

SCHOOLS.: State Superintendent may revoke state teacher's
: certificate for any grounds mentioned in Sec.
: 10631, R. S. Mo. 1939, and he is not confined
: to grounds specified in Sec. 10599, R. S. Mo.,
: 1939.

June 17, 1944

Honorable Roy Scantlin
State Superintendent of Schools
Jefferson City, Missouri

7-3



Dear Mr. Scantlin:

This will acknowledge the receipt of your letter of June 12, 1944, requesting an opinion of this office, which is as follows:

"This department is confronted with the problem of the proper interpretation of the laws of this state applicable to the revocation of a teacher's certificate issued by the State Superintendent of Schools. Our particular case is one in which a teacher annuls a written contract with the board of education. The following sections of law which provide for the revocation of teachers' certificates do not seem to fully harmonize, and they require interpretation.

"1. Section 10631, R. S., Laws of Missouri, provides in part that the County Superintendent of Schools may revoke upon satisfactory proof any county certificate for incompetency, immorality, neglect of duty, or the annulling of written contracts with the board of directors without the consent of the majority of the members of the board which is a party to such contract. This law further provides that in case any person holding a certificate issued by the State Superintendent, the County Superintendent in the county where the offense is alleged to have been committed shall notify in writing such person issuing the certificate and that person shall proceed to revoke such certificate. You will observe this law provides specifically for the revocation of a certificate because of the annulling of the written contract with the board of education.

"2. Section 10499, R. S. 1939, Laws of Missouri, which authorizes the State Superintendent of Schools to grant certificates to teachers and also provides that such certificates may be revoked by the Superintendent of Schools for incompetency, cruelty, immorality, drunkenness, or neglect of duty. This law does not include the provision in Section 10631 which authorizes the revocation of a certificate because of the annulling of written contracts with the board of education. Also, two additional reasons for revoking certificates are included in this section which do not appear in 10631, namely, cruelty, and drunkenness.

"The specific problem at hand is whether or not the State Superintendent of Schools has the legal authority to revoke a teacher's certificate because of the annulling of a written contract with the board of education as provided for in Section 10631.

"I shall appreciate your advice and official opinion in answer to the following questions:

"1. Has the State Superintendent of Schools authority under the provisions of Section 10631 to take legal action in the revoking of a teacher's certificate issued by the State Superintendent of Schools because of the annulling of a written contract with the board of education when officially notified by the County Superintendent of Schools as provided by law?

"2. Even though Section 10599 which also authorizes the State Superintendent of Schools to revoke certificates does not include as one of the reasons for revoking the certificate the annullment of written contracts with the board of education, does it prevent the operation of Section 10631 in relation to the annullment of contracts? Can these two sections be harmonized and construed together?"

Section 10599, R. S. Mo., 1939 provides, in speaking of the powers of the state superintendent:

"* * * He shall also have authority to examine teachers and grant certificates of qualifications to those who pass a satisfactory examination, but the applicant shall not be charged any fee for such examination or certificate, nor shall the state superintendent receive any fee or compensation therefor; and any person holding such certificate from him shall be permitted to teach without further examination from other authorized examiners. Said certificates may be revoked by the state superintendent for incompetency, cruelty, immorality, drunkenness or neglect of duty."

Sec. 10631 Provides:

"The county superintendent may revoke, upon satisfactory proof, any county certificate for incompetency, immorality, neglect of duty, or the annulling of written contracts with the board of directors without the consent of the majority of the members of the board which is a party to such contract. All charges must be preferred in writing, signed and sworn to by the party or parties making the accusation, which must be filed with the county superintendent, and the teacher must be given due notice, of not less than ten days, an opportunity to be heard, together with witnesses. In case any person holding a certificate issued by the state superintendent, the board of curators of the state university, or the board of regents of any state teachers college, shall be complained of as herein provided for, then it shall be the duty of the county superintendent in the county where the offense is alleged to have been committed, to notify, in writing, the person or board issuing such certificate, and such person or board shall proceed as herein provided for the revocation of such certificate. The complaint must plainly and fully specify what incompetency, immorality, neglect of duty or other charge is made against the teacher, and if the county superintendent shall, after a hearing, revoke said certificate, the teacher shall have the right to appeal said hearing to the circuit court at any time within

