

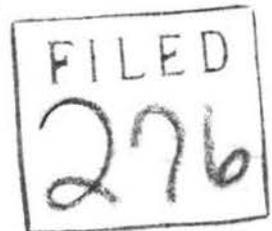
TEACHERS:
SCHOOLS:
SCHOOL BOARDS:
UNIONS:
LABOR UNIONS:
CONTRACTS:
PUBLIC CONTRACTS:

(1) Teachers may join in groups, including unions, for the purpose of making proposals to school boards, but the boards cannot enter into binding agreements with such groups; (2) School boards may consider teacher group proposals and are not precluded from acting favorably upon such proposals to the extent that they do not conflict

with applicable law or superior regulation; (3) School boards may enter into binding contracts with individual teachers which extend beyond the term of the school board, provided that the individual contract is not for an unreasonable term, in bad faith, fraudulent or in conflict with any statutory provisions or superior regulations; (4) No school board can enter into a contract which involves more than one teacher; (5) The school boards exercise a function of the sovereign and as such cannot delegate and cannot bargain or contract away any sovereign powers or duties.

OPINION NO. 276

December 12, 1968



Honorable Robert L. Prange
State Senator, 14th District
12714 Bellefontaine Road
St. Louis, Missouri 63138

Dear Senator Prange:

This is in response to your opinion request in which you raise the following questions:

"1. Can school boards negotiate with any teacher group and can a school board enter into an agreement or contract with a group of teachers or can a board only establish a policy by a vote of the board?"

"2. As a school board is reorganized each year after the annual election can a board enter into a binding contract involving more than one teacher for a period of more than one year?"

"3. Can a school board negotiate and contract away the right to establish policy for the operation of public schools?"

Honorable Robert L. Prange -

We understand that you are concerned with school boards in general and without particular limitation to any type of school district.

Our labor organization statutes, Section 105.500 to 105.530, RSMo Supp. 1967, were first enacted in 1965 and amended in 1967.

Section 105.500, RSMo Supp. 1967, defines "public body" as follows:

"(3) 'Public body' means the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state."

This office has previously concluded in Opinion No. 68, dated May 6, 1966, to the Honorable Howard M. Garrett (copy enclosed), that a school district is a political subdivision within the meaning of the above section.

However, Section 105.510, RSMo Supp. 1967, provides:

"105.510. Public employees may join labor organizations and bargain collectively-- exceptions--not to be discharged or discriminated against. -- Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization." (Emphasis added).

Thus, the legislature expressly excluded public school teachers from the provisions of the labor organization statutes, Sections 105.500 to 105.530. This is not to say, however, that groups of teachers have no right to organize and to present their proposals to a public body.

Honorable Robert L. Prange -

Prior to the enactment of Sections 105.500 to 105.530, we recognized that our constitution authorized some governmental employees to legally organize and to become members of a labor union. We reached this conclusion in Opinion No. 68, dated March 15, 1957, to the Honorable W. H. S. O'Brien, copy enclosed. We concluded in that opinion that: the employees of a county highway commission may legally organize and become members of the labor union; a county court lacks the power to enter into collective bargaining agreements binding on the county with a labor union representing employees of a county highway commission; a county court lacks the power to enter into and execute a contract of employment with a labor union representing employees of a county highway commission.

Additionally, in this respect we note that Article I, Section 29 of the Missouri Constitution provides:

"That employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

This article, however, was intended to safeguard collective bargaining as that term was usually understood in employer and employee relations in private industry and does not apply to public employees. City of Springfield vs. Clouse, 206 S.W. 2d 539 (1947). The court in Clouse, however, held that although it made no difference whether or not the public employees were employed in a corporate or proprietary capacity, the ruling did not mean that public employees have no right to organize since there was nothing improper in the organization of municipal employees into labor unions but that entering into a binding agreement with public employees was an entirely different matter.

The right of teachers to organize is found in Bergman v. Board of Education, 230 S.W. 2d 714 (1950), in which the court cited Clouse with approval.

In answer to your first question we conclude that teachers have the legal right to organize labor unions in the same manner as do employees of private industry but that as public employees they do not have the right to bargain collectively and negotiate in the same manner as private employees nor do they have the rights granted certain public employees under Sections 105.500 to 105.530, RSMo Supp. 1967. It is our interpretation, and we hold, that such teachers may present proposals to the school boards but for the reasons stated in Clouse cannot collectively enter into agreements or contracts with boards. The boards would not be precluded from establishing a policy, regulation or resolution which was favorable to the proposal of a teacher group in so far, of course, as the same did not conflict with statutory provisions or delegate authority vested in the boards.

Honorable Robert L. Prange -

We note by comparison that even those employees who are within the provisions of the labor organization statutes have not been granted the full right of collective bargaining as it is commonly known. In this respect we attach for your information our Opinion No. 373, dated October 17, 1967, addressed to the Honorable Corley Thompson, Jr.

It is quite evident that such teachers do not have the right to strike, and that the labor organization statutes do not grant any such right even to employees covered by that law. Section 105.530, RSMo Supp. 1967.

In answer to your second question concerning whether or not the board can enter into a binding contract involving more than one teacher for a period extending beyond the term of the school board we refer you to our opinion, attached, No. 304, dated November 9, 1965, to the Honorable Gerald Kiser. Although that opinion dealt with the county court and their authority to contract beyond their term, the reasoning is applicable to this point. That opinion concluded that the contract may be for a period beyond the term of the governing body provided it is not an unreasonable period, is not in bad faith or is not fraudulent.

