TEACHER EMPLOYMENT: In a situation in which prior to April 15 of any school year a teacher notifies his employing school board that he will not contract with the board for the coming year, the board is under no obligation to acknowledge or to act upon receipt of this communication and the passing of the date of April 15 without the board notifying the teacher that he will not be re-employed does not constitute re-employment of the teacher by the board.

May 26, 1959

FILED
10

Honorable Earl Bollinger
Representative, Madison County
House of Representatives
Capitol Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

> "I would appreciate an opinion on the following question:
>
> "If a school teacher submits to the Board of Education a letter of resignation for the coming school year before April 15, and the Board of Education does not notify the teacher of his dismissal on or before April 15, can the teacher expect a contract under law 163.090?"

Section 163.090, RSMo 1949, to which you refer, reads:

> "Except as may be otherwise provided by law, the provisions of section 163.080 relative to the time and manner of employing teachers shall apply only to their original employment; and their re-employment shall be subject to the regulations herein set forth. It shall be the duty of each and every board having one or more teachers under contract to notify each and every such teacher in writing concerning his or her re-employment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give such notice shall constitute re-employment on the same terms as those provided in the contract

> of the current fiscal year; and not later than the first day of May of the same year the board shall present to each such teacher not so notified a regular contract the same as if the teacher had been regularly re-employed. Any teacher who shall have been informed of re-election by written notice or tender of a contract shall within fifteen days thereafter present to the employing board a written acceptance or rejection of the employment tendered; and failure of a teacher to present such acceptance within such time shall constitute a rejection of the board's offer. Any contract given a teacher may be terminated at any time by mutual consent of the teacher and the board. When the board of directors of any school district deems it advisable to close the school and send the pupils elsewhere rather than employ a teacher, said board of directors shall have power to terminate any contract continued under the provisions of this section by giving the teacher written notice of such termination not later than the first day of July next following the teacher's re-employment."

A reading of the above section would appear to indicate two things. One is that the section contemplates a situation in which neither the employed teacher nor the school board makes any communication with the other regarding employment of the teacher for the coming school year. The section holds that, when there is no such communication and April 15 passes, the board's permitting that date to pass without communication with the teacher, constitutes a proffer by the board of a contract to the teacher for the coming year on the same terms as the contract under which the teacher was employed. The section also imposes upon a teacher who shall have been informed of re-election by written notice or tender of a contract the duty to notify the school board, within fifteen days after such notice or tender, of his acceptance or rejection.

The second meaning which Section 163.090 carries, and we believe a very important one in the instant situation, is that the contract of employment is not a continuing one but that each contract is a new contract. In the case of Bergmann v. Board of Education, 230 S.W.2d 714, at l.c. 720, the Missouri Supreme Court, in referring to Section 163.090, stated:

> "While the latter section provides for re-employment under specified circumstances, it expressly provides for the execution of

> a new, specific and distinct annual contract for each school year for which the teacher is employed.* * *"

In the case of State v. School Dist. No. 7, 302 S.W.2d 497, at l.c. 499, the Springfield Court of Appeals stated:

> "Section 163.090, on which relator relies, required the board to determine, on or before April 15, 1956, whether he would be re-employed for the succeeding school year beginning July 1, 1956 [Bergmann v. Board of Education of Normandy Consolidated School Dist., 360 Mo. 644, 654, 230 S.W.2d 714, 720], and the agreed statement of facts indisputably establishes that the board undertook to make such determination on April 6, 1956. The motion that 'we offer Gale Joslin a contract for the 1956-57 school year' appropriately recognized that Section 163.090 did not establish '"some sort of tenure for teachers"' [Bergmann case, supra, 230 S.W.2d loc. cit. 720[and did not change the legal effect of the written contract under which relator was employed for the year ending June 30, 1956 [Dye v. School Dist. No. 32 of Pulaski County, 355 Mo. 231, 240, 195 S.W.2d 874, 879], but that, if relator was to be re-employed, the statute contemplated 'the execution of a new, specific and distinct annual contract,' for the succeeding year beginning July 1, 1956.* * *"

We believe that this fact, to wit, that each yearly contract is a new contract, is significant here because we have a situation where the teacher, prior to April 15, has notified the school board that he will not make a contract with it to teach the following year. We do not believe that this notice by the teacher that he will not enter into a contract with the board, which contract would be a new contract, requires the board to acknowledge such notice by the teacher. As indicated by the two above cases cited, the teacher is not, by notifying the board that he will not contract for the coming year, "resigning," as he stated, but is simply notifying the board that he will not contract with it.

