

SCHOOLS:
TEACHERS:

1. Insubordination as used in paragraph 168.107 1(3) means:

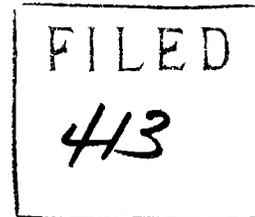
A teacher's willful, intentional refusal or neglect to obey an express or implied command, instruction, order or rule of the teacher's employing school board, which command, instruction, order or rule is known to the teacher, is reasonable in nature and is given by and with proper authority.

2. A teacher belonging to a voluntary organization whose membership consists in part of teachers would not be in violation of Section 168.116 if the association takes part in the management of a campaign for the election or defeat of a member of a board of education so long as the teacher member does not take part in the initiation or control of the campaign.

OPINION NO. 413

November 25, 1969

Honorable William B. Waters
State Senator, District 17
First Office Building
Liberty, Missouri 64068



Dear Senator Waters:

This letter is in response to your request for an official opinion on the following questions pertaining to House Bill 120 passed by the 75th General Assembly:

"1. Section 168.107, 1. (3). Many school districts are faced with the problem of establishing guidelines on dismissal policies. They would like to have a definition of 'insubordination' as it appears in said section.

"2. Section 168.116 prohibits a teacher from taking part in the management of the campaign for the election or defeat of a member of the school board. There are a number of voluntary groups or associations of those who are interested in education whose membership consists in part of teachers. Should such an association take part in the management of a campaign, would those teachers who belong to the association be in violation of this section?"

I.

A Definition of "Insubordination" as
it Appears in Section 168.107 1(3).

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Section 168.107 1 reads in part as follows:

"An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

* * * *

"(3) Incompetency, inefficiency or insubordination in line of duty;" (emphasis added)

"Insubordination" is not defined in House Bill 120. Set forth below are general definitions of "insubordination" based on cases from many jurisdictions not necessarily in the education field.

". . . Thus, generally a refusal or neglect on the servant's part to obey a lawful and reasonable command, order, or rule of the master which, in view of all the circumstances of the case, amounts to insubordination, and is inconsistent with his duties to his master, is a sufficient ground for discharge. . . ." 56 C.J.S. Master and Servant, Section 42h. p. 432.

"Among the fundamental duties of the employee is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer, and wilful or intentional disobedience thereof, as a general rule, justifies a rescission of the contract of service and the peremptory dismissal of the employee, whether the disobedience consists in a disregard of the express provisions of the contract, general rules or instructions, or particular commands. . . ." 35 Am Jur. Master and Servant, Section 44 p. 478.

"Rules, instructions, or commands in order to be the ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employee has engaged to discharge. . . ." Id. at Section 45 p. 479.

The courts in other states have followed these general rules in cases involving teachers and school personnel. For instance

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the Supreme Court of Wisconsin in Millar v. Joint School District No. 2, Village of Wild Rose, 2 Wis.2d 303, 86 N.W.2d 455 (1957) a teacher brought action against the school district and others for damages because he was discharged for insubordination. The court in defining "insubordination" relied in part upon the general definitions set forth above. In addition the court noted the following from a previous Wisconsin case:

"In Green v. Somers, 1916, 163 Wis. 99, 100, 157 N.W. 529, 530, it was said:

"'An employer has the right to give all lawful and reasonable commands deemed by him necessary to the proper management of his business, and the employe's duty is to obey such commands where there is nothing in the contract of employment to relieve him from such duty.

"'Any inexcusable and substantial insubordination on the part of an employe or willful refusal to obey such commands amounting to insubordination, is good ground for discharge. Thomas v. Beaver Dam Mfg. Co., 157 Wis. 427, 147 N.W. 364; 26 Cyc. 992. . . ." Id. at 460-461.

