

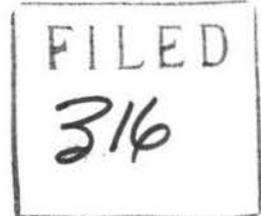
SCHOOL DISTRICTS:  
SCHOOLS:  
TEACHERS:  
CONTRACTS:

1969, even if the rehiring of school district's receiving a Board of Education.

A six-director school district in the State of Missouri must rehire a "permanent teacher" as that term is defined in the Teacher Tenure Act, Sections 168.102 to 168.130, RSMo this teacher will result in the lower classification from the State Board of Education.

OPINION NO. 316

October 13, 1971



Honorable Daniel M. Buescher  
Prosecuting Attorney  
Franklin County Court House  
Union, Missouri 63084

Dear Mr. Buescher:

This official opinion is issued in response to your request for a ruling on a question of whether a six-director school district in Missouri must rehire a "permanent teacher" if the rehiring of this teacher will result in the school district's receiving a lower classification from the State Board of Education.

From your opinion request we understand the facts underlying this request to be as follows: The teacher in question is a permanent teacher as that term is defined in the Teacher Tenure Act, Section 164.104(4). This teacher has been teaching in a school which has been annexed by another district. You advise that the State Department of Education states that the acquiring district may lose its AAA classification if this teacher, who does not have a degree, is hired.<sup>1</sup>

We understand that the question being asked by you relates solely to whether the district must rehire the permanent teacher even if it adversely effects its classification by the State Department of Education. Because it is implicitly assumed in your request, we also are assuming that the acquiring district must hire a permanent teacher employed by the acquired district, unless the classification problem prevents it. On this point generally, see Opinion No. 186, dated July 9, 1971, a copy of which is enclosed.

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Footnote

1. We are advised by the State Department of Education that its policy through the years has been not to lower a classification because a district which has recently increased its size through merger or annexation is required to honor the contracts of teachers in the old district.

Honorable Daniel M. Buescher

Under the Missouri statutes, we find no relationship between classification of school districts carried out by the State Department of Education pursuant to general authority granted to it by the legislature in Section 161.122, RSMo 1969, and the provisions of the Teacher Tenure Act, Sections 168.102 to 168.130, RSMo 1969.

Section 168.106, RSMo 1969, provides as follows:

"Indefinite contract, what affects. --  
The contract between a school district and a permanent teacher shall be known as an indefinite contract and shall continue in effect for an indefinite period, subject only to:

"(1) Compulsory or optional retirement when the teacher reaches the age of retirement provided by law, or regulation established by the local board of education;

"(2) Modification by a succeeding indefinite contract or contracts in the manner hereinafter provided;

"(3) The death of the teacher;

"(4) Resignation of the teacher with the written consent of the school board;

"(5) Termination by the board of education after a hearing as herinafter provided; and

"(6) The revocation of the teacher's certificate."

This section contains the only exceptions to the indefiniteness of a permanent teacher's contract. See Opinion No. 268, dated October 6, 1971, a copy of which is enclosed. None of these authorized exceptions permit a school district to make a contract with a permanent teacher subject to changes in the boundaries of the school district or to classification requirements propounded by the State Department of Education.<sup>2</sup>

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Footnote

2. Note Section 168.124, RSMo 1969, pertaining to leaves of absence in the event of "school district reorganization".

Honorable Daniel M. Buescher

Section 168.114, RSMo 1969, sets forth the only grounds upon which a school board may terminate a permanent teacher's contract:

"Board may terminate, grounds for. --

1. 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:

"(1) Physical or mental condition unfitting him to instruct or associate with children;

"(2) Immoral conduct;

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

"(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;

"(5) Excessive or unreasonable absence from performance of duties; or

"(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board."

No provision in this section is made for terminating the indefinite contract of a permanent teacher because the teacher does not possess qualifications required by the State Department of Education in classifying school districts.

We find no intent whatsoever in the Teacher Tenure Act to make a permanent teacher's contract subject to the classification standards of the State Board of Education.

Honorable Daniel M. Buescher

CONCLUSION

Therefore, it is the conclusion of this office that a six-director school district in the State of Missouri must rehire a "permanent teacher" as that term is defined in the Teacher Tenure Act, Sections 168.102 to 168.130, RSMo 1969, even if the rehiring of this teacher will result in the school district's receiving a lower classification from the State Board of Education.

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

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General

Enclosure:

Opinion No. 186, DeCoster, July 9, 1971  
Opinion No. 268, Baker, October 6, 1971