

SCHOOLS:
TEACHERS:

A teacher who has served only five successive years in the same school system has not achieved "permanent teacher" status pursuant to the definition of "permanent teacher" in Section 168.104(4), RSMo 1969, and therefore, such a teacher would not gain "permanent teacher" status upon being reemployed by that same school district for the second successive year.

NOTE

(A copy of Opinion No. 233, rendered October 24, 1972, to J. William Holliday, should be sent with this opinion)

OPINION NO. 371

October 2, 1970

Honorable James P. Mulvaney
State Representative
Twenty-ninth District
5717 Beldon
Jennings, Missouri 63136



Dear Representative Mulvaney:

This is in reply to your letter requesting an interpretation of Section 168.102(3) of Senate Committee Substitute for House Bill No. 120 of the Seventy-fifth General Assembly (which now appears as Section 168.104(4), RSMo 1969) of the Teacher Tenure Law. Your letter reads, in part, as follows:

"I am interested in obtaining an opinion on the following section of the Teacher Tenure Law:

"168.102(3) "Permanent Teacher", any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a full-time teacher by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an

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indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. . . ."

"If the teacher had served five years in a district prior to the tenure law, and if the teacher was separated prior to the tenure law going into effect, would the teacher be a permanent teacher if rehired by that same district for two consecutive years after the tenure law takes effect?"

The part of Section 168.104(4) which must be interpreted to respond to your question is as follows:

" . . . except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. . . ." (Emphasis supplied.)

To be accorded "permanent teacher" status upon returning to a school system for two years a teacher must have been a "permanent teacher" at the time he separated from the school system.

Pursuant to Section 168.104(4), RSMo 1969, a permanent teacher is a teacher who has taught in the same school district for five successive years and has been reemployed by that district for the sixth successive year. The critical point in time for achieving permanent teacher status is reemployment for the sixth successive year by the same school district. A teacher may have been employed for the sixth successive year either before or after the effective date of the Teacher Tenure Act (July 1, 1970) and thereby be a "permanent teacher" for the purposes of the "except" clause of Section 168.104(4). However, if such a permanent teacher has separated from the district either before or after the effective date of the Teacher Tenure Act, he does not achieve permanent teacher status immediately upon reemployment with the district. The teacher must serve one probationary year and, if reemployed for the succeeding year, regains permanent teacher status in that district.

Applying the foregoing conclusions to the factual situation set forth in your letter, we note that the teacher about

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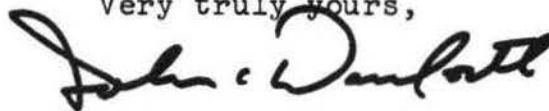
whom you inquire had served only five successive years in the district prior to separation. Under these facts, the teacher in question never qualified for permanent teacher status prior to his separation from the district because he was not reemployed for the sixth successive year. Therefore, this teacher would not have been a permanent teacher when he separated from the district and would not qualify under the "except" clause of Section 168.104(4) for permanent teacher status upon being reemployed by that same district for the second successive year.

CONCLUSION

It is the opinion of this office that a teacher who has served only five successive years in the same school system has not achieved "permanent teacher" status pursuant to the definition of "permanent teacher" in Section 168.104(4), RSMo 1969, and, therefore, such a teacher would not gain "permanent teacher" status upon being reemployed by that same school district for the second successive year.

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

Very truly yours,



JOHN C. DANFORTH
Attorney General