In Kostanzer v. State ex rel. Ramsey, 205 Ind. 536, 187 N.E. 337 (1933) the Supreme Court of Indiana had before it the question whether a teacher's marriage in defiance of a rule prohibiting marriage was insubordination under the Indiana Teacher Tenure Act. "Insubordination" was defined in the Indiana Teacher Tenure Act as the ". . . willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation." Id. at 341. The court stated that if the rule respecting marriage was a reasonable rule then the teacher's marriage was an act of insubordination and constituted good and just cause for the cancellation of her contract. However, the court concluded that it was not a reasonable rule and therefore there was no insubordination.

The Alabama Supreme Court in State ex rel. Steele v. Board of Education of Fairfield, 252 Ala. 254, 40 So.2d 689 (1949), had before it the question whether a teacher had been insubordinate under the Alabama Teacher Tenure Act for refusing to take a mental ability test which was required by the rules and regulations of her school board. The court defined "insubordination" as follows:

"One of the statutory grounds for the cancellation of a contract of a tenure teacher is 'insubordination.' § 356, Title 52 Code 1940.

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The term 'insubordination' is not defined in the statute, but unquestionably it includes the willful refusal of a teacher to obey the reasonable rules and regulations of his or her employing board of education." Id. at 695.

In State ex rel. Richardson v. Board of Regents of the University of Nevada, 70 Nev. 347, 269 P.2d 265 (1954) the Supreme Court of Nevada reviewed an order of the Board of Regents discharging a professor. In concluding that the circumstances did not support a charge of insubordination, the court relied upon the following definition:

". . . From the many definitions found in the cases we may say without greater elaboration that 'insubordination' imports a willful disregard of express or implied directions, or such a defiant attitude as to be equivalent thereto. 'Rebellious', 'mutinous', and 'disobedient' are often quoted as definitions or synonyms of 'insubordinate'. Refinements that deal with the authority of the superior officer to promulgate the order or with the reasonableness of the order in question need not be considered." Id. at 276.

The Superior Court of Delaware in Shockley v. Board of Education, Laurel Special School District, 51 Del. 537, 149 A.2d 331 (1959) relied on the definitions of insubordination in both the Steele and Richardson cases in arriving at its own definition of the Delaware statutory language of "willful and persistent insubordination":

"As stated above, our Delaware statute does not define the words 'willful and persistent insubordination', but after an examination of the cases, I am persuaded that a fair and reasonable definition is as follows:

"'A constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority.'" Id. at 334.

In analyzing the sufficiency of a notice of termination to a probationary teacher under the Arizona Teacher Tenure Act, the Supreme Court of Arizona in School District No. 8, Pinal County v. The Superior Court of Pinal County, 102 Ariz. 478, 433 P.2d 28 (1967) stated as follows:

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"Clearly, the reasons assigned for the termination of the Forseth contract, that is, insubordination and lack of cooperation, are generic, categorizing the type of conduct which the school board or superintendent found objectionable. But both grounds, we think, have fixed and well-understood meanings so that they do not leave the teacher in ignorance. Insubordination imports a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders, McIntosh v. Abbot, 231 Mass. 180, 120 N.E. 383, and lack of cooperation is characteristically a subtle species of insubordination. Both terms are descriptive of a class of censurable practices destructive of the efficiency of the employer's organization. Accordingly, where, as here, a probationary teacher's right to remain in public service is dependent upon whether the appointing officers are satisfied with the teacher's conduct and capacity, and they are, in law, the sole judges, we are reluctant to place an unduly narrow construction on the legislative language lest it defeat the salutary purpose of determining the fitness of a probationer to serve a school district." Id. at 30. (emphasis supplied)

A careful search of Missouri cases has not revealed any definition of "insubordination" in a case involving school teachers or school personnel. However, the question of what is "insubordination" in other areas has come before Missouri courts. For instance, in Jordan v. Weber Moulding Company, 77 Mo.App. 572 (1898) the plaintiff was a traveling salesman who claimed he was wrongfully discharged. The question in the case was whether plaintiff's failure to follow certain instructions constituted insubordination and therefore just cause for his discharge. The St. Louis Court of Appeals approved the giving of the following instruction to the jury:

"If from the evidence you believe that the plaintiff intentionally disobeyed the instructions given by the defendant to the plaintiff regarding his expenses or his route, or concerning other matters connected with the business, or neglected or refused to perform duties imposed upon him, and that such disobedience or such neglect was in regard to matters of such importance in the conduct of the business as reasonably required obedience and fulfillment on the part of the plaintiff, and that the

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defendant with reasonable promptness discharged the plaintiff for such disobedience or neglect, then his discharge was "with just cause."
. . .'" Id. at 575.

