

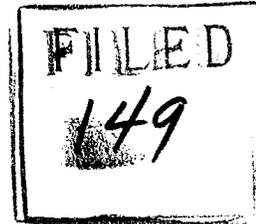
SCHOOLS:
CONTRACTS:
SCHOOL CONTRACTS:

1. The superintendent's contract was automatically renewed for the 1969-1970 school year pursuant to Section 168.111, RSMo 1967 Supp. 2. The resolution of the school board in

April 1969 to extend the superintendent's contract for the 1970-1971 school year did not result in a valid employment contract for the school year 1970-1971. 3. The School Board may refuse to renew the superintendent's contract for the school year 1970-1971 in the manner provided by Section 168.111, RSMo 1967 Supp. 4. The extent to which the school board can direct control and specify the duties of the superintendent depends on the terms of the superintendent's contract and on the provisions of Section 168.121, RSMo 1967 Supp. pertaining to the construction of such contracts.

OPINION NO. 149

April 9, 1970



Honorable Don W. Kennedy
State Representative
One Hundred Twelfth District
127 West Austin Boulevard
Nevada, Missouri 64772

Dear Representative Kennedy:

This opinion is in response to your request for an official ruling on six questions pertaining to the powers of a six director district to contract with a superintendent.

The facts set forth in the attachment to your opinion request are as follows:

"Nevada R-5 School District is a six director school district. The Superintendent of Schools has served for 22 years. He is employed on a 12 month basis for a school year commencing on July 1st and running to the following June 30th.

"The school board in the past has, by resolutions from time to time, extended the superintendent's contract of em-

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ployment one to two years beyond the current school year in order to protect him from a hostile board and to give him security. His salary has been set each spring, at the same time as the rest of the school administrators, for the coming year.

"For the last few years the superintendent has presented the names of teachers to be employed to the Board for approval and after approval has handled the preparation of contracts to be tendered the teachers on or before May 1st, covering their re-employment for the coming year, and has obtained the signatures of the President of the Board and of the teacher. It has been the practice of the board to set a salary schedule for all teachers sometime prior to the issuing of contracts, usually based on the prior year's salaries and then to grant an increase to the teachers after their contracts are signed, conditioned on necessary state aid being available. The teachers also have been receiving supplemental compensation based on their additional assignments beyond a regular teaching load. Usually the administrators salaries are set at a later meeting of the board after the regular teachers salaries have been set. In recent years the Superintendent apparently has not prepared a written contract for himself nor obtained the signature of the President of the Board nor signed a contract himself.

"At the meeting of the school board after the annual school election to certify the election results and to issue certificates of election to the two new members of the board, held on April 1, 1969, the school board, by formal resolution, extended the superintendent's contract of employment for an additional school year beyond what had previously been authorized, i.e., from July 1, 1970 to June 30, 1971. No salary was set at

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this time. No written contract was ever tendered or signed.

"In the month of April, 1969, the administrators salary schedule was finally approved and authorized a salary of \$17,000.00 for the superintendent for a 12 month year running from July 1, 1969 to June 30, 1970.

"In October, 1969, the school board gave the superintendent a year's leave of absence with full pay. Thereafter the superintendent tendered his resignation, conditioned on being paid his full salary through June 30, 1971. No action was taken by the board and in January, 1970, the superintendent advised the board his resignation was withdrawn."

Based on the foregoing facts you have asked the opinion of this office on the following questions:

"1. Does the superintendent have a contract of any kind or was he re-employed for the 1969-1970 school year because of lack of notification under R.S.M. Sec. 168.111?

"2. If the superintendent has a contract, is it for the school year 1969-1970 or for more than one year, and at what salary?

"3. If the superintendent has a contract for only the school year 1969-1970, then can the Board terminate his employment at the end of such school year in the manner provided by R.S.M. Sec. 168.111?

"4. If the superintendent has a contract for more than one year, can the school board change his salary to whatever amount it sees fit for the school year 1970-1971?

"5. To what extent can the board direct, control, and specify the duties of the superintendent?

"6. If the superintendent has a contract beyond the school year 1969-1970, can the

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contract be terminated by the mutual consent of the superintendent and the board, and would the board be authorized to pay to the superintendent in lump sum settlement an amount equal to his salary for the balance of the remaining years of his alleged employment, i.e., until June 30, 1971?"

I.

Renewal of the superintendent's contract is governed by the provisions of Section 168.111, RSMo 1967 Supp. Although Section 168.111 refers by its terms to teachers, "teacher" is defined in the first paragraph of Section 168.111 as follows:

"1. The word 'teacher' for the purpose of this section means any person employed in the public schools of this state in a position for which certification is required."

