prohibited from giving any moral instructions which tend to impress upon students the importance and necessity of good manners, truthfulness, temperance, purity, patriotism, and industry.

10. As of 1968, the State of Utah did not have a loyalty oath statute.

11. There is no State law restricting local school boards from purchasing supplies or equipment from a teacher, but it is illegal for a teacher to act as an agent for a company to sell the company's products to the students of his school.

12. Statutes prohibit teachers in any public school of the State to act as an agent for any author, publisher, bookseller, or other person to introduce such articles whatever into any school district in which he is teaching.

13. Teachers cannot seek exemptions from acting as a witness in trials on the grounds that they are teaching school.

14. State laws make no provision for either confidential or privileged communication for those who make disclosures to school teachers.

15. A public school teacher in the state militia or any branch of the federal military, naval, or marine services is entitled to certain privileges from his local school board which
include restoration of his position, leaves with pay, and continuing as a member of the state retirement system. if certain actions are initiated by the teacher within a specified time.

16. The State has a Right to Work Law which is to protect and maintain employees from undue restraint and coercion from both employers and labor organizations.

**Teacher control of pupils**

1. Courts have held that teachers stand in the place of the parent,"in loco parentis," but may exercise only those powers which are just, proper, and necessary for the welfare of the pupil under a particular circumstance, which may even extend to pupils outside school hours when the good name and respect of school authorities are involved.

2. The teacher's discipline of a pupil, in order to be reasonable, must take into account the age, sex, size, strength, and general health of the pupil, and the courts will not condone malice, anger, arbitrary, or capricious actions on the part of the teacher in controlling his pupils.

3. As a general rule, unless prohibited by statute or local school board ruling, the teacher has the authority to inflict corporal punishment upon his pupils unless there is evidence of malice, brutality, or permanent injury to the pupil.
4. Statutes authorize local school boards to expel pupils from school, but generally require that pupils be informed of the charges against them and that they be given the right to a hearing.

5. Teachers may suspend a pupil temporarily, but the final determination of whether the suspension shall remain in effect, be modified, or the pupil expelled permanently, rests with the local school board.

6. Teachers generally are given the authority to classify and grade pupils as, in their discretion, will be for the best interest of the schools, but they are still subject to the condition of reasonableness.

7. Generally, the law recognizes that a teacher must be free to state candidly his opinions, observations, and belief about his pupils and under certain circumstances have a qualified privilege of communication.

Teacher control of pupils in Utah

1. Local school boards have the authority to expel pupils for violating school rules, and they have the legal power to take from the pupils the privilege of continuing their free public education.
2. Local school boards are authorized to excuse from compulsory school attendance any minor who has reached the age of sixteen who continues to have a negative attitude.

3. There is no State law respecting the use of corporal punishment in the public school even though most local school boards forbid this form of punishment.

Teacher liability in Utah

1. The Governmental Immunity Act was passed in the State to become effective July 1, 1966, wherein the immunity of local school boards was waived for certain of their own acts and negligent acts of employees when performed in their official capacity.

2. Law suits are possible against a governmental entity as an alternative to suing an individual employee, and once a judgment is obtained against a local school board, provisions of the law bar any action against the teacher.

3. The provisions of the law make local school boards responsible for injuries: (a) resulting from the negligent operation of a motor vehicle by any school employee, (b) caused by a defective, unsafe, or dangerous condition on school grounds or in school buildings, and (c) those injuries proximately caused by a negligent act or omission of the employee within the scope of his employment.
4. The law waives immunity from suit of local school boards for any contractual obligation and the recovery of any property.

5. The law has attempted to make the State responsible for negligence, and individuals responsible for intentional torts and discretionary functions.

6. The exceptions wherein immunity is not waived for liability suit pertaining to negligent acts or omissions of the employee committed within the scope of his employment which are most applicable to school districts are: (a) failure to perform or failure to exercise a discretionary function, (b) assault, battery, liable, slander, infliction of mental anguish, and invasion of rights of privacy, (c) failure to make inspection or by reason of making an inadequate or negligent inspection of any property, and (d) misrepresentation, whether negligent or intentional.

7. Immunity is not waived for liability suit against local school boards for hidden or concealed latent type defective conditions in school buildings and on school property, or the operation of emergency vehicles.

8. The Governmental Immunity Act provides that local school boards may maintain a reserve fund, or purchase liability insurance to pay claims or judgments against them.
9. The law permits a local school board to insure any or all of its employees against individual liability for injury or damage committed in the scope of employment regardless of whether the local school board is immune from suit.

10. Most local school boards in the State have purchased liability insurance which includes coverage to pay damage against teachers who are judged by the courts to be negligent in the performance of their duties, but some school district policies do not cover teaching personnel in corporal punishment suits.

