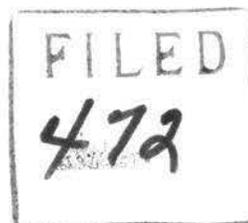


NOTE: Section 168.131, RSMo 1978, Answer by Letter (Bartlett)
was repealed by Senate Bill
No. 580, Laws 1982.

October 2, 1970

OPINION LETTER NO. 472

Honorable Robert Pentland
State Senator
First District
6429 Gravois
St. Louis, Missouri 63116



Dear Senator Pentland:

This letter is in response to your request for the ruling of this office on three questions pertaining to Section 168.131, RSMo 1969.

Section 168.131 states in full:

"No teacher shall be employed to teach in the schools of Missouri who has not furnished a certificate by a reputable physician, showing the teacher to be in good health and free from any contagious disease at the time the certificate is granted."

The questions that you ask are:

"1. Is Section 168.131 RSMo Cum. Supp. 1967 applicable to the School District comprised of the City of St. Louis?

"2. Is this section statutory authority for the requirement of an annual physical examination of each of the system's personnel?

"3. Employees who do not present a physical examination report by September 8, 1970, are subject to action determined applicable under state statutes. What statutes, if any, are applicable to this situation?"

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In answer to your first question, Section 168.131 provides that "no teacher shall be employed to teach in the schools of Missouri. . . ." The school district comprised of the City of St. Louis is a metropolitan school district as that term is defined in Section 160.011, RSMo 1969. Metropolitan school districts are not excluded from the coverage of Section 168.131. Therefore, we conclude that Section 168.131 applies to all teachers employed to teach in the schools of Missouri including those employed by the school district comprised of the City of St. Louis.

In answer to your second question, Section 168.131 applies only to "teachers" and not to all personnel. In this respect, we enclose Opinion No. 421, dated October 16, 1969, to Walsh, in which we concluded that Section 168.131 does not apply to non-certificated building employees of the Board of Education for the City of St. Louis.

Your second question, however, raises additional questions with respect to the two classes of teachers in a metropolitan school district -- probationary and permanent teachers. See Section 168.221, RSMo 1969.

A probationary teacher is appointed on a school year basis, Section 168.221, RSMo 1969, and must, under the provisions of Section 168.131, furnish a health certificate at the beginning of each year of employment. We note, in this respect, that the time of furnishing the required certificate is referable to the actual period of employment of the teacher and not the date of execution of the contract of employment. Tate v. School Dist. No. 11 of Gentry County, 23 S.W.2d 1013 (Mo., 1930).

The contract between a permanent teacher and a metropolitan school district is permanent and continues in effect subject only to removal for the causes set forth in Sections 168.221 and 168.281, RSMo 1969. A permanent teacher must, under Section 168.131, furnish a health certificate only at the commencement of the actual period of employment under the permanent contract and not each year thereafter.

However, another question indirectly raised by your second question is whether the school board of a metropolitan district may propound a regulation requiring all personnel including permanent teachers to submit an annual health certificate.

Section 171.011 authorizes the school board of each school district in the state to make needful rules and regulations. This section states in full:

"The school board of each school district
in the state may make all needful rules

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and regulations for the organization, grading and government in the school district. The rules shall take effect when a copy of the rules, duly signed by order of the board, is deposited with the district clerk. The district clerk shall transmit forthwith a copy of the rules to the teachers employed in the schools. The rules may be amended or repealed in like manner."

"The school board of each school district in the state . . ." is broad enough to include the board of a metropolitan school district. Furthermore, Sections 168.221 and 168.281, which pertain exclusively to metropolitan school districts, refer to "published regulations of the school district. . . ."

Reasonable requirements with respect to the health of school teachers serve to protect children as well as other teachers and would be a proper exercise of the regulatory powers granted to a school board by Section 171.011. Therefore, we believe that the school board of a metropolitan school district could require an annual physical examination of all teachers including permanent teachers.

In answer to your third question, all teachers in a metropolitan school district who are covered by the terms of Section 168.131 (all probationary teachers and those permanent teachers who are in the initial year of their permanent employment) should not be permitted to actually begin teaching until they have furnished the required health certificate. See definition of "employed" for purposes of Section 168.131 in the Tate case, supra. Furthermore, we assume non-compliance with a Missouri statute pertaining to the qualifications of a teacher to teach in the schools of Missouri would constitute a breach of a probationary teacher's contract. For a permanent teacher in the initial year of his permanent employment with a metropolitan district to not comply with a Missouri law "governing the public schools of the state" would constitute cause for removal under Sections 168.221 and 168.281.

In the event the school board has a published regulation requiring all teachers to submit a health certificate by a certain day, the penalty for non-compliance with that regulation may also be provided in the regulations. However, for permanent teachers, non-compliance with a published regulation of the school district

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would constitute cause for removal under Sections 168.221 and 168.281.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Opinion No. 421, Walsh, October 16, 1969