In another case involving claimed wrongful discharge, Craig v. Thompson, 244 S.W.2d 37 (Mo. 1951) the Supreme Court of Missouri stated:

". . . In every contract of employment it is implied that the employee will obey the lawful and reasonable rules, orders and instructions of the employer, and disobedience of such known rules justify the employee's discharge. . . ." Id. at 41.

In Lee v. Missouri Pacific Railroad Company, 335 S.W.2d 92 (Mo. 1960) decided by the Supreme Court of Missouri an engineer brought suit against his employer for wrongful discharge. The question before the court was whether plaintiff's refusal to follow a particular instruction was insubordination. In concluding that it was, the court stated as follows:

". . . Since there had apparently been some confusion about the proper interpretation of Rule 104, at least on plaintiff's line, plaintiff's superior officers had not only the authority but the duty to interpret it. Plaintiff had been informed of their interpretation, which cannot be held unreasonable, before the occurrence herein involved; but even though he knew of it and knew that the conductor had been so instructed concerning it, he deliberately ordered action exactly contrary to the instructions he knew had been given by the conductor on that occasion. Plaintiff had no right to make himself the sole judge of the proper interpretation of Rule 104. We must hold that plaintiff's action was in violation of Rule 104 as interpreted by his superior officers; that he violated Rule 107 in refusing to obey the conductor's instructions and violated Rule 501 by refusal to comply with the instructions of the trainmaster concerning the authorized interpretation of Rule 104; that his conduct was insubordination stated as ground for discharge in Rule N; . . ." Id. at 98.

Based on the foregoing cases, we conclude that a reasonable definition of "insubordination" as used in Section 168.107 1(3) would be as follows:

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A teacher's willful, intentional refusal or neglect to obey an express or implied command, instruction, order or rule of the teacher's employing school board, which command, instruction, order or rule is known to the teacher, is reasonable in nature and is given by and with proper authority.

II.

Would a Teacher Belonging to an Organization Whose Membership Consists in Part of Teachers be in Violation of Section 168.116 if this Organization Took Place in the Management of a Campaign for the Election or Defeat of a Member of a School Board?

We believe that the basis for answering this question is contained in Opinion No. 353 of this office, dated August 26, 1969. A copy of this opinion is enclosed. As stated therein, "The public purpose for which this statute was written was apparently to prevent the disruption of schools and school boards by political campaigns. . . ." Id. at 2. Furthermore, a teacher should have ". . . no share of the control or guidance of a campaign for or against one of his own school board members. . . ." ". . . It is only necessary that he avoid exacerbation of relations between board members and teachers by initiating or taking part in the running of a campaign against or for a board member." Id. at 3. Therefore, we believe that a teacher member of a group or association interested in education whose membership consists in part of teachers would not be in violation of this section so long as the teacher in question does not take part in the initiation or control of a campaign against or for a board member.

CONCLUSION

Therefore, it is the opinion of this office that:

1. Insubordination as used in paragraph 168.107 1(3) means:

A teacher's willful, intentional refusal or neglect to obey an express or implied command, instruction, order or rule of the teacher's employing school board, which command, instruction, order or rule is known to the teacher, is reasonable in nature and is given by and with proper authority.

2. A teacher belonging to a voluntary organization whose membership consists in part of teachers would not be in violation of

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Section 168.116 if the association takes part in the management of a campaign for the election or defeat of a member of a board of education so long as the teacher member does not take part in the initiation or control of the campaign.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 353
8-26-69, Gralike