

April 2, 1970

ANSWER BY LETTER - BLACKMAR

OPINION LETTER NO. 101

Honorable John E. Parrish  
Prosecuting Attorney  
Camden County Court House  
Camdenton, Missouri 65020



Dear Mr. Parrish:

This is in response to your request for an opinion concerning action taken by a school board of a reorganized school district in your county in terminating the contract of a teacher.

In your opinion request you indicate that the school board minutes for December 11, 1969, show a motion made, seconded and carried, that the principal ". . . be relieved of [sic] principal and teacher but that he receive his pay until end of contract of the school year 1969-1970 . . . ." The minutes for that date also show that the superintendent of schools was authorized by the board to notify the principal ". . . of his dismissal as principal." We have also been given a copy of a letter by the superintendent of schools to the principal pursuant to the above mentioned board directive. The letter states in part:

"Thus, although your service to this school district is now completely terminated for this year and all school years to follow you will eventually receive all of your contracted salary for the 1969-70 school year."

The minutes of the school board meeting held December 16, 1969, show a motion made and seconded that the principal ". . . be re-instated and the letter he received concerning his dismissal retracted . . . ." The vote on that motion was tied three to three.

Section 168.121, RSMo Supp. 1967, states:

"The contract required in sections 168.101 and 168.111 shall be construed under the

Honorable John E. Parrish

general law of contracts, each party thereto being equally bound thereby. The board may not dismiss a teacher, except as provided in section 170.011, RSMo; but if the teacher's certificate is revoked the contract is thereby annulled. The faithful execution of the rules and regulations furnished by the board shall be considered as part of the contract if the rules and regulations furnished by the board shall be considered as part of the contract if the rules and regulations are furnished to the teacher by the board when the contract is made. If the teacher fails or refuses to comply with the terms of the contract or to execute the rules and regulations of the board, the board may refuse to pay the teacher, after due notice in writing is given by order of the board, until compliance therewith is rendered. If the schoolhouse is destroyed, the contract becomes void."

We have received no information that would indicate the teacher was dismissed pursuant to Section 170.011, RSMo Supp. 1967, or that the teacher was dismissed because the teacher's teaching certificate had been revoked. We further assume for the purposes of this opinion that the teacher was not dismissed for any cause permitted by Section 168.121, RSMo Supp. 1967.

In Wood v. Consolidated School District, 7 S.W.2d 1018 (K.C. Ct.App., 1928), the court in analyzing the statutory predecessor to Section 168.121 concluded that "a school board has no power or authority to dismiss a teacher, and any action of the board looking to that end would be ultra vires." Id. at 1020. The court relied on the following quotation from the decision in Oakes v. School District, 98 Mo.App. 163, 165, 71 S.W. 1060, 1061 (1903):

"By referring to section 9763, Revised Statutes, it will be seen that when a legally qualified teacher has been employed under a contract entered into with the board of directors of a school district to teach a school for a specified number of months, that it is not in the power of such board to dismiss him. If a board of directors dismiss a teacher it exceeds the limits of its statutable authority and its act in doing so binds no one. It is ultra vires. If directors by the employment of force prevent a teacher from complying with his contract, then such directors and not the district are liable to him for the damages resulting therefrom to him. Frazier v. School District, 24 Mo. App. 250; McCutchen v. Windsor, 55 Mo. 149; Arnold v. School District, 78 Mo. 226. As the discharge of the plaintiff

Honorable John E. Parrish

was nil and as the directors did not by the employment of force prevent him from continuing to teach the school, no reason appears why he did not continue to teach the entire term." Wood v. Consolidated School District, 7 S.W.2d 1018, 1020-1021 (K.C.Ct.App. 1928)

In Lynch v. Webb City School District, 373 S.W.2d 193, 197 (Spr. Ct.App. 1963) it was held that a school board had no implied authority to dismiss a teacher for any reason.

