

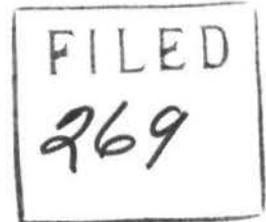
SCHOOLS:
TEACHERS:

A teacher who served eleven years in a school district from 1954 through 1965, before leaving the employment of that district, and who returned to the district four years later in 1969, and who was reemployed for two successive years after returning, qualified as a permanent teacher prior to leaving the employment of the district and, therefore reemployment for the first school year did not constitute an indefinite contract but when the teacher was employed for the succeeding year, the employment constituted an indefinite contract, pursuant to Section 168.104(4), RSMo 1969.

OPINION NO. 269

May 13, 1971

Honorable Eric F. Fink
Representative, District 46
Room 202B, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Fink:

This official opinion is issued in response to your request for a ruling on the following questions:

"A teacher taught in a school district from 1954 through 1965 and from 1969 through the present date.

"According to section 168.104(4) 'Permanent teacher,' since the teacher referred to has completed five years of service in the same district that re-employed her, should she not receive tenure after being re-employed for a second successive year?

"Further, according to section 168.104(5), since she has been previously employed as a full time teacher two or more years, should not the board of education at least waive one year of her probationary period?

"Since she has taught in the same district eleven years before a leave of absence and twelve years before the tenure bill went into effect, it would seem unduly restrictive to interpret the law to mean that her teaching experience would have to be outside that same district."

Honorable Eric F. Fink

Your inquiry relates to a teacher who has taught in a school district for eleven years, takes a leave of absence for approximately four years and is rehired by the same school district for the 1969-1970 and 1970-1971 school years. We understand your question to be whether this teacher would be a "permanent teacher" as that term is defined in Section 168.104(4). If she is not a permanent teacher, you then inquire whether the board should waive one year of her probationary period pursuant to Section 168.104(5).

Section 168.104(4) provides as follows:

"'Permanent teacher', any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a full-time teacher by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. Any permanent teacher who is promoted with his consent to a position of principal or assistant principal, or is first employed by a district as a principal or assistant principal, shall not have permanent status in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;"

The crucial part of this definition for the purpose of answering your inquiry, is the following:

". . . except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. . . ."
(Emphasis supplied)

To be accorded "permanent teacher" status upon returning to a school system for two years, a teacher must have been a "permanent teacher" at the time he separated from the school system.

Honorable Eric F. Fink

In Opinion No. 371, dated October 2, 1970, we had occasion to interpret Section 168.104(4) in the following manner:

"Pursuant to Section 168.104(4), RSMo 1969, a permanent teacher is a teacher who has taught in the same school district for five successive years and has been reemployed by that district for the sixth successive year. The critical point in time for achieving permanent teacher status is reemployment for the sixth successive year by the same school district. A teacher may have been employed for the sixth successive year either before or after the effective date of the Teacher Tenure Act (July 1, 1970) and thereby be a 'permanent teacher' for the purposes of the 'except' clause of Section 168.104(4). However, if such a permanent teacher has separated from the district either before or after the effective date of the Teacher Tenure Act, he does not achieve permanent teacher status immediately upon reemployment with the district. The teacher must serve one probationary year and, if reemployed for the succeeding year, regains permanent teacher status in that district."

Based on these conclusions from Opinion No. 371, which we hereby reaffirm, the teacher in question would have been a permanent teacher at the time she left the employment of the school district in 1965, having served eleven years continuously in the district. Upon reemployment by the same school district for the second successive year after her return, i.e., the 1970-1971 school year, this teacher's employment would constitute an indefinite contract pursuant to Section 168.104(4).

Having determined that the teacher in question would have permanent teacher status upon reemployment for the second successive year, we do not reach the second question concerning the length of time she would have to serve as a probationary teacher under Section 168.104(5).

CONCLUSION

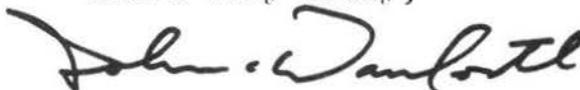
Therefore, it is the opinion of this office that a teacher who served eleven years in a school district from 1954 through 1965, before leaving the employment of that district, and who returned to the district four years later in 1969, and who was reemployed for two successive years after returning, qualified as a permanent teacher

Honorable Eric F. Fink

prior to leaving the employment of the district and, therefore re-employment for the first school year did not constitute an indefinite contract but when the teacher was employed for the succeeding year, the employment constituted an indefinite contract, pursuant to Section 168.104(4), RSMo 1969.

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

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 371
10-2-70, Mulvaney