11. Members of the Utah Education Association are covered by a $10,000 liability insurance policy while on the job which gives teachers defense protection under corporal punishment cases.

12. The State Legislature enacted a law in 1965 making it mandatory for every pupil, teacher, and visitor in any public or private school participating in certain industrial education class activities to wear industrial quality eye protective devices while participating in activities which may endanger their vision.

13. Most local school boards require all students participating in competitive athletics to carry accident insurance and encourage all students to purchase insurance for accidents resulting from school related activities.
14. Many local school boards purchase blanket liability coverage which protects employees driving an automobile whether it is their own or district owned when used for authorized school activities.

15. Utah has a "guest statute" provision wherein the rider who shares rides and no charge is made is considered to be a guest and to be in the car at his own volition; therefore, the owner of the car, under normal circumstances, is not liable if the guest is injured while riding in his automobile.

16. Some local school boards require written parental consent before permitting a student to be transported to certain off-campus type activities even though such "liability waivers" have little or no legal value, as the parent cannot abrogate his responsibility for the safety of the child by "signing it away."

17. Some local school boards encourage their teaching personnel to qualify for a First Aid and/or a Medical Self Help Certificate in order to assist where necessary in case of an accident or illness of a pupil.
Implications

In most instances, the authority under which a local school board operates in Utah is clearly indicated and its duties and responsibilities are identified. However, some practices have been followed by some local school boards which are clearly outside the law, while others are questionable. Local school boards within the State of Utah which engage in the following kinds of activities and practices may be subject to legal action, penalties, or other restrictions.

Certification and qualification

1. Employment of persons as teachers who do not possess a current, valid teaching certificate or who are not certificated in the particular area in which service is being rendered.

Teacher employment

1. Releasing teachers from contract upon teacher’s request, without formal board action.

2. Extending oral or written contractual agreements with teachers beyond the five year limitation according to law.

3. Discriminating in teacher employment where only those of a dominant religious faith or race, or those with the personal habits congruent with the general mores of the communities
were recruited.

4. Blacklisting certain teaching personnel deemed to be unprofessional or unqualified by particular neighboring school districts.

5. Continuing to practice, which may appear to be unwise policy, the employing of members of their immediate family as teachers.

6. Employing uncertificated, unauthorized substitute teachers in one particular position beyond two months.

7. Assigning teacher aides to instructional type duties generally considered by the Office of the State Board of Education to be professional in nature.

**Teacher tenure and dismissal**

1. Not providing an orderly dismissal procedure for teaching personnel.

2. Continuing to employ inefficient and incompetent teaching personnel.

3. Releasing or attempting to release teachers from their contracts without according to them all of the contractual rights expressly provided within the agreement, or within the policies of the local school district.
Teacher benefits

1. Including a "dependency clause" in their salary schedule policies; a practice which has been declared legally questionable by not only two of Utah Attorneys General, but some courts within the United States.

2. Granting bonuses to teaching personnel which have not been provided for under formal contract.

3. Not publishing the salary schedules of all of their professional employees as specified by law.

4. Not providing citizens the proper mechanisms to inspect business matters of the school district as is provided by law.

5. Not abiding by the salary schedule as negotiated with the local teacher association wherein they do not employ all teaching personnel "on guide" but continue to allow certain teaching experience, college credit, and degrees as salary determiners not included in written policies.

6. Retaining the amount that a teaching employee receives from the Utah State Retirement Investment Fund when the employee continues to receive full salary under the sick leave policy of the district.

7. Requiring their teaching personnel to become members of the Utah Education Association or the Educators...
Mutual Insurance Company as a prerequisite to participate in the district-sponsored health and accident insurance policy.

8. Failing to make up the days of school to a total of nine months as required by state law, and/or 180 days as set by the Office of the State Board of Education in order to qualify to participate in Uniform School Funds due to temporary interruptions wherein schools are closed.

9. Applying undue pressure on professional employees to refrain them from joining local, state, or national teacher associations.

Teacher status and authority

1. Continuing to pay teachers who serve as legislators for the time spent away from their teaching assignment.

2. Transferring and/or demoting professional personnel wherein such actions may appear to be capricious and arbitrary.

3. Permitting teachers to receive a form of remuneration from commercial companies whose products are being purchased by students.
Teacher control of pupils

1. Permitting the school administration to expel students from school without official action of the local school board.

2. Continuing to permit corporal punishment wherein some cases of permanent damage to pupils occurs.

3. Withholding credits and diplomas due to non-payment of fees.

4. Adopting rules and regulations prohibiting married students from attending day school and/or from participation in extra curricular school activities.

5. Not adopting rules and procedures outlining both statutory and district policy rights of teachers to discipline and control students.

