

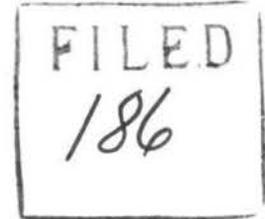
SCHOOLS:  
TEACHERS:

When two or more school districts consolidate and form a new school district, the new consolidated dis-

trict should give the teachers under contract with each component district credit, in accordance with the Teacher Tenure Act, particularly Section 168.104, RSMo 1969, for all years of employment in a component district.

OPINION NO. 186

July 9, 1971



Honorable Richard DeCoster  
Representative, District 94  
Canton, Missouri 63435

Dear Representative DeCoster:

This is in reply to your request for an official opinion from this office concerning the following question:

". . . Does time served as a teacher employed by a school district count toward tenure when that school district is incorporated into a new, larger school district and the teacher is then employed by the new school district? That is does time served in the old district count toward tenure in the new district. Or, must the teacher be employed as a teacher for five successive years in the new district before attaining tenure? (168.104 R.S.Mo 1969)

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". . . In 1967 the voters of Lewis County School districts R-I, R-II, R-IV and R-VI elected to consolidate into one new Lewis County C-I School District. The school board of the new district (C-I) employed many of the teachers who had taught in the old districts. Some of these teachers remained in the same buildings and taught the same subjects or grades. Others were transferred to different units in the new system. In the fall of 1970 a new facility known as Highland High School was put into service to accomodate [sic] the senior high school pupils of the C-I district. In [sic] understand some of the teachers in question were then assigned to the new facility.

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"The question is does continuous time served as a teacher-employee of R-I, R-II, R-IV or R-VI count toward the 5 year tenure required as an employee of the C-I where there was no interruption of employment between the two systems?"

Section 168.104(4), RSMo 1969, describes the manner whereby a teacher obtains tenure and reads, in part, as follows:

"'Permanent teacher', any teacher who has been employed 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; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract . . ."

Thus, a teacher obtains "permanent teacher" status, or tenure, upon being reemployed by the same school district for a sixth successive year. Upon such reemployment the school district must enter into an "indefinite contract" with the teacher. This contract, providing for annual reemployment, continues in force from year to year without renewal and may be terminated only for certain enumerated statutory reasons. Sections 168.106 to 168.114, RSMo 1969. A teacher who has been employed by the same school district for less than six successive years is known as a "probationary teacher." Section 168.104(5), RSMo 1969. The probationary teacher is only entitled to an annual contract of employment. Section 168.126, RSMo 1969. The school board may, each year, elect whether or not to tender a new contract for the ensuing year.

Section 168.122, RSMo 1969, authorizes a school board to place a probationary teacher on a temporary part-time teaching schedule, and provides that such part-time employment shall not be counted towards tenure. Section 168.126(2), RSMo 1969, authorizes a school board to terminate a probationary teacher's contract for full-time employment due to unsatisfactory performance. There is, however, no provision in the Teacher Tenure Act, Sections 168.102 through 168.130, RSMo 1969, authorizing a school board to withhold credit towards tenure for one or more years of successive full-time employment by a probationary teacher. If a school board is not satisfied with a probationary teacher's performance, it may either elect to terminate his contract or not renew his contract for the next school year in accordance with Section 168.126(2). But if

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the school board continues to reemploy the probationary teacher, it must allow credit for prior successive yearly employment and execute an indefinite contract with the teacher upon reemployment for the sixth successive year. The length of successive yearly service, therefore, constitutes an important part of the probationary teacher's contract rights. Correspondingly, this legal right to be accorded tenure credit is an obligation binding upon the school district.

