

SCHOOLS: A teacher is a permanent teacher, under
TEACHERS: the provisions of Section 168.104(5)
TEACHER TENURE: of the Teacher Tenure Act (Sections
168.102 to 168.130, RSMo 1969), if he
has been employed as a full-time teacher in the same school
district for four successive years and reemployed for a fifth
successive year after previously having been employed two years
or more by another school district.

October 24, 1972

OPINION NO. 233

Honorable J. William Holliday
Clark County Prosecuting Attorney
220 North Morgan
Kahoka, Missouri 63445

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233

Dear Mr. Holliday:

This official opinion is issued in response to your request for a ruling on whether a teacher is a permanent teacher, under the provisions of the Teacher Tenure Act (Sections 168.102 to 168.130, RSMo 1969), if he has been employed as a full-time teacher in the same school district for five successive years after having been employed for four years by other Missouri school districts.

The following facts that you gave us are used as the basis for this opinion: The board of education of a six-director school district notified one of its teachers before April 15, 1972, that he would not be retained for the 1972-1973 school year. The superintendent of the school district told the high school teacher that he was not a permanent teacher and that he would not be offered a contract for the forthcoming school year because the school district could no longer afford to employ a guidance counselor at his salary level. The teacher was employed by this school district for five successive years (the school years of 1967-1968 through 1971-1972). Prior to 1967, he was employed for two years by each of two other Missouri school districts.

A probationary teacher is defined in the Teacher Tenure Act (Sections 168.102 to 168.130, RSMo 1969) as follows:

''Probationary teacher,' any teacher as herein defined who has been employed full time in the same school district for five successive years or less. . . . In the case of any probationary teacher who has

Dr. Arthur L. Mallory

been employed in any other school system as a full-time teacher for two or more years, the board of education shall waive one year of his probationary period."
Section 168.104(5), RSMo 1969.
(Emphasis added.)

A permanent teacher, under the Teacher Tenure Act, is defined as follows:

"'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; . . ."
Section 168.104(4), RSMo 1969. (Emphasis added.)

In Opinion No. 371, Mulvaney, October 2, 1970, we held that a teacher who has served only five successive years in the same school district had not achieved "permanent teacher" status, as defined in Section 168.104(4), RSMo 1969. As we indicated in that opinion, "the critical point in time for achieving permanent teacher status is reemployment for the sixth successive year by the same school district." (Emphasis added.)

The facts of the instant situation present a significant exception to this general requirement that a teacher must serve a probationary period of five successive years and be reemployed for the sixth to achieve permanent teacher status. The board of education, under Section 168.104(5), RSMo 1969, must waive one year of a teacher's probationary period if he has been employed in any other school system as a full-time teacher for two or more years. The teacher in question, after having taught two years in another school system, had been employed in this school district for four successive years (school years 1967-1968 through 1970-1971) prior to entering into a contract for the fifth successive school year (1971-1972). Upon reemployment for the 1971-1972 school year, he became a permanent teacher, as defined by Sections 168.104(4) and 168.104(5), RSMo 1969.

CONCLUSION

Therefore, it is the conclusion of this office that a teacher is a permanent teacher, under the provisions of Section 168.104(5) of the Teacher Tenure Act (Sections 168.102 to 168.130, RSMo 1969), if he has been employed as a full-time teacher in the

Dr. Arthur L. Mallory

same school district for four successive years and reemployed for a fifth successive year after previously having been employed two years or more by another school district.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General

Enclosure:

Opinion No. 371, Mulvaney, 10-2-70