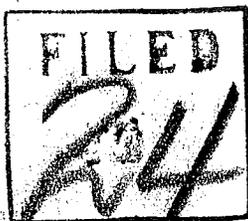


PUBLIC SCHOOL RETIREMENT SYSTEM: Definition of words "substitute" and  
"temporary" as used in House Bill  
SCHOOLS: No. 387, 68th General Assembly,  
relating to Public School Retirement  
System.



September 27, 1955

Mr. G. L. Donahoe  
Executive Secretary  
Public School Retirement System  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Donahoe:

This is in response to your request for opinion dated August 5, 1955, which reads as follows:

"House Bill #387, as passed by the 68th General Assembly, was approved by the Governor and will become effective August 29, 1955. This Bill contains only one section, which reads as follows:

'Section 1. Any retired teacher as defined in section 169.010 who is currently receiving a retirement allowance may serve as a substitute teacher not to exceed 60 days in any one school year; and the retirement allowance of such retired teacher shall not be reduced or discontinued because of such service nor shall such retired teacher contribute to the retirement system because of earnings during such period of temporary employment.'

"Section 169.010, as referred to in this Bill, contains a definition of 'teacher', which definition was for the purpose of determining eligibility for membership in the retirement system. We are not aware of any statutory definition of the term 'substitute teacher' and, since this Bill provides that a retired member of our system may serve as a substitute teacher not to exceed 60 days in

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any school year without a reduction or discontinuance of the retirement allowance payments because of such service, we feel the need for some manner of determining when the retired member is serving as a substitute teacher as differentiated from services as a teacher on a full-time basis, or services on a part-time basis.

"The Board of Trustees would appreciate a definition of 'substitute teacher' under temporary employment as the terms are used in H. B. #387 in order that we may know the type of teaching service which may be rendered by a retired teacher as provided for in this Bill and without a reduction or discontinuance of the retired teacher's allowance."

In your request you have referred to Section 169.010, RSMo, Cum. Supp. 1953, which defines the word "teacher," in part, as follows:

"(6) 'Teacher' shall mean any \* \* \* substitute teacher, \* \* \* who shall teach or be employed by any public school, state college or state teachers' college on a full-time basis \* \* \*."

We are informed that in many of the larger school systems there are regularly employed teachers who do not have a specific assignment but whose duty it is during the school year to substitute for absent teachers as directed by the administrative authority. In referring to a period of temporary employment in House Bill No. 387 it is obvious that it was not this type of employment that was intended to be exempted from the provisions of the Retirement System law.

The word "temporary" is defined as follows:

"Lasting for a time only; existing or continuing for a limited time; not permanent; ephemeral; transitory; as, temporary relief; a temporary position."

Webster's New International Dictionary,  
Second Edition, Unabridged.

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We further believe that the use of the word "temporary" excludes from the purview of House Bill No. 387 the regular employment of a substitute teacher on a part-time basis.

It is conceivable that a teacher may actually serve less than sixty days during a school year as a substitute but, nevertheless, be regularly employed so as to fall within the definition of a teacher under Section 169.010, supra, and not within the exemption of House Bill No. 387. In *Charters v. Board of Trustees of Seattle Teachers' Retirement Fund*, 192 Wash. 261, 73 P. (2d) 508, a teacher was employed as a regular substitute each year to be called upon by the superintendent as she might be needed to take the place of an absent teacher. The retirement law required that to be eligible for benefits the teacher must have been "regularly employed." The court said, 73 P. (2d) 1.c. 513:

"After careful consideration of the statute, we hold that a substitute teacher, occupying a status similar to that occupied by appellant here, is a teacher regularly employed within the purview of the section of the act defining the word 'teacher.' \* \* \*"

We have been unable to find any legal definition of the term "substitute teacher" either in the Missouri statutes or Missouri cases. However, the word "substitute" does not have a common accepted dictionary meaning. In Webster's New International Dictionary, Second Edition, Unabridged, the word "substitute" is defined, in part, as follows:

"1. A person or thing put in place of another; one acting for, taking the place of, or held in readiness to replace, another.

\* \* \* \* \*

"Syn. - Substitute, Deputy, Proxy. Substitute applies in general to one who takes another's place in case of the latter's absence. \* \* \*"

We have searched the cases from other jurisdictions and find that the proper definition of the term "substitute teacher" has most often arisen in connection with a state's tenure law.

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Usually the term is either defined by statute or the court's construction of it is founded upon a statute. However, the meaning given to the term is consistent throughout and conforms to the generally accepted meaning of the word "substitute."

For example, in *Schulz v. State Board of Education*, 132 N.J.L. 345, 40 A. (2d) 663, 669, the court stated:

"The word 'substitute' usually presents the idea of something or someone substituted for another - not the real thing or the real person, but a 'substitute.'"

In *Gerritt v. Fullerton Union High School Dist.*, 24 Cal. App. (2d) 482, 75 P. (2d) 627, 639, it was said:

"Permanent or probationary teachers are, under the school laws, employed for a year, while substitute teachers are employed from day to day. \* \* \*"

Again, in *Wood v. Los Angeles City School Dist.*, 6 Cal. App. (2d) 400, 402, 44 P. (2d) 644, 645, the court said:

"The substitute teacher is employed from day to day to serve at the option of the school district in the absence of the regular teacher."

Therefore, we believe that a retired teacher to fall within the meaning of House Bill No. 387 may be employed temporarily, as opposed to regularly, as a substitute for a regularly employed teacher who for any one of many reasons may be absent, or to fill a position which may temporarily be vacant.

#### CONCLUSION

It is the opinion of this office that House Bill No. 387, 68th General Assembly, permits the temporary employment of a retired teacher to serve as a substitute for a regularly employed teacher not to exceed sixty days in any one school year, or to fill a position which may temporarily be vacant, such

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teaching service being rendered in accordance with the definition of the words "substitute" and "temporary" as contained in the body of this opinion.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml