

December 5, 1962

OPINION NO. 381
Answered by letter - Northcutt.

Mr. Bernard W. Gorman
Prosecuting Attorney
Atchison County
Court House
Rockport, Missouri



Dear Mr. Gorman:

In answer to your request of October 16, 1962, for the opinion of this office as to the application of Opinion #217-1962, (copy enclosed) to the County Court or Treasurer, as well as to the School Board as stated in said opinion, it is the position of this office that since a County Superintendent of Schools is included within the term and definition of the word "teacher" contained in Section 169.010, that the opinion would apply as well to the County Court or Treasurer.

We have taken this position in answer to several other requests, and we are taking this position in a case which is before the courts at the present time.

I believe that this letter will adequately answer your question along with a re-reading of Opinion #217-1962.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

RFH:ag
Enc.

ATTORNEY GENERAL'S OPINION

SCHOOL DISTRICTS:
SCHOOL TEACHER
RETIREMENT AGE:
TEACHERS' FUND:
SUBSTITUTE TEACHER:

Teachers' salaries must be paid from fund provided in Sec. 165.110, RSMo 1959. In school districts in this state not in cities that have a population of 75,000 or more, teacher is retired July 1 next after attaining age 70 and may thereafter teach only under provisions of Sec. 169.560; school board may not legally pay teacher's salary from fund provided in Sec. 165.110 past July 1 next after teacher has reached age 70 except under provisions of Sec. 169.560; school board may not legally contract with teacher who is retired by provisions of Sec. 169.060 except under provisions of Sec. 169.560.

Opinion No. 217 (1962)

July 25, 1962

Honorable Arthur B. Cohn
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Mr. Cohn:

This is in reply to your letter of May 14, 1962, requesting an opinion from this office in answer to the following question:

"If the school board hires a teacher who is of the retirement age, to-wit: 70 years of age, can the school board legally pay her salary from the regularly appropriated teachers fund or must her salary be paid from a different fund?"

Section 169.010, paragraph 6, defines "teacher" as follows:

"Teacher" shall mean any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, or librarian who shall teach or be employed by any public school, state college or state teachers' college on a full-time basis and who shall be duly certificated under the law governing the certification of teachers; any county superintendent of schools, assistant county superintendent of schools and those employed by county superintendents of schools upon a full-time basis and who shall be duly certified under the law governing the certification of teachers; and the state superintendent of

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public schools or commissioner of education, persons employed in the state department of education or by the state board of education in an executive capacity and other persons employed by said state board of education on a full-time basis who shall be duly certified under the law governing the certification of teachers; and persons employed by the board of trustees of the public school retirement system of Missouri on a full-time basis who shall be duly certified under the law governing the certification of teachers; provided that this clause shall not be construed to include employees of the University of Missouri or Lincoln University."

For our purpose the above definition of the term "teacher" is sufficient and is adopted for the purposes of this opinion.

Having defined the term "teacher", we must now determine in what manner and from what source a teacher in Missouri may legally be paid, and in this connection we find that disbursement of all school money is governed and controlled by Section 165.110, RSMo 1959, which has contained within it specific references to teachers. This section provides that all teachers' salaries must be paid out of the specified teachers fund. The statutes are completely silent as to any other legal method of payment of teachers' salaries.

As may be seen from the above, teachers' salaries may be paid only from the authorized teachers fund as provided by Section 165.110, RSMo 1959, supra; however, it does not answer the question of whether a teacher, age seventy or over, may be paid from this fund. To do this it is necessary to turn to other statutes and determine whether there is an age limit beyond which a person may not teach. If there is a legally established age limit beyond which a person may not teach it would follow that any payment to such person would be an illegal payment of public funds and therefore prohibited.

We turn in this regard to Chapter 169, RSMo 1959. Sections 169.010 to 169.130, inclusive, provide for the retirement of teachers in school districts of less than seventy-five thousand. The districts embraced within this act are set out in Section 169.020, RSMo 1959, as follows:

" * * * The system so created shall include all school districts in this state, except those in cities that had populations of seventy-five thousand or more according to the latest United States decennial census,

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and such others as are or hereafter may be included * * *

The above section includes the Waynesville district because it is not a district in a city of more than seventy-five thousand.

Section 169.050, RSMo 1959, provides in part that:

"* * * all employees as herein defined of districts included in the retirement system thereby created shall be members of the system by virtue of their employment."
(underscoring added)

"Employee" is defined by Section 169.010, RSMo 1959, as synonymous with "teacher". Therefore, by operation of this chapter "teachers" are members of the retirement system by virtue of their employment.

The above sections make membership in the public school retirement system of Missouri and employment as a teacher dependent one upon the other and bound together. Membership in the retirement system is a legal qualification for a "teacher".

Section 169.060, RSMo 1959, provides that a member (which by operation of Section 169.050 includes teachers) of the public school retirement system of Missouri must retire upon reaching age seventy by the following provision:

"* * * a member shall be retired automatically on the first day of July next following the school year in which he reaches the age of seventy years,* * *" (underscoring added)

Therefore, the phrase "shall be retired automatically" directs that the individual member has no choice or volition as to whether he will or will not continue as a member of the retirement system and thereby, as a teacher, he is retired by operation of the statute.

It may be seen that by the enactment of Section 169.060, RSMo 1959, the Legislature intended that retirement or withdrawal from active service as a member of the retirement system was to be mandatory upon said member and upon July first next after reaching the age of seventy years a member is by law rendered incapacitated to continue in active teaching service in the public schools contained within the retirement system.

We may further illustrate the fact that a "teacher" may not teach beyond July 1 following the attainment of age seventy by reading Section 163.080, RSMo 1959, which provides as follows:

"The board shall have power, at a regular or

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special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; * * *" (underscoring added)

In connection with the above quoted portion it may be seen that one of the legal qualifications for a "teacher" is membership in the retirement system as provided by Section 169.050, supra. It would follow that when a "teacher" is retired by operation of Section 169.060, RSMo 1959, supra, the "teacher" is no longer legally qualified and therefore, by operation of Section 163.080, supra, the school board would have no authority to contract with and employ the "teacher", and any payment to such "teacher" would be an illegal payment of public funds and therefore prohibited.

It will be noted that the absolute retirement of "teachers" at age seventy is modified to the extent that a retired teacher over age seventy may serve as a substitute teacher not to exceed sixty days in any one school year by the provisions of Section 169.560, RSMo 1959.

CONCLUSION

Therefore, it is the opinion of this office that:

1. A school board may not legally pay a teacher's salary from a fund other than the teachers fund provided by Section 165.110, RSMo 1959.
2. In school districts in this state not in cities that have a population of seventy-five thousand or more:

A. A "teacher" is automatically retired July first following the attainment of the age of seventy years and may not thereafter actively engage in teaching in public schools, except under the provisions of Section 169.560 as a substitute teacher;

B. A school board may not legally pay a teacher's salary from the teachers fund created by Section 165.110, RSMo 1959, beyond July first next after the teacher has attained seventy years of age, except under the provisions for a substitute teacher as contained in Section 169.560;

C. A school board may not legally contract with and employ a "teacher" who is retired by the provisions of Section 169.060, RSMo 1959, except under the provisions of Section 169.560 regarding substitute teachers.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert R. Northcutt.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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