As further supporting this view and as introducing a new element which we believe to be very important, we note the case of Dye v. School Dist. No. 32, 195 S.W.2d 874. At l.c. 879, the Missouri Supreme Court en banc stated:

> "Respondents' view is that the provision of Sec. 10342a extending a teacher's contract for another year in the circumstances stated therein operates retrospectively and changes the contract, itself, by imposing a new duty

> and making its term two years instead of one. We do not think so. A retrospective law is one that relates back to, and gives to a previous transaction, some different legal effect from that which it had under the law when it occurred. A statute is not retrospective merely because it relates to antecedent transactions, where it does not change their legal effect. Here, the original contract itself was not affected, and the appellant is not complaining. The new law merely imposed a statutory duty on both parties to give notice of its continuance or not. The public interest was involved. The respondents had almost five months in which to give notice after the statute became operative. It is necessary that such arrangements be made in advance. The State, with respect to its school boards, had the right to waive or impair its own vested rights, if any." (Emphasis ours.)

From the underlined portion of the above, it will be noted that the court holds that this law (Section 163.090) imposes a duty on both parties, that is the teacher and the board, to give notice to the other. It is true that the underlined portion of the above, with reference to the contract, used the word "continuance," but we believe that the word is used in the light of the construction put upon the contract by the other portion of the quotation from the Dye case and in the light of the cases of State v. School Dist. No. 7 and Bergmann v. Board of Education, which holds that each year's contract is a new and separate contract.

We note also that the Bergmann case (l.c. 720) quotes the Dye case with approval and states:

> "* * * It was there said 'the new law merely imposed a statutory duty on both parties to give notice of its (the contract's) continuance or not.'"

In view of the above and for the reasons given, we are of the opinion that when, prior to April 15, a teacher informs the employing board that he will not contract with the board for the coming year that there is no duty upon the board to acknowledge or to act upon the receipt of such communication and that the passage of the date of April 15 without notice by the board to the teacher that the teacher will not be employed does not constitute re-employment under Section 163.090.

In reaching the above conclusion, we are not unaware of the case of Common School Dist. No. 27 v. Brinkman, 233 S.W.2d 768. The fact situation in that case had some similarity to that in the instant case but is, we believe, clearly distinguishable. In the Brinkman case, the teacher in question was not notified by the board prior to April 15 that he would not be employed for the coming year. Subsequent to the passing of April 15, he notified the board that he would accept re-employment and on the opening day of school appeared at the school to discharge his duties. The St. Louis Court of Appeals held that the board, by failure to notify prior to April 15, had re-employed the teacher on the basis of what is now Section 163.090, supra. However, the Brinkman case differed significantly from the instant case. In the Brinkman case, there was no showing whatever that prior to April 15 the defendant informed the board as a whole or any member singly that he would not contract with the board for employment for the coming year. At l.c. 770 of the opinion, it is stated that testimony was introduced to the effect that the defendant "had made statements that he would not accept the position as teacher of the school for the next succeeding year on the same terms provided for in his contract" for the past year. It is not indicated to whom he made such statements. At l.c. 771, the opinion states that defendant told the president of the board, prior to April 15, that he wanted an increase in salary. There was no indication that he stated that he would not teach unless he received the increase. At l.c. 772, George Koelling, a member of the board of directors, testified that prior to April 15 he had a conversation with the teacher in regard to teaching the coming year and that defendant stated that he would "like to have the school but he could not teach for the old price, that he would have to have the budget price which was $200.00."

We do not believe that any of the above can be construed as being notice to the board by the teacher that he would not enter into a contract of employment with the board for the coming year. In the instant case, the teacher very clearly has done so. His use of the word "resign" in his letter to the board is not truly descriptive of his action as we have pointed out above. He could not "resign" from an employment which he did not have. His meaning, as we have indicated above, clearly was that he would not contract with the board with regard to teaching the school another year.

In view of the above, as we have said, we believe that the Brinkman case is clearly distinguishable from the instant case.

CONCLUSION

It is the opinion of this department that in a situation in which, prior to April 15 of any school year, a teacher notifies his

employing school board that he will not contract with the board for the coming year, that the board is under no obligation to acknowledge or to act upon receipt of this communication and that the passing of the date of April 15 without the board's notifying the teacher that he will not be re-employed does not constitute re-employment of the teacher by the board.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lw:lvd