

SCHOOLS:  
TEACHERS:  
TEACHER TENURE:  
TEACHERS' CERTIFICATES:

(1) A probationary and a permanent teacher may be sued by a six-director school district as defined in Section 160.011(12), RSMo 1969, for damages which the school district

can prove resulted from the teacher's unjustified refusal to perform the agreed upon services provided for in the teacher's contract. (2) Pursuant to Sections 168.114 through 168.120, a permanent teacher's indefinite contract could be terminated by a school district if a teacher unjustifiably refuses to perform the services called for by the teacher's employment contract with the school district. (3) A teacher's teaching certificate could be revoked by the authority which issued the certificate upon satisfactory proof that the teacher has unjustifiably failed to perform the services called for by his employment agreement and that, therefore, the teacher has neglected his duty and/or has annulled his contract with the local school board without the consent of the majority of the members of the board which is a party to the contract as provided in Section 168.071, RSMo 1969.

OPINION NO. 104

October 2, 1973

Honorable Richard J. DeCoster  
Representative, District 1  
Box 222  
Canton, Missouri 63435



Dear Representative DeCoster:

This official opinion is issued in response to your request for a ruling on whether (1) Missouri law permits a school district to sue an employee under contract to render personal services for damages for breach of contract; (2) unjustified failure of a teacher to carry out the terms of a contract of employment with a school district would terminate the teacher's rights under the Teacher Tenure Act (Sections 168.102 to 168.130, RSMo 1969); (3) failure of a teacher to honor a valid contract with a school district would constitute grounds for revocation of his teaching certificate (Section 168.071, RSMo 1969); and (4) willful defiance of a valid court order would be grounds for termination of tenure or for revocation of a teacher's certificate under our statutes.

No facts have been furnished in connection with your request. Therefore, we have had to make certain assumptions, which appear throughout this opinion, in order to answer your questions.

Honorable Richard J. DeCoster

As used in this opinion, "school district" refers to "any school district which has six directors and includes urban districts regardless of the number of directors an urban district may have." Section 160.011(12), RSMo 1969. We have not used as a basis for this opinion the facts surrounding the teachers' strike in the St. Louis School District because it is the subject of litigation. Thus, a "metropolitan school district," as defined in Section 160.011(8), is not considered in this opinion. For the same reason, we are not passing on the question of whether a teacher who strikes has breached his teaching contract, thereby subjecting himself to a breach of contract action and loss of rights under the Teacher Tenure Act.

If a teacher breaches a contract with a district, could he be sued for damages?

We assume that a valid employment contract existed between the teacher and the school district, and that the teacher arbitrarily and without justification refused to perform the services called for by the contract. Under general principles of contract law, the teacher would thereby have breached his employment contract with the district. See 17 Am.Jur.2d., Contracts, Section 441, and Cuba Consolidated School Dist. No. 1. v. Fox, 79 S.W.2d 772 (Spr.Ct.App. 1935).

Assuming that a teacher has breached his contract with the school district, the teacher could be sued by the district for monetary damages arising out of the breach. However, to recover any damages, the school district would be required to prove the amount of monetary harm caused by the teacher's actions. 5 Corbin, Contracts, Section 1002 (1964). In 3A Corbin, Contracts, Section 677 (1960), the author commented on whether damages can be recovered in this situation:

"The effect of absence from work may depend upon whether the employer can get an efficient substitute on a temporary basis. . . . School districts generally have a list of available substitute teachers who are ready to fill, on a temporary basis, the place of an absent teacher. . . ."

If a substitute can be obtained for the same salary as the defaulting teacher, the district could have difficulty in establishing that it was monetarily damaged. On the other hand, if the district has to pay a substitute more money to perform the same services than was paid the defaulting teacher, the difference between the two salaries might form the basis for a money judgment against the defaulting teacher.

Honorable Richard J. DeCoster

Could failure by a permanent teacher to render teaching services pursuant to an indefinite contract result in termination of the permanent teacher's indefinite contract?

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If we assume that a permanent teacher has arbitrarily and without justification refused to perform the services called for by his contract, Section 168.114, RSMo 1969, provides that such action could lead to termination of the teacher's permanent contract with the district. Several of the causes for termination of an indefinite contract provided in Section 168.114 might apply, depending upon the factual situation:

"(3) Incompetency, inefficiency or insubordination in line of duty;

"(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;

"(5) Excessive or unreasonable absence from performance of duties; . . ."

In an earlier opinion (No. 413, Waters, November 25, 1969), we defined "insubordination" as used in Section 168.114(3), RSMo 1969, to mean:

"A teacher's willful, intentional refusal or neglect to obey an express or implied command, instruction, order or rule of the teacher's employing school board, which command, instruction, order or rule is known to the teacher, is reasonable in nature and is given by and with proper authority." Opinion No. 413 at pp. 6-7.

To accomplish termination of an indefinite contract, the board would have to follow the termination procedure set forth in Sections 168.116 through 168.120, RSMo 1969.

Would failure to perform the services called for by an employment contract revoke a teacher's certificate to teach?

Honorable Richard J. DeCoster

By "failure to honor a valid contract," we assume that you are referring to a situation where the teacher, whether a probationary or a permanent teacher, has unjustifiably refused to perform the services called for by the contract with the school district. Pursuant to Section 168.071, RSMo 1969, the authority which issued a teaching certificate may revoke it upon satisfactory proof of "neglect of duty" or "the annulling of a written contract with the local school board without the consent of a majority of the members of the board which is a party to the contract."

Would willful defiance of a court order terminate a teacher's tenure or revoke his teaching certificate?

We decline to answer this question because the facts we would have to assume as the basis for an answer would be essentially the facts of the St. Louis teachers' strike. As previously indicated, that matter is still the subject of litigation and, therefore, it would not be appropriate for this office to render an opinion on this question.

#### CONCLUSION

Therefore, it is the conclusion of this office that (1) a probationary or a permanent teacher may be sued by a six-director school district as defined in Section 160.011(12), RSMo 1969, for damages which the school district can prove resulted from the teacher's unjustified refusal to perform the agreed upon services provided for in the teacher's contract; (2) pursuant to Sections 168.114 through 168.120, a permanent teacher's indefinite contract could be terminated by a school district if a teacher unjustifiably refuses to perform the services called for by the teacher's employment contract with the school district; and (3) a teacher's teaching certificate could be revoked by the authority which issued the certificate upon satisfactory proof that the teacher has unjustifiably failed to perform the services called for by his employment agreement and that, therefore, the teacher has neglected his duty and/or has annulled his contract with the local school board without the consent of the majority of the members of the board which is a party to the contract as provided in Section 168.071, RSMo 1969.

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

Yours very truly,

  
JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 413, 11-25-69, Waters