In the present factual situation the Lewis County C-I School District, a consolidated six-director school district, has, from its inception, reemployed teachers who were formerly employed by one of the four individual districts which now comprise the larger consolidated district. The legal effect of consolidation was considered by the Missouri Supreme Court in Lewis County C-I School District v. Normile, 431 S.W.2d 118 (Mo. banc 1968). The voters of each of the four component school districts had, shortly before adoption of the plan for consolidation, approved tax rates for their respective districts in the following amounts: R-I, \$2.50; R-II, \$2.55; R-IV, \$3.20; and R-VI, \$3.25. These taxes were assessed and extended upon the general tax books in the names of each of the respective districts. The plan to consolidate the four school districts was subsequently approved on May 26, 1967; however, no election was called in the newly formed consolidated district to authorize a tax levy in excess of the constitutional limitation. A suit was brought by a group of taxpayers of the consolidated district to enjoin the collection of taxes at the rates assessed, or at any rate exceeding that which can be levied without voter approval. The Supreme Court of Missouri held that the consolidated school district could collect the taxes levied in the four predecessor districts, stating:

" . . . It is the general statutory plan that when a consolidation of school districts is approved the component districts shall immediately cease to exist and the newly formed district shall be entitled to receive all of the assets of said districts, and shall be liable for all of the debts and legal obligations of said former districts. See § 162.251; State ex rel. Consolidated School District No. 8 of Pemiscot County v. Smith, 343 Mo. 288, 121 S.W.2d 160 [5]; State ex rel. Smith v. Gardner, Mo.App., 204 S.W.2d 319 [1]. We think the taxes approved and levied in each of the component districts immediately became a property right or intangible asset of each district. Upon the approval of the plan of reorganization those assets became the property

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of the new district and it was entitled to receive the taxes collected. . . ." Id. at 121.

Along with the assets and benefits a consolidated school district must accept the obligations and burdens as well. Section 162.251, RSMo 1969, provides that a plan to form a consolidated six-director school district shall become effective on July 1 following the election and that:

". . . The new district shall faithfully perform all existing contracts and assume all legal obligations of the component districts."

Thus, on July 1, 1967, the Lewis County C-I School District came into legal existence and Lewis County School Districts R-I, R-II, R-IV and R-VI ceased to exist. The new consolidated six-director school district assumed all the legal obligations of the component district and was required to faithfully perform all its existing contracts. An indefinite contract between a permanent teacher and one of the component districts constitutes such an obligation that became binding upon the consolidated district. Faithful performance of that contract required the consolidated district to provide the permanent teacher with the benefits of an indefinite contract in the new district. Thus, a teacher who had been reemployed by one of the predecessor districts for a sixth successive year before consolidation would automatically obtain tenure with the consolidated district.

A probationary teacher's annual contract of employment must be executed in April of each year. Section 168.126(3), RSMo 1969. As stated above, the Lewis County consolidated school district came into legal existence on July 1, 1967. Therefore, annual contracts of employment which were executed in April, 1967, between probationary teachers and the component school districts also became binding upon the consolidated district. Faithful performance of these contracts required that the consolidated district provide the probationary teacher with employment in the new district for the ensuing school year, and that it grant credit toward tenure with the new district for that year's employment.

Part of the probationary teacher's contract rights is the right to receive credit toward tenure for previous successive yearly employment. Upon consolidation the new district assumed the obligation of its component districts to give probationary teachers such credit. Thus, faithful performance of probationary teachers' contracts existing at the time consolidation took effect also required that the new district allow credit towards tenure with the consolidated district not only for the current year but for prior years of service with the component districts as well. After the

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consolidated district had performed annual contracts of employment existing at the time consolidation became effective, it was empowered to elect whether or not to reemploy probationary teachers for the next school year. For those probationary teachers whom it did reemploy, the district was required to grant credit towards tenure for prior successive yearly employment with the consolidated district and with one of the component districts.

CONCLUSION

It is, therefore, the opinion of this office that when two or more school districts consolidate and form a new school district, the new consolidated district should give the teachers under contract with each component district credit, in accordance with the Teacher Tenure Act, particularly Section 168.104, RSMo 1969, for all years of employment in a component district.

The foregoing opinion, which I hereby approve, was prepared by my Assistants, D. Brook Bartlett and John B. Mitchell, Jr.

Yours very truly,



JOHN C. DANFORTH  
Attorney General