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Public Officer—Removal of for Incompetency

C. P. W.

West Virginia University College of Law

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It is submitted that the arguments last given are the more weighty. The very absence of authority for permitting P so to sue is an indication, at least, that the profession has never regarded P as having such a right. While this is no argument against the proposition, still it is a tacit admission that the doctrine of third-party beneficiary contracts is inapplicable in a suit by a disclosed principal, on a contract in which sole credit is given to his agent.

—R. T. D.,

PUBLIC OFFICER—REMOVAL OF FOR INCOMPETENCY.—By petition to the circuit court the petitioner sought to have the D, a member of the district board of education, removed from office, on the general ground of incompetency; under W. Va. Code, Ch. 7, §7 and Art. IV, §6 of the Constitution. One of the specified grounds was that the D could not read writing. D demurred and the trial court sustained the demurrer. Held, demurrer correctly sustained. *Sharps v. Jones*, 131 S. E. 463 (W. Va. 1926).

The court not only states that a school board member who cannot read writing is not incompetent to fill the office, but goes further and says that there are absolutely no educational requirements for membership on a district board of education. Does it necessarily mean, because educational requirements for board members are not laid down in so many words in the West Virginia Code, that a school board member would be *competent* to fill his place satisfactorily, from an educational standpoint, if he is illiterate? What does the word "incompetence" mean? W. Va. Const. Art. IV, §6. What does "incompetency" mean? W. Va. Code, Ch. 7, §7. "Incompetence" and "incompetency" have the same meaning, and the one here applicable is the state of being incompetent; unfit; lacking ability. "Incompetent" means not answering all requirements; incapable; unqualified; unfit. WEBSTER, NEW STANDARD DICTIONARY, 1920. "Inccmpetent" means not duly qualified; not answering all requirements; unsuitable; incapable; not legally fit. BLACK, LAW DICTIONARY, 2ND ED. District boards of education have broad discretionary powers and much authority over the schools in their district, and members would seem to be incompetent, within the scope of that

word in the Code, if they are illiterate. W. Va. Const. Art. IV, §6. Code, Ch. 7, §7. The board will provide needed land for school purposes, W Va. Code, Ch. 45, §49, school houses and other buildings of suitable kinds, furniture, fixtures, apparatus and library books, *ibid.*, Ch. 45, §50, libraries for schools, and books, bookcases and other articles necessary therefore, *ibid.*, Ch. 45, §62, free text books to certain persons, *ibid.*, Ch. 45, §65,—subject to the rules of the State Board of Education, *ibid.*, Ch. 45, §13. A district board of education may provide maps, charts, and other educational appliances. An appliance, in this connection, is anything brought into use as a means to effect the end. *Honaker v. Board of Education*, 42 W. Va. 170, 24 S. E. 544, VOORHEES, LAW OF PUBLIC SCHOOLS, §36. It is difficult to see how one with no education at all is competent to pass upon the question of what pedagogical supplies and appliances are necessary. Yet such materials are an essential to successful teaching. *Honaker v. Board of Education, supra*. District boards of education have the power to fix special salary schedules for superintendents, supervisors, principals and other employees not teachers, to fix the salaries for teachers,—subject to the Statutory requirements for minimum salaries,—and to provide higher rates of salary for summer school work and other professional improvement, W. Va. Code, Ch. 45, §55. A board may appoint a district supervisor to supervise methods in the schools, offer suggestions to teachers and to call meetings of teachers when desirable, *ibid.*, Ch. 45, §56. The board may suspend or dismiss any principal or teacher, on various grounds, if the required procedure is followed. *Ibid.*, Ch. 45, §57. It may provide a Teacher's Retirement Fund. *Ibid.*, Ch. 45, §66. It may establish kindergartens, *ibid.*, Ch. 45, §60, and provide for evening classes and night schools; for community use of school property; and may require, assemble and house materials for use in study of local problems; and may provide facilities for the dissemination of information useful on the farm, in the home or in the community, *ibid.*, Ch. 45, §61, and furnish medical inspection and school nurses, or establish dental clinics. *ibid.*, Ch. 45 §§64-64A inclusive. Every district board of education has the general control and management of all the schools and school interests in the district. *Ibid.*, Ch.