June 17, 1944

ten days thereafter by filing an affidavit and giving bond as is now required before justices of the peace. On any such appeal the judge of the circuit shall, with or without a jury, at the option of either the teacher or the person making the complaint, hear the whole matter anew and decide the same de novo affirming or denying the action of the county superintendent, and he shall tax the cost against the appellant if the judgment of the county superintendent is affirmed, but if he disaffirms such judgment, then he shall assess the costs of the whole proceedings against the person or persons making the complaint. Any teacher having his or her certificate revoked by any other authority than that of county superintendent shall have the right to appeal therefrom to the circuit court and shall have the right to a like hearing and trial as is herein provided for in the appeal from the decision of the county superintendent."

This section specifically provides for action by the State Superintendent in case anyone holding a state certificate is complained of "as herein provided for." One of the grounds provided in this section is the annulling of written contracts with the board of directors without the consent of the majority of the board. This statute therefore specifically gives the State Superintendent authority to take legal action in the revoking of a teacher's certificate on that ground, and hence question number one in your letter must be answered in the affirmative.

With regard to the second question propounded in your letter it may be stated that the two statutes relate to the same subject matter and must be regarded in legal phraseology as being in *pari materia*.

The rule is that all acts in *pari materia* should be construed together. *Grimes v. Reynolds* 83 S.W. 1132; *Ackerman v. Green*, 100 S. W. 30. *Glaser v. Rothschild* 120 S. W. 1.

It has also frequently been held that the courts have a duty in construing two or more statutes relating to the same subject to read them together and to harmonize them if possible and to give force and effect to each and the rule applies not only to acts passed

at prior and subsequent sessions. State ex rel Central Surety Insurance corporation v. State Tax Commission 153 S. W. (2d) 43. See also State on Inf. Barker v. Koely, 192 S. W. 748; State v. Naylor, 40 S. W. (2d) 1079.

The provisions of Sec. 10599, relative to revocation first appeared in Sec. 8079, R. S. Mo. 1889. The provisions of Sec. 10631, first appeared in the Laws of 1901, p. 246.

Thus we see that Sec. 10599 for the purposes of the question here is some twelve years older than Sec. 10631.

It has been held that two statutes relating to the same general subject matter should be read together and harmonized if possible, with the view of giving effect to consistent legislative policy, but to the extent that statutes are necessarily inconsistent, a later statute which deals with common subject matter in a particular way will prevail over earlier statute of a more general nature. State v. Margiaracina, 125 S. W. (2d) 58. See also State vs. Crawford, 262 S. W. 341. There is no specific conflict on the face of these two statutes. Sec. 10599 does not say specifically that the causes mentioned therein are the only grounds on which the State Superintendent may revoke and therefore, under the rule of *pari materia* heretofore stated, the two statutes should be harmonized and the later section held to add a new ground for revocation. However, in any event, under the rule announced in the State v. Margiaracina case *supra*, it is difficult to see how provisions of Sec. 10631 can be avoided. It clearly is a later act and clearly deals in a much more specific fashion with the same subject matter as Sec. 10599. Its provisions therefore, would prevail under the rule laid down in the aforementioned decisions even in the event of an inconsistency between the two acts,

Hon. Roy Scantlin

-6-

June 17, 1944

CONCLUSION.

It is, therefore, the opinion of this office that Sec. 10631, R. S. Mo., 1939, gives the State Superintendent the right to revoke, after proper hearing, state teachers' certificates for any and all grounds mentioned therein, and that he is not confined to the grounds set out in Sec. 10599, R. S. Mo., 1939.

Respectfully submitted

ROBERT J. FLANAGAN
Assistant Attorney General

RJF:LeC

APPROVED:

ROY MCKITTRICK
Attorney General