

SCHOOLS: A board of education may not require  
TEACHERS: a teacher to have been employed two  
RULES & REGULATIONS: years or more by another school dis-  
trict within ten years immediately  
prior to employment by the board of education as a condition for  
a waiver of one year toward tenure of a probationary period for  
a probationary teacher.

OPINION NO. 43

November 15, 1973

Honorable Donald L. Manford  
Missouri Senate, 8th District  
9409 Oakland  
Kansas City, Missouri 64138



Dear Senator Manford:

You have requested an opinion of the Attorney General  
whether:

"A rule or regulation by a board of education  
be considered reasonable if it required that  
experience in another school district must  
be within ten years immediately prior to  
employment to enable the board of education  
to waive one year toward tenure of a proba-  
tionary period for a probationary teacher?"

Section 168.104(5), RSMo 1969, (Teacher Tenure Act) provides:

"'Probationary teacher', any teacher as  
herein defined who has been employed full  
time in the same school district for five  
successive years or less. A teacher recog-  
nized as a full-time teacher by a public  
school retirement system shall be recognized  
as a full-time teacher under sections 168.102  
to 168.130. In the case of any probationary  
teacher who has been employed in any other  
school system as a full-time teacher for two  
or more years, the board of education shall  
waive one year of his probationary period;"  
(Emphasis added)

This section of the Teacher Tenure Act has previously been  
construed in an opinion of the Attorney General (Opinion No. 233,  
Holliday, 10-24-72 (copy enclosed)). In that opinion this office

Honorable Donald L. Manford

determined that "the board of education, under Section 168.104(5), RSMo 1969, must waive one year of a teacher's probationary period if he has been employed in any other school system as a full-time teacher for two or more years." We reaffirm our position set forth in that opinion. The statutory language is mandatory and the power of the board of education to make such a rule must be found prior to a determination of the reasonableness of the rule. We find no such power. Accordingly, Section 168.045(5), RSMo, does not permit a school district to impose a more stringent rule or regulation upon a teacher in the determination of his eligibility for classification as a permanent teacher. See Wright v. Board of Education of St. Louis, 246 S.W. 43 (Mo. 1922).

#### CONCLUSION

It is the opinion of this office that a board of education may not require a teacher to have been employed two years or more by another school district within ten years immediately prior to employment by the board of education as a condition for a waiver of one year toward tenure of a probationary period for a probationary teacher.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donald R. Bird.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 233  
10-24-72, Holliday