45, §58. VOORHEES, LAW OF PUBLIC SCHOOLS, §177. The board performs such other duties and exercises such other authority as the law or the State Board of Education may prescribe. W. Va. Code, Ch. 45, §68. VOORHEES, LAW OF PUBLIC SCHOOLS, §15. It is constitutional to remove a district officer, including a school board member, for incompetency, even if the grounds are not specifically set forth in the Constitution. *Dawson v. Phillips*, 78 W. Va. 14, 88 S. E. 456; VOORHEES, LAW OF PUBLIC SCHOOLS, §47. The district system,—the one used in West Virginia,—is the poorest possible type of school administration. CUBBERLEY, IMPROVEMENT OF RURAL SCHOOLS, p. 30. CUBBERLEY, PUBLIC SCHOOL ADMINISTRATION, pps. 52-53 inclusive. West Virginia stands thirty-fourth among all the states in percentage of literates to the total population, ten years and over, of all classes. U. S. DEPARTMENT OF COMMERCE, STATISTICAL ATLAS OF THE UNITED STATES. 1924. Plate 218, no. 1. The state has only ten cities with a population of over ten thousand, and the largest of these has fewer than sixty-four thousand. W. VA. LEGISLATIVE HANDBOOK AND MANUAL AND OFFICIAL REGISTER, 1925, p. 283. But the total state population is almost one and a half millions. *Ibid.*, p. 281. In such a predominantly rural state,—and one with a poor system of administration, and a high percentage of illiteracy, where the district boards of education have direct and personal control of the schools, it is especially important that some reasonable educational standard be set for membership. Teachers must meet strict requirements. They must hold a valid certificate, be of good moral character and physically and mentally qualified. W. Va. Code, Ch. 45, §96. They must also meet such additional requirements as the State Board of Education sets up. It issues certificates only if proper credentials are presented. *Ibid.*, Ch. 45, §14. The State Board also regulates the standards of teacher training. *Ibid.*, Ch. 45, §38. Yet, as the court interprets the statute, and the word "incompetence", in the principal case, members of a district school board are perfectly competent to serve even if absolutely illiterate. A teacher is the paid representative of the school board, and will naturally reflect the board's personnel and spirit. SWAIN, RURAL SCHOOL MANAGEMENT, p. 86. In order to promote better education in West Virginia, teachers are urged to better their schools by meeting the "Standard School" require-

ments. REPORT OF STATE BOARD OF EDUCATION 1922 pps. 20 to 23 inclusive, at 21. Satisfying Group III, especially,—which relates to furnishings and supplies,—will depend largely upon the school board. School board members control what a school will be. KIRKPATRICK, THE RURAL SCHOOL FROM WITHIN p. 74. VOORHEES, LAW OF PUBLIC SCHOOLS, §45. In determining the meaning of the language of an act of the Legislature the intention which appears most in accord with convenience, reason and justice should be presumed to be the true one. MAXWELL, INTERPRETATIONS OF STATUTES, Ch. VIII, §1. LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, §363. When the broad powers of a district board of education, and the fact that the board is to *promote education*, are considered,—and removal for incompetency is legal and constitutional, — the application of this rule would seem to require some reasonable standard of education for school board members. Language is rarely so free from ambiguity, as to be capable of being used in only one sense, and to adhere too rigidly to the precise words of a statute may cause the court to miss its real meaning. MAXWELL, INTERPRETATION OF STATUTES, Ch. I, §3. LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, §§376 to 378 inclusive. The words of a statute are to be understood in the sense in which they best express the legislative intent. Their meaning is not so much in a grammatical or etymological sense only, as in the subject, *and the object to be attained*. MAXWELL, INTERPRETATION OF STATUTES, Ch. II, §1. LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, §366. Construction is to be made of all the parts together, and not of one part by itself. MAXWELL, INTERPRETATION OF STATUTES, Ch. I, §4. LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, §344. When the Code sections dealing with the many duties and the broad authority of members of the district education boards,—and the sections of the Code and of the Constitution allowing removal for incompetency,—are construed together—it would seem to have been the intent of the Legislature to regard the illiteracy of a board member such a ground of incompetency as would justify his removal from office.

—C. P. W.