6. Adopting rules and regulations limiting the constitutional rights of students.

Teacher liability

1. Permitting teachers to prescribe treatment and perform medical services beyond the nature of simple first aid.

2. Making mandatory the requirement for parents to sign liability waivers before students are allowed to be transported to off-campus type activities in order to reduce chances for law suits due to injuries.
3. Permitting teachers to transport students to-and-from school activities without adequate liability insurance coverage.

4. Not providing adequate eye protection devices in accordance to Utah law nor insisting that such devices are properly worn.

5. Not following what may appear to be wise procedure by providing insurance for teachers as a protection, particularly, in corporal punishment suits. A few local Utah school boards are not providing any type of liability insurance for their teaching personnel.

Recommendations

Certain recommendations and guidelines are suggested by this study for local school board policies and legislative enactments in Utah. These recommendations and guidelines may also involve the other agencies or organizations which have a role in the public schools in the State of Utah.

Recommendations in general

1. In view of the principle held by the courts that the individual must know the law, it is logical to conclude that individual local school board members and their professional educators should be fully informed of their legal authority and
responsibilities under the law in relation to teaching personnel. In the past, there has not been a single source of this legal information available to them. It is, therefore, recommended that this study, or a condensation or results of this study, be made available to every local school board in Utah to supplement its own written policies and procedures with respect to teaching personnel.

2. The Office of the State Superintendent of Public Instruction in Utah should, and does, play an important role in proposing the enactment of statutes by the Legislature. This Office should be relied upon more by the Legislature to recommend the amendment, repeal, and/or enactment of statutes in order to clarify school law and to make it consistent with the more widely accepted structure of school organization and administration.

3. The Utah School Boards Association should become more active in giving leadership to local school boards in such areas as legislation, negotiation procedures, and general school operation.

4. Local school boards should take the initiative, individually and collectively, to improve their working relationship with teaching personnel.
Teacher certification

1. The Office of the State Board of Education of Utah in cooperation with other state boards of education should formulate and adopt a policy of "reciprocal agreements" wherein teaching certificates issued by one state would be acceptable to another state under acceptable accreditation standards.

2. Outdated and obsolete statutes dealing with teacher certification should be deleted from the Utah Code, particularly those dealing with such areas as: (a) the issuing of certificates and life diplomas (53-2-15; 53-2-16, Utah Code); (b) the issuing of teaching certificates by the University of Utah, (53-31-19; 53-2-19, Utah Code); (c) the issuing of reciprocal teaching certificates to those out of state (53-2-20, Utah Code); (d) determining by examination the qualifications of applicants for certificates, (53-2-22, Utah Code); and (e) the requirement of instruction in school health, (53-2-26, Utah Code).

3. The qualifying examination should be eliminated as a requirement for a kindergarten efficiency endorsement and similar academic qualifications be required as for other certification endorsements.

4. State Uniform School Funds should be withheld from local school boards that continue to employ non-certificated
or non-authorized teaching personnel.

5. Standards should be established to assure greater uniformity throughout the various school districts in the State of Utah in the quality teaching requirements for Professional Certificates as needs to be verified by the local school board.

6. Standards should be established to assure greater uniformity throughout the various school districts in the State of Utah in the quality of substitute teachers.

Teacher employment

1. The Office of the State Board of Education in Utah should establish guidelines and requirements for the licensing of teacher aides which are designed to insure a higher quality of competent auxiliary assistants to professional teachers.

2. Teachers' contracts should contain a clause requiring teachers to forfeit a given amount of their salary for breaking their contracts.

3. Those local school boards that do not have "rules and regulations" pertaining to the employment of teaching personnel should proceed to formulate them immediately and adhere to them.

4. The Utah anti-nepotism law should be changed to prohibit local school board members from originally appointing or voting for the appointment as a professional certificated employee
of any local school board member's; father, mother, husband, wife, son, daughter, sister, or brother when the salary, wages, pay or compensation of such appointee is to be paid out of any public funds.

Teacher tenure and dismissal

1. A teacher tenure law should be passed in the State of Utah establishing a uniform procedure for attaining tenure as well as a procedure for orderly dismissal by local school boards under both the probationary and tenured status of teaching personnel.

2. Local school boards should accord legal consideration to their teaching personnel considered for dismissal.

3. Local school boards should establish policies to maintain a personnel file for each employee.

Teacher benefits

1. Local school boards should abide by the salary schedule and policies as negotiated with teacher associations and refrain from making arbitrary adjustments in employing particular teaching personnel by crediting them with teaching experience, college credit or degrees not included in written policy agreement.