Therefore, we are of the opinion, based on the information accompanying this opinion request, that the dismissal on December 11, 1969, of the principal for the remainder of the school year was improper.

However, we believe that the action taken by the school board on December 11, 1969, can be interpreted as a determination not to renew the contract of the principal for the school year 1970-71 pursuant to Section 168.111(3), RSMo Supp. 1967. We base this conclusion on the entries in the minutes of the board meeting conducted on that date and on the letter sent to the principal by the superintendent of schools informing the principal of the action taken by the board. Section 168.111(3), RSMo Supp. 1967, states as follows:

"Each school board having one or more teachers under contract shall notify each teacher in writing concerning his reemployment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give notice constitutes reemployment on the same terms as those provided in the contract of the current fiscal year; and not later than the first day of May of the same year the board shall present to each teacher not so notified a regular contract the same as if the teacher had been regularly reemployed. . . ."

We are of the opinion that the letter from the superintendent to the principal dated December 12, 1969, sent pursuant to the specific authorization of the board, was sufficient notice to the teacher that his contract would not be renewed for the 1970-71 school year.

Since the teacher was given notice on December 12, 1969, that he would not be reemployed, the action taken by the school board at a special meeting on December 16, 1969, to reinstate the teacher and to retract the letter notifying him of his lack of reemployment was not action on the question of reemployment as that term is used in Section 168.111(4), RSMo Supp. 1967, and the provisions of that section dealing with the tie vote on the question of reemployment are inapplicable. Section 168.111(4) provides:

Honorable John E. Parrish

"Any motion regarding lack of reemployment of a teacher shall include only one person and a tie vote thereon constitutes reemployment. Disapproval of reemployment to be effective requires a majority vote of the whole board."

Because the motion before the board at the December 16, 1969, special meeting of the board was to reinstate the principal and to retract the letter of December 12, 1969, and did not deal with the question of reemployment under Section 168.111(3), the provisions of Section 162.301, RSMo Supp. 1967, would apply to the vote on that motion. Under Section 162.301, RSMo Supp. 1967:

". . . [w]hen there is an equal division of the whole board upon any question except the reemployment of a teacher, the county superintendent of schools, if requested by at least three members of the school board, shall cast the deciding vote upon the question, and for the determination of the question shall be considered a member of the board."

This office has been informed that the office of county superintendent of schools has been abolished in Camden County and that three members of the school board have petitioned the county superintendent of schools to break the deadlock. Section 179.220 RSMo Supp. 1967, provides the procedures to be followed in breaking the deadlock when the office of county superintendent of schools has been abolished. That section states:

"1. In all counties where the office of county superintendent of schools is abolished, the county court or county council may designate a temporary superintendent of schools who shall serve only for the period of time which will be required to arbitrate any controversy which may exist in or between any school districts within the county. No person shall receive any additional remuneration for time or expenses incurred in the performance of duties established or delegated in accordance with this section.

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"7. In any circumstances in which an appointment must be made, a meeting or election called or other function or duty performed, which would

Honorable John E. Parrish

have been performed by the county superintendent if the office had not been abolished, the county court or county council shall make the necessary arrangements within its discretion either on its order or by designating a school district superintendent to perform the duty, except that such assignment shall be limited to the time required to perform the duty designated by the county court or county council."

Under that statute, the county court must resolve the deadlock or designate a school district superintendent to perform this duty.

If the deadlock should be resolved in favor of retracting the letter of December 11, 1969, then the principal will no longer have notice that his contract is not to be renewed and Section 168.111, RSMo Supp. 1967, is once more applicable. Under that statute the school board will have to vote once again as to whether to reemploy the teacher for the next school year. If the board should again be equally split, the teacher would be reemployed for the next school year. If the board fails to act by April 15 one way or the other, the teacher is deemed by that statute to be reemployed for the next school year.

Very truly yours,

JOHN C. DANFORTH  
Attorney General