

SCHOOLS:
BOARD OF EDUCATION:
RETIREMENT OF TEACHERS:
USING PUBLIC REVENUE FOR
PAYMENT INTO RETIREMENT
FUND:

Board of Education in cities of 500,000
or over may not terminate the tenure of
teachers on the basis of age without
recommendation of the Superintendent of
Instruction.
Revenues may be used to pay teachers
retired from service.

July 18, 1939 7/26



Board of Education
of the City of St. Louis
St. Louis, Missouri

Attention: Mr. Richard Murphy

Gentlemen:

This is in reply to yours of recent date wherein
you request an opinion from this department on the follow-
ing questions:

"1. May the Board of Education
terminate the tenure of teachers
on the basis of age?

"2. Can the Board legally use
part of its revenues as payment
to teachers retired from service?"

In our research on your first question we find
that Sections 9573 and 9575, R. S. Missouri 1929, are
applicable. They are as follows:

"The members of such board of edu-
cation shall be elected on a general
ticket and by the qualified voters
of such city at large as herein-
after provided, and shall qualify
by taking the oath prescribed by
this article, and proceed to organize
by electing one of their number presi-
dent and another vice-president; and
thereupon it shall be the duty of any

then existing corporation, or board of directors, or officers of the school district of such city, to surrender their offices and to deliver to said board of education, or to its officers, agents or employes, all the public school property, both real and personal, of every kind whatsoever, and the control and management of the public school affairs of such city: Provided, that until such board of education shall be organized, the administration of the public schools and the management of school property in such city shall remain in the control of any such existing corporation, board of directors, or officers of the school district, in the same manner and with the same powers as existed prior to the passage of this article, or the attaining by said city of the requisite number of inhabitants. It shall be the duty of the said board of education, as soon as practicable after its organization, to appoint a superintendent of public instruction, a commissioner of school buildings, a secretary and treasurer, an auditor, and such other officers, employes and agents as it may deem proper: Provided, that no such officer, employe or agent shall be a member of said board. And such board of education may continue the employment and service of any existing officers, teachers, agents or other employes, in their several capacities, in connection with the administration of school affairs until such time as they may effect the change of the administrative system applicable to the public schools as contemplated in this article; and said board of education may thereafter

retain or remove any agents, teachers, janitors, engineers or other employes then rendering service in connection with the public schools of such city. At its first regular meeting after the first day of October in each year following its original organization, said board of education shall reorganize by electing one of its members president and another vice-president. All vacancies in such board shall be filled by the mayor by appointment until the next election for members of said board, when the vacancy shall be filled for the remainder of the term. All rules and by-laws made by any existing corporation, board of directors, or officers of the school district, at such time vested in such city with the management of the public schools, for the government of the public schools and school property in such city, shall continue in force, so far as consistent with this article, until repealed or altered by such board of education."

"The superintendent of instruction shall be appointed by the board of education for a term of four years, during which term his compensation shall not be reduced. The board of education may, on the nomination of the superintendent of instruction, appoint as many assistant superintendents as it may deem necessary, whose compensation shall be fixed by the board, and who may be removed by the superintendent with the approval of the board. The superintendent of instruction shall have general supervision, subject to the control of the board, of the course of instruction, discipline and conduct of

the schools, textbooks and studies; and all appointments, promotions and transfers of teachers, and introduction and changes of textbooks and apparatus, shall be made only upon the recommendation of the superintendent, and the approval of the board. The superintendent shall have power to suspend any teacher for cause deemed by him sufficient, and the board of education shall take such action upon the restoration or removal of such teacher as it may deem proper. All appointments and promotions of teachers shall be made upon the basis of merit, to be ascertained, as far as practicable, in cases of appointments, by examination, and in cases of promotion, by length and character of service. Examination for appointment shall be conducted by the superintendent under regulations to be made by the board. The superintendent of instruction shall devote himself exclusively to the duties of his office and shall have power to appoint clerks, whose number and salary shall be fixed by the board, and shall have power to remove the same; shall exercise a general supervision over the schools of the city, examine their condition and progress, and shall keep himself informed of the progress of education in other cities. He shall advise himself of the need of extension of the school system of the city, shall make reports from time to time as may be fixed by the rules or directed by the board, and shall be responsible to the board for the condition of the instruction and discipline of the schools."