Similarly in Tate vs. School Dist. No. 11 of Gentry County, 23 S.W. 2d 1013 (1929) the Supreme Court of Missouri adopted the "prevailing weight of judicial authority on the subject", stating at l.c. 1021:

" . . . 'In the absence of a statutory provision limiting, either expressly or by implication, the time for which a contract for employment of a school-teacher may be made to a period within the contracting schoolboard's or officers' term of office, such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office, or for the term of school succeeding their term of office, provided such contract is made in good faith, without fraud or collusion, and for a reasonable period of time; . . .'"

This office previously held that a school board may contract with a teacher for a period of more than one year. See attached Opinions No. 24, dated May 1, 1933, to the Board of Education, City of Columbia, and No. 83, dated May 9, 1941, to the Honorable Robert W. Smart. Insofar as concerns the applicable statutory limitations on the term of years or otherwise for teacher employment contracts, the boards may be limited.

In this respect, we note that the various statutory provisions vary.

Honorable Robert L. Prange -

Section 168.191, RSMo Supp. 1967, with respect to superintendent and teacher contracts in high school districts (Class 1 counties) provides in part:

"* * * The school board of such high school districts may enter into contracts, for a period not to exceed two years, with school teachers if the contracts are made upon the recommendation of the superintendent of schools of the high school district, but the contracts thus approved by the superintendent of schools shall not extend for a period of more than one year beyond the time for which the superintendent was employed to supervise the public schools of the high school district. This law shall not invalidate or repeal any other law of this state relating to the employment of teachers, principals or superintendents of public schools"

Section 168.201, RSMo Supp. 1967, with respect to superintendent and employee contracts in urban districts provides:

"The school board in urban districts may employ and contract with a superintendent for a term not to exceed four years from the time of making the contract, and may employ such other servants and agents as it deems necessary, and prescribe their powers, duties, compensation and term of office or employment which shall not exceed two years. It shall provide and keep a corporate seal."

We further note that Section 168.101, RSMo Supp. 1967, provides in part:

"The school board, at a regular or special meeting called after the annual school meeting, may contract with and employ legally qualified teachers for and in the name of the district. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with him. The clerk shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. * * *"

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In Tate, supra, the court in construing this statute held, at l.c. 1020:

"* * *The legislative grant of power to the board of directors of a school district to employ, and to contract with, legally qualified teachers, is made general by the statute. No express limitation is put upon the grant of power by any language of the statute; nor is any limitation upon the power granted to be reasonably implied from the language and context of the statute. The statute does not limit, or undertake to limit, either expressly or impliedly, the period of employment of a teacher to the single and particular school year in which the contract of employment is made by the school district board of directors. * * *" (Emphasis added).

We recognize that the St. Louis Court of Appeals in Magenheim vs. Board of Education, 347 S.W. 2d 409 (1961), stated that the contract between a "Town School District Board and a school teacher is for one year". Magenheim, however, considered the question of teacher tenure and we view this statement by the court as merely obiter dictum and in conflict with the Supreme Court holding in Tate which we regard as controlling.

Going further, however, into the nucleus of your second question, and that is with regard to whether or not a binding contract may be entered into which involves more than one teacher, we conclude that such a contract would not be valid or proper. The general statutory provisions contained in Chapter 168 and particularly Section 168.101, RSMo Supp. 1967, with respect to the employment of teachers and their contracts is indicative that only individual contracts are contemplated, each by its own terms, taking into consideration the employment rights and limitations of the individual teacher.

In answer to your second question, then, school boards may enter into binding contracts with individual teachers which extend beyond the term of the school board, provided that the individual contract is not for an unreasonable term, in bad faith, fraudulent or in conflict with any statutory provisions or superior regulation.

In answer to your third question concerning whether or not a school board may negotiate and contract away their right to establish policy for the operation of public schools, we conclude that it is inherent in the framework of the government that the governing body has all the duties and obligations set out by statute and cannot contract or delegate any part of their sovereign function. This conclusion is well established by Springfield vs. Clouse, supra, which was cited and quoted extensively in the attached opinions.

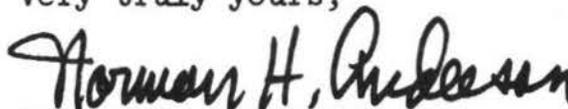
Honorable Robert L. Prange -

CONCLUSION

It is the opinion of this office that: (1) Teachers may join in groups, including unions, for the purpose of making proposals to school boards, but the boards cannot enter into binding agreements with such groups; (2) School boards may consider teacher group proposals and are not precluded from acting favorably upon such proposals to the extent that they do not conflict with applicable law or superior regulation; (3) School boards may enter into binding contracts with individual teachers which extend beyond the term of the school board, provided that the individual contract is not for an unreasonable term, in bad faith, fraudulent or in conflict with any statutory provisions or superior regulations; (4) No school board can enter into a contract which involves more than one teacher; (5) The school boards exercise a function of the sovereign and as such cannot delegate and cannot bargain or contract away any sovereign powers or duties.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,


NORMAN H. ANDERSON
Attorney General

enc: Op. No. 24, Board of Education, 5/1/33
Op. No. 83, Smart, 5/9/41
Op. No. 68, O'Brien, 3/15/57
Op. No. 304, Kiser, 11/9/65
Op. No. 68, Garrett, 5/6/66
Op. No. 373, Thompson, 10/17/67