

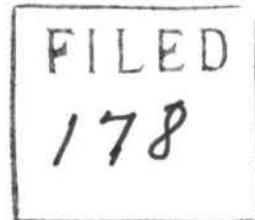
SCHOOLS:
TEACHERS:

A school board of a six-director school district may terminate a probationary teacher's contract pursuant to the terms of subsection 2 of Section 168.126, RSMo 1969, if a written statement is delivered to the probationary teacher setting forth each and every area of incompetency in which the board desires improvement in sufficient detail so as to permit the teacher to have an opportunity to correct the alleged faults within ninety days. If the alleged incompetency is not corrected, the board may, pursuant to subsection 2 of Section 168.126, RSMo 1969, terminate the employment of the probationary teacher immediately or at the end of the school year.

OPINION NO. 178

July 19, 1971

Honorable Granvil B. Vaughan
Representative, District 163
Route 1
West Plains, Missouri 65775



Dear Representative Vaughan:

This official opinion is issued in response to your request for a ruling on the following questions pertaining to Section 168.126, RSMo 1969:

- "1. Whether the annexed letter, after due consultation and enumeration of the teacher's faults by the administrative staff and Board of Education, is sufficient to comply with paragraph two of this section.
- "2. If this letter is sufficient notice, is the Board of Education authorized to terminate teacher's employment immediately by this section, and if the School Board may terminate a teacher's employment immediately, may they prorate according to the number of days taught the annual remuneration of said teacher.
- "3. If the Board may not immediately terminate a probationary teacher, is it required to give ninety days notice prior to refusing to tender a contract to said probationary teacher for the forthcoming school year or may they merely notify said teacher between April 1 and April 15 of each school year that said probationary teacher will not be retained by the School Board."

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Subsection 2 of Section 168.126 reads as follows:

"2. If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency. If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the board of education. A tie vote thereon constitutes termination. On or before the fifteenth day of April but not before April first in each school year, the board of education shall notify a probationary teacher who will not be retained by the school district of the termination of his employment."

Question 1

In order for the Board of Education to terminate the contract of a probationary teacher during its term, the board must ". . . provide the teacher with a written statement definitely setting forth his alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency. . . ." Subsection 2, Section 168.126.

With reference to the particular letter enclosed with your request, we do not believe it appropriate for this office to rule whether a specific letter to a specific teacher complies with Section 168.126, RSMo 1969.

As a general rule, we believe that written statements furnished to probationary teachers should be as complete and detailed as possible so that the teacher in question will have ". . . an opportunity to correct his fault and overcome his incompetency. . . ." Naturally, it is imperative that the board set forth every area of incompetency

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upon which it requires improvement so that the teacher will be informed of those areas in which improvement is necessary. Furthermore, we believe that the teacher should be furnished with as many specific examples of the alleged incompetency as the school board has available to it so that the teacher can see precisely where improvement is needed.

Question 2

Your second question asks us to assume that the letter quoted above is sufficient notice and that the teacher does not improve satisfactorily during the ninety day period after receipt of the notification. Could the board then terminate the probationary teacher's contract immediately?

Subsection 2 of Section 168.126 provides that ". . . If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. . . ." (Emphasis added.) This language authorizes the school board to terminate a probationary teacher's contract immediately after the expiration of the ninety day period if satisfactory improvement is not made.

You then inquire whether the school board may prorate the annual remuneration of said teacher according to the number of days taught. This question envisions a termination date which occurs in the middle of a pay period. Although the statute makes no mention of the basis upon which a teacher terminated pursuant to Section 168.126 should be compensated, we believe that the teacher should be paid for each and every day in which services are rendered to the district prior to the date he is lawfully terminated.

Question 3

Having concluded, in response to question 2, that a school board may immediately terminate a probationary teacher under the circumstances set forth above, we understand that an answer to question 3 is not desired.

CONCLUSION

Therefore, it is the opinion of this office that a school board of a six-director school district may terminate a probationary teacher's contract pursuant to the terms of subsection 2 of Section 168.126, RSMo 1969, if a written statement is delivered to the probationary teacher setting forth each and every area of incompetency in which the board desires improvement in sufficient

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detail so as to permit the teacher to have an opportunity to correct the alleged faults within ninety days. If the alleged incompetency is not corrected, the board may, pursuant to subsection 2 of Section 168.126, RSMo 1969, terminate the employment of the probationary teacher immediately or at the end of the school year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the printed name.

JOHN C. DANFORTH
Attorney General