The power of the board to employ and terminate the services of teachers has been before the Supreme Court on

two different occasions. The first time in State ex rel. Brown et al. v. Board of Education of City of St. Louis et al., 294 Mo. 106, 242 S. W. 85, and State ex rel. Brown v. Board of Education, 299 Mo. 465, 253 S. W. 937. The first time the question of the power of the board came before the Supreme Court it seems that the board of education of the city of St. Louis made the following rule with respect to employment of teachers (242 S. W. 86):

"Section 1. The teachers appointed at the close of the scholastic year shall hold their positions for one year; and the board distinctly reserves the right of discontinuing the services of any and all of the teachers at any time, should it deem such an action expedient. Any teacher appointed to a position shall hold position for that scholastic year, subject, however, to the above-mentioned provisions governing teachers reappointed at the close of the scholastic year. Every teacher employed by the board shall be required to sign a contract accepting appointment subject to the conditions of this rule."

The authority of the board of education to make and enforce such a rule was covered in this case and the court, in construing what is now Section 9575, R. S. Missouri 1929, said at l. c. 88:

"The statute under consideration was enacted in 1897. Section 11461 was obviously enacted to abrogate this rule and to remedy the evils arising from its enforcement. This purpose is as apparent as if it had been so declared in express terms. It ordains that the superintendent of instruction shall have general supervision, subject to the control of the board, of the course of instruction, discipline, and conduct of the schools,

text-books, and studies; and all appointments, transfers, and promotions of teachers and introduction and changes of text-books and apparatus, shall be made only upon the recommendation of the superintendent and the approval of the board. The superintendent shall have power to suspend any teacher for cause deemed by him sufficient, and the board of education shall take such action upon the restoration or removal of such teacher as it may deem proper. All appointments and promotions of teachers shall be made upon the basis of merit, to be ascertained, as far as practicable, in cases of appointments, by examination, and in cases of promotion, by length and character of service. These and other provisions of this section are the dominant characteristics of the statute. They unmistakably indicate that the chief business of the board, under the direction and leadership of the superintendent of instruction, is the organization of a permanent corps of teachers on the basis of merit, whose tenures are not dependent on the pleasure of the board. The members of the board are shorn of all power of appointment or dismissal, except upon the recommendation of the superintendent. * * *

The court in that case very definitely ruled that the board of education did not have authority to terminate the service of a teacher without the recommendation of the superintendent of instruction. The above decree again came before the Supreme Court in State ex rel. Brown v. Board of Education, 299 Mo. 465, and in discussing that decree the court, at l. c. 469, said:

"It will be noticed by this final

decree that the Board of Education and the Superintendent of Instruction are enjoined (1) 'from appointing teachers for a year;' (2) 'from discontinuing the services of any teacher except after suspension by the "Superintendent of Instruction" in the manner provided by law;' (3) and from appointing and promoting teachers except upon the basis of merit, to be ascertained as far as practicable in case of appointment, by examination, and in case of promotion by length and character of service.

"As to the objection to the ruling '(2)' of the circuit court, relating to the discontinuance of the service of a teacher, the order is that it shall be done in the manner provided by law; that is, provided by Section 11461, set out above. The trial court certainly did not err in making that order. As to objection to order '(3)' relating to the appointments and promotions, etc., it is in almost the exact language of the statute regarding appointments and promotions and it cannot be contended that the trial court erred in making that order. Those injunctive orders are made because the observance of Section 1, Rule 47, was held by this court to be in violation of the statute.

"The only part of the judgment which the appellants objected to with any plausible reason is that '(1)' enjoining the board from 'appointing teachers for a year.' It is argued with great earnestness by the appellant that under that ruling, teachers employed by the Board of Education hold

for life, subject only to a possible removal for cause 'after a trial.' The appellants conjure up an insidious peril in the form of teachers fastening themselves like leeches upon the Board of Education so that they cannot be shaken off."

Again at l. c. 471 the court said:

"* * * There is nothing in the opinion of this court, nor in the judgment of the circuit court, which prohibits the Board of Education, on the recommendation of the Superintendent of Instruction, where circumstances require it, in an individual case, from making a contract with a teacher for a definite period. The judgment merely provides that all appointments and promotions shall be made upon the basis of merit to be ascertained in the manner provided by the statute. In the former opinion of this court it is said the law contemplates that the superintendent has the requisite capacity and information to determine the qualifications of teachers and may make recommendations accordingly. If the superintendent should recommend for sufficient reasons that an individual teacher should be appointed for a definite period and the board so chooses to appoint one, there is nothing in the judgment of the circuit court, nor in the opinion to prevent it."

So it seems from the opinions of the Supreme Court in these two cases that the board of education, with a recommendation of the superintendent of instruction, might terminate the services of the teachers on the account of age or make such contracts of employment as the parties saw fit to make.