2. A new State Uniform School Fund formula should be devised containing a weighting factor which provides financial consideration for a local school district based upon teacher
experience, credit hours and degrees. Local school boards in Utah could then establish a reciprocal agreement whereby teaching personnel may change positions among the various school districts and retain their status as to a position on a salary schedule. A transfer of accumulated sick leave of teaching personnel from district-to-district in Utah may also be made possible through such a change in the State of Utah finance formula.

3. Legislation should be passed prohibiting local school boards from basing teaching personnel’s salary determination upon discriminatory factors such as family dependency.

4. Legislation should be passed to make mandatory a leave of absence without pay for teaching personnel elected to the Legislature, or any position of public trust, during the time they are absent from their teaching assignment.

5. The Legislature should continue to financially improve the Utah Employees’ Retirement Program.

6. A mandatory state system of minimum group insurance for all public employees should be established as a fringe benefit by the governmental employing agency that would extend after retirement and until the death of the former state employee.

7. Steps should be taken by the Office of the State Board of Education and State School Boards Association in
cooperation with other state boards of education and state school board associations to explore the possibilities of enacting laws permitting reciprocal agreements among all states whereby a teachers' retirement program would become nationwide and not be confined to the boundaries of a particular state as it is at present. Teachers could then move from state-to-state under one retirement program.

Teacher status and authority

1. Based upon a review of recommended model legislation and statutes already enacted in other states, it is recommended that a negotiation statute be passed by the Utah Legislature that would:

   (a) Accord to certified public school teaching personnel the right to organize, to be represented, to negotiate professionally, and to bargain on a collective basis with local school boards concerning hours, salary, working conditions, and other terms of professional employment.

   (b) Define negotiations as the procedure where-in the local boards of education and/or their representatives exchange ideas and viewpoints with representatives of the education association
in good faith for the purpose of reaching an agreement.

(c) Define the method of selecting the local school board and teacher representatives negotiating or bargaining agents, and define what professional personnel are to be included in the provisions of the act.

(d) Provide for the protection of the rights of the minority in grievance procedures.

(e) Determine what preliminary procedures are to be followed by both parties to establish the obligation to meet for negotiation or bargaining purposes.

(f) Provide for referral of complaints of failure to negotiate or bargain in good faith by either party to an appropriate state agency as may be designated by the state legislature.

(g) Catalogue unfair labor or negotiation practices.

(h) Establish negotiation timetables that fit the fiscal, legal obligations of a local school board.

(i) Delimit the scope of negotiations and differentiate between "policy matters" and "working conditions," and provide for an impartial state
agency to decide disputes arising over these questions.

(j) Provide machinery for the submitting of unresolved issues to mediation, and/or arbitration.

(k) Provide for the selection, composition and procedure to be used by a board of arbitrators in resolving issues of disagreement.

(l) Determine the authority of a board of arbitration upon both parties and basis of appeal.

(m) Establish the responsibility for the payment of fees and expenses involved in arbitration.

(n) Omit any reference to prohibiting teachers from engaging in any strike or concerted refusal to render services. This recommendation is being made even though the traditional judicial view is that public employees do not have the right to strike. There does appear to be some indications that this theory of sovereignty or supremacy of government is yet to be challenged under the premise that the right to strike is rooted in the freedom of man and that he may not be denied that right. Utah may be wise to omit
any reference of "strike" in a negotiation statute and operate under the common law principle until such time as this issue is further resolved in the courts.

2. Legislation should be passed which would make it a misdemeanor for teaching personnel to sell a company's products to a local school board or to enrolled students within the local school district where the teacher is employed.

Teacher control of students

1. Each local school board should formulate and adopt district policies, after a thorough discussion with representative groups of teaching personnel, and students, on such matters as: (a) guidelines to student discipline, particularly as it applies to corporal punishment, (b) authority to suspend and expel students, and (c) standards for student grading and classification.

2. Local school boards should discontinue illegal practices which invade the rights of students.

Teacher liability

1. The purchase of liability insurance by local school boards for teaching personnel should be made mandatory and include such provisions as:
(a) Protection of teachers against corporal punishment suits.

(b) Protection for coverage of "Personal Injury" which would cover claims arising out of false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, invasion of privacy, wrongful eviction or wrongful entry.

(c) Protection for teachers who are required to use their private cars to transport students.

(d) Permission for a local school board to negotiate its liability insurance rather than to make mandatory that the contract must be let to the lowest and best bidder.

2. Local school boards should strongly encourage every teaching employee to receive some "first aid" or "medical self help" training.

3. Local school boards should carefully prepare and adopt policies concerned with The Utah Governmental Immunity Act for implementation by their teaching personnel.
4. Local school boards should provide adequate health services through the employment of professional medical personnel to reduce the necessity of teaching personnel becoming involved in student health problems other than emergencies where simple first aid would be required.
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