Pursuant to the classification standards of the State Board of Education, a superintendent must hold a superintendent's certificate. Therefore, Section 168.111 would govern a superintendent's reemployment. See the School Administrators Handbook (State Board of Education 1969) pp. 122-123.

Furthermore, "teacher" as used in Section 168.101, RSMo 1967 Supp., has been interpreted as including superintendents. See Lemasters v. Willman, 281 S.W.2d 580 (St.L. Ct.Apps., 1955). Although Section 168.101 pertains only to the original employment of a superintendent (Section 168.111, paragraph 2), there is no indication that superintendents should be included in the definition of "teacher" in one section but not in the other.

Having determined that Section 168.111 governs the reemployment of superintendents, the pertinent provisions of that section are as follows:

"3. Each school board having one or more teachers under contract shall notify each teacher in writing concerning his reemployment 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 the notice constitutes reemployment on the same terms as those provided in the contract of the cur-

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rent fiscal year; and not later than the first day of May of the same year the board shall present to each teacher not so notified a regular contract the same as if the teacher had been regularly reemployed.

* * *

"5. Any teacher who is informed of reelection 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 the acceptance within such time constitutes a rejection of the board's offer."

Assuming that the superintendent had a valid contract for the 1968-1969 school year and assuming that the board had not already entered into a written contract with the superintendent for the 1969-1970 school year prior to its meeting in early April, 1969, the failure of the board prior to April 15, 1969 to notify the superintendent that he had or had not been reemployed would have resulted in his automatic reemployment on the same terms as the 1968-1969 contract. See paragraph 3 of Section 168.111. Automatic reemployment is only for one year, i.e., the school year beginning on the following July 1. Magenheim v. Board of Education, 347 S.W.2d 409 (St.L. Ct.Apps., 1961) and Williams v. School Dist. of Springfield R-12, 447 S.W.2d 256, 260 (Mo. Div. 2, 1969).

II.

At the school board meeting on April 1, 1969, the board passed a resolution purporting to extend the superintendent's contract for the school year 1970-1971. In our view a valid contract for the school year 1970-1971 did not result from the passage of this resolution. We have not been advised that the board's action was communicated in writing to the superintendent as required by paragraph 3, Section 168.111. Therefore, although the board may have passed a resolution, a written offer was never delivered to the superintendent. Even if such a written offer was delivered to the superintendent, we have not been advised that the superintendent presented within 15 days thereafter a written acceptance of the offer. Not having done so "constitutes rejection of the board's offer." Paragraph 5, Section 168.111.

In view of the fact that we hold there was no valid contract for the 1970-1971 school year, we deem it unnecessary to decide whether the board had the authority to enter into such a contract under these circumstances.

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III.

Having determined above that the superintendent has a contract only for the school year 1969-1970, it follows that the school board can decide not to reemploy him for the school year beginning on July 1, 1970, if it acts prior to April 15, 1970 pursuant to Section 168.111.

IV.

Having determined that the superintendent has a contract for only the school year 1969-1970, we do not believe it necessary to answer this question.

V.

The relationship between the superintendent and the board is governed primarily by the terms of the contract entered into between the parties. In Section 168.121, RSMo 1967 Supp. the following appears:

" . . . The faithful execution of the rules and regulations furnished by the board shall be considered as part of the contract if the rules and regulations are furnished to the teacher by the board when the contract is made. If the teacher fails or refuses to comply with the terms of the contract or to execute the rules and regulations of the board, the board may refuse to pay the teacher, after due notice in writing is given by order of the board, until compliance therewith is rendered. . . ."

VI.

This is not being answered because we have previously determined the superintendent does not have a contract beyond the school year 1969-1970 under the facts as stated in your opinion request.

CONCLUSION

Therefore, it is the opinion of this office that:

1. Under the facts stated in your opinion request, the superintendent's contract was automatically renewed for the 1969-1970 school year pursuant to Section 168.111, RSMo 1967 Supp.

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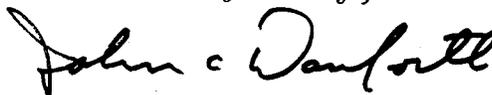
2. Under the facts furnished in the opinion request, the resolution of the school board in April 1969 to extend the superintendent's contract for the 1970-1971 school year did not result in a valid employment contract for the school year 1970-1971.

3. The School Board may refuse to renew the superintendent's contract for the school year 1970-1971 in the manner provided by Section 168.111, RSMo 1967 Supp.

4. The extent to which the school board can direct control and specify the duties of the superintendent depends on the terms of the superintendent's contract and on the provisions of Section 168.121 RSMo 1967 Supp. pertaining to the construction of such contracts.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General