In our research through the statutes we find, however, that Section 9006 is a special statute applicable to teachers in such cities who have elected to participate in the retirement pension fund. This section is as follows:

"The public school boards or boards of directors having charge of public schools in such cities shall have power, by a majority vote of all members, to retire any female teacher or other administrative and clerical employe who shall have elected to come under and participate in the benefits of this article, as aforesaid, and who shall have taught in public schools or rendered service therein for a period aggregating twenty-five years; and any male teacher or administrative and clerical employe who shall have elected to come under and participate in the benefits of this article, as aforesaid, and who shall have taught or rendered such service for a period aggregating thirty years; and such teacher or administrative and clerical employe shall have the right, after such term of service, to retire and become a beneficiary under said article, provided he shall be, in the judgment of the board of trustees, physically or mentally incapacitated for such service: Provided, however, that four-fifths of the said term of service shall have been rendered by said beneficiary within the limits of the municipality where said boards have jurisdiction; Provided further, that said board of trustees shall have full power to pass on the applications of all teachers, administrative and clerical employes, who may elect to come under and participate in the benefits of this article, and prescribe

rules governing time of service."

It seems from this section that the board of education of such cities may retire teachers who have been in service for a certain period of time, and provided that they come within the provisions of said Section 9006.

CONCLUSION.

From the foregoing it is the opinion of this department that the board of education of the city of St. Louis may not terminate the tenure of a teacher on the basis of age without the recommendation of the superintendent of instruction unless such teacher comes within the provisions of Section 9006, supra. In such case, the board by majority vote may retire such teacher.

We are further of the opinion that if the superintendent of instruction recommends the termination of the tenure of a teacher that the board may terminate such services.

II.

On your second question we find that Section 9004 R. S. Missouri 1929, is applicable, and it provides as follows:

"The public school board or boards of directors having charge of public schools in cities now or hereafter having a population of three hundred thousand inhabitants or more shall have power to create a public school teachers' and administrative and clerical employees' pension and retirement fund, and for that purpose they may set apart the following moneys, to-wit: (1) An amount not exceeding one per cent. per annum of the respective salaries paid to teachers and administrative

and clerical employes in the employment of such boards, who shall elect to come under and participate in the benefits of the succeeding sections, which amount shall be deducted from said salaries annually, at such time and in such manner as the board of trustees shall prescribe. (2) All moneys received from donations, legacies, gifts, bequests or otherwise, on account of said fund. (3) All moneys which may be derived from other methods of increment as may be duly and legally devised for the increase of said fund."

From this section a retirement or teachers' fund is provided.

Your question especially refers to the authority of the board of education to use public funds for the payment of teachers who have retired. Section 47 of Article IV of the Constitution provides as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: Provided, That this shall not be so construed as to prohibit the General Assembly from providing by law for authorizing the creation, maintenance and management of a fund for the pensioning of crippled and disabled firemen, and for the relief of the widows and minor children of deceased firemen, by such cities, villages or incorporated towns as may have an

organized fire department--said fund to be taken from the municipal revenue of such cities, villages or incorporated towns: Provided further, That nothing in this Constitution contained shall be construed as prohibiting the General Assembly from granting, or authorizing the granting of, pensions to the deserving blind, as may be provided and regulated by law: Provided further, That the General Assembly of the State of Missouri shall cause an annual tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation of the taxable property of the State to be levied for the purpose of providing a fund to be devoted in the manner provided by law to the pensioning of the deserving blind. If any balance shall exist in such fund after the deserving blind have been pensioned, then the same, or so much thereof as may be necessary, may be used for the support of the commission for the blind. And if there shall be a balance in said fund after the blind have been pensioned and the commission for the blind has received adequate support, then the same shall be transferred to the public school fund. Said tax shall be levied and collected annually in the same manner as other State taxes are levied and collected, and such fund shall be subject to appropriation for above purposes by the General Assembly."

This article of the Constitution was amended in 1936 by adding another section thereto and it is as follows:
(Laws of Missouri 1937, page 613, Amendment No. 3, Section 47a)

"Nothing in this Constitution contained shall be construed as prohibiting payments, from any public funds, into

Board of Education
City of St. Louis

-13-

July 18, 1939

a fund or funds, for paying benefits, upon retirement, disability, or death, to persons employed and paid out of any public fund, for educational services, their beneficiaries, or their estates."

It appears that this amendment was adopted especially for the purpose of taking care of the funds needed to carry out the provisions of Section 9004, supra.

CONCLUSION.

From the foregoing it is the opinion of this department that if funds are available the board of education of the city of St. Louis can legally use them in payment to teachers who are retired from service.

Respectfully submitted

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APPROVED:

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