

SCHOOLS:
TEACHERS:
PUBLIC SCHOOL RETIREMENT SYSTEM:

The board of education of a school district has authority under the provisions of subsection 1 of Section 168.106,

RSMo 1969 and Section 171.011, RSMo 1969, to adopt a regulation requiring a permanent teacher to retire at sixty-five years of age.

OPINION NO. 23

March 13, 1973

Honorable Mark A. Youngdahl
State Representative, District 9
Room 412 State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Youngdahl:

This is to acknowledge receipt of your request for an official opinion of this office which reads as follows:

"V.A.M.S. §169.060(1) provides as follows:

'A member who is 70 years of age or more one year after the date the retirement system becomes operative shall be retired as of that date and shall be entitled to benefits, as provided in §§169.010 to 169.130, on the basis of his creditable service. Thereafter, a member shall be retired automatically on the first day of July next following the school year in which he reaches the age of 70 years, and shall thereupon be entitled to benefits, as provided in §§169.010 to 169.130, on the basis of his creditable service, if his creditable service is 5 years or more.'

"The question which is being presented for an official opinion is as follows: (a) May the School District of St. Joseph, Missouri, an urban school district, provide under the rules and regulations of the Board of Education that a teacher must mandatorily retire at the age of 65 years in light of the above statute?"

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You further indicate as follows:

"Through the years, the Board of Education of the School District of St. Joseph, Missouri, an urban school district, has formulated rules and regulations which are binding upon the teachers of said district and which are made a part of the contract between the teacher and the School District of St. Joseph, Missouri. The Board of Education of the School District of St. Joseph, Missouri, is desiring to formulate a rule and regulation making retirement of teachers mandatory upon reaching the age of 65 years. The question has arisen as to whether or not V.A.M.S. §169.060 impliedly gives a teacher a right to teach until reaching the age of 70 years before facing mandatory retirement, assuming said teacher meets all other qualifications as called for by the statutes. In other words does V.A.M.S. §169.060 give a teacher a qualified right to teach until he reaches the age of 70, which right cannot be changed by mere rule and regulation by the Board of Education."

In rendering this opinion, the assumption is made that you are referring to a permanent teacher as that term is defined in subsection 4 of Section 164.104, RSMo 1969, of the Teacher Tenure Act. In addition, the assumption is made that the St. Joseph School District is a school district included within the provisions of Section 169.020, RSMo 1969, relating to the Public School Retirement System of Missouri.

Generally, the Public School Retirement System of Missouri is provided for by Sections 169.010 through 169.130, RSMo 1969. In this regard Section 169.050, RSMo 1969, provides in part as follows:

". . . all employees as herein defined of districts included in the retirement system thereby created shall be members of the system by virtue of their employment."

(Emphasis ours)

"Employee" is defined by subsection 5 of Section 169.010, RSMo 1969, as synonymous with the term "teacher". Therefore, teachers are members of the retirement system as a result of their employment. Subsection 1 of Section 169.060 provides for

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compulsory retirement of a member as of July 1 next following the attainment of age seventy.

With respect to the authority of school districts to make rules and regulations, Section 171.011, RSMo 1969, provides as follows:

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

Generally the power of a board of education of a school district to make rules and regulations is subject to the limitation that no such rule or regulation may conflict with or contravene any statute or constitution, and that a board may not restrict or diminish or enlarge its own powers or jurisdiction. 78 C.J.S. Schools and School Districts, Section 121, page 908. It was also pointed out in Magenheim v. Board of Education of the School District of Riverview Gardens, 347 S.W.2d 409 (St.L.Ct.App. 1961), that the legislature has delegated to school boards the power to exercise their judgment and discretion in matters affecting school management, including the employment of teachers, and a court will not interfere unless the board exercises such power in an unreasonable, arbitrary, capricious or unlawful manner.

In connection with the above, Section 168.106, RSMo 1969, of the Teacher Tenure Act, provides in part as follows:

"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;"
(Emphasis ours)

Thus, under the above statute, a permanent teacher's contract continues indefinitely except for certain exceptions, one of which

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being compulsory or optional retirement provided by law, or regulation established by the local board of education. Therefore, it is our view that under the provisions of subsection 1 of Section 168.106 and Section 171.011, a board of education of a school district would have authority to adopt a regulation requiring a permanent teacher to retire at sixty-five years of age.

CONCLUSION

It is the opinion of this office that the board of education of a school district has authority under the provisions of subsection 1 of Section 168.106, RSMo 1969 and Section 171.011, RSMo 1969, to adopt a regulation requiring a permanent teacher to retire at sixty-five years of age.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General