

SCHOOLS: Teacher is not re-employed when school board votes not to re-employ teacher and written notice is given to teacher, signed by president and secretary of board.

August 26, 1952



Honorable William E. Seay
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"A matter has been presented to this office on which I will appreciate your opinion. A school board of six members, but with only five in attendance, failed to re-hire a teacher who is under contract for the present year. The motion upon which the vote was taken provided that all teachers, except this one, be re-employed for the coming 1952-53 school year, and that this one be notified prior to April 15, 1952, that she had not been re-employed. This motion was lost on a vote to two 'yes' and three 'no.' A later motion was made to re-employ all teachers except this one. This motion carried, but it is pointed out that this motion omitted the requirement that this teacher be notified. Subsequently a motion was made that this teacher be re-employed on which the vote stood three 'yes' and two 'no' and the motion was lost because a majority of the entire membership of the board was not cast in favor of the motion.

"Later, but prior to the 15th of April, a notice was given to this teacher advising her in writing that she had not been re-employed for the coming year. This notice

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was signed by the President and the Secretary of the board and was intended to comply with the requirements of Sec. 163.090 RSM 1949.

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"Since that time, this teacher has written a letter to the Board asserting her right to teach during the coming year since she considers herself re-hired, and that she will demand payment of her salary from the treasury of the district.

"I will appreciate it very much if you can render your opinion of this subject and advise as whether or not you consider her re-employed or not."

To analyze the action taken by the school board with reference to the hiring of teachers, it appears from the facts which you have presented that the school board, in its meeting where five members were in attendance, took up and voted on three separate motions.

The first motion was to employ all teachers, except the one in question, for the coming 1952-53 school year, and that this one be notified prior to April 15, 1952, that she had not been re-employed. This first motion did not carry. Consequently no teachers were re-employed for the coming school year.

The second motion presented to the board was to re-employ all teachers, except the one in question. Nothing was contained in this motion with regard to giving the particular teacher notice that she was not re-employed. As you have stated in your letter, this second motion carried. Consequently the school board manifested a clear intent to re-employ all teachers, except the one in question.

A third motion was presented to re-employ the teacher who had been excepted in the previous motions. This motion did not carry because a majority of the entire membership of the board was not cast in favor of the motion.

In this connection Section 165.320, RSMo 1949, in part, provides:

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" * * * A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor. * * *"
(Emphasis ours.)

Thereafter, and prior to April 15, 1952, a written notice was given to the teacher in question, signed by the president and secretary of the school board, advising her that she had not been re-employed for the coming year. It appears that the question which you undertake to present is whether or not it was necessary for the school board, after voting not to re-employ the particular teacher, to also vote on the question of giving her notice as to her lack of re-employment.

With regard to the hiring of teachers, the law is mandatory in requiring a vote of the school board, and as provided in Section 165.320, supra, no teacher may be employed unless a majority of the whole board shall vote therefor.

Where a teacher has been originally employed under a previous contract, Section 163.090, RSMo 1949, requires written notification be given a teacher on or before April 15 of the year in which the contract in force expires of her re-employment or lack thereof. The statute requires the school board to give such notice, and failure to do so constitutes re-employment of the teacher on the same terms as provided in the contract of the current fiscal year. Thus Section 163.090, in part, provides:

" * * * It shall be the duty of each and every board having one or more teachers under contract to notify each and every such teacher in writing concerning his or her re-employment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give such notice shall constitute re-employment on the same terms as those provided in the contract of the current fiscal year; * * *"

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While the statute requires the board to give such notice, we do not believe the statute requires the board to vote on the question of giving the notice. In other words, the matter of giving notice is an automatic requirement of the law and is not a matter about which the school board can exercise a choice or discretion by voting thereon.

To otherwise construe the statute could result in an absurd situation if a school board voted not to re-employ a teacher and then voted, either in the same motion or a separate motion, not to give the teacher notice of her lack of re-employment as required by law, knowing that failure to do so did constitute re-employment. In such an instance the board in one motion would be voting not to re-employ the teacher and in the other motion would, in effect, vote to re-employ the teacher.

Under the facts you have presented the school board, in its vote on the second motion, clearly decided not to re-employ the teacher in question.

The written notice given subsequently was signed by the president and secretary of the school board, and as you state in your letter was intended to comply with the requirements of Section 163.090, supra. Therefore, we can only assume that the written notice was given with the knowledge and acquiescence of the school board for the purpose of notifying the teacher of the board's action relative to her continued employment. The notice was signed by the proper officials of the school board, and we therefore believe that there was a substantial compliance with the statute.

A case somewhat in point is Peter v. Kaufmann, 327 Mo. 915, 38 S.W. (2d) 1062. In that case a school election wherein a school levy was voted was being attacked on the theory that no proper notice had been given. Notices of the election were actually posted by the secretary of the school board, but it was contended that since the school board did not specifically order the notices posted they were improper and of no effect. In ruling on the question the court, at S.W. 1.c. 1064, said:

"As to plaintiff's contention that no proper notice had been given embodying these propositions to be voted on at the annual meeting in April, 1927, at which meeting these levies were voted, his contention seems to be only that the school board did not specifically order notices to be posted embodying these propositions to be voted on. * * *

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"It is true that the minutes of the board meeting on March 1, 1927, do not show a formal order of the board directing the secretary of the board to post these notices, or prescribing what the notices should contain, but we decline to hold that this is a fatal defect. * * *"

Other cases where a similar situation was being considered by the court, and where the court ruled as it did in the above case, are Breuninger v. Hill, 277 Mo. 239, 210 S.W. 67, and Lowland School Dist. No. 32 v. Wooldridge School Dist. No. 34, 216 S.W. (2d) 545.

Under the facts you have presented the school board voted not to re-employ the teacher, and, as the court in the above case decided, we do not think it was necessary for the school board to make a formal order or adopt a formal motion directing the president and secretary of the board to give written notice to the teacher of the board's action.

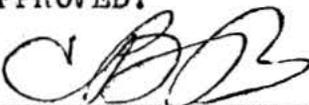
CONCLUSION

In the premises, it is the opinion of this department that when the board of directors of a school district votes not to re-employ a teacher and written notice is given to the teacher on or before April 15 of the board's action, signed by the president and secretary of the board, the teacher is not re-employed for the following school year. No formal order or motion by the school board directing the president and secretary to give written notice to the teacher of the board's action is required.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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