

- SCHOOLS: 1. The power of a public school board to employ
TEACHERS: teachers includes the discretion to grant tem-
SABBATICAL LEAVE: porary leaves of absence with or without pay sub-
PUBLIC SCHOOL ject to the limitations of other applicable laws.
RETIREMENT SYSTEM:
STATE AID: 2. Leave of absence must be set out in writing
and incorporated in the employment contract
between the board and the teacher. The leave cannot be a gratuity,
but must be in exchange for service rendered by the teacher during
the contract period.
3. Leave agreements by school boards of St. Louis County must
be in accord with requirements of Sections 168.191, RSMo Supp. 1967,
which limits the terms of teaching contracts.
4. Public school teachers' retirement system contributions under
Section 169.010, et seq., RSMo should be calculated during the teacher's
leave of absence in the same manner as contributions are calculated
during periods of actual service.
5. A temporary leave of absence of a teacher employed on a regular
full-time basis does not affect the eligibility of the school district
for state aid known as "Teacher Preparation Allowance" under subsection
2 of Section 163.031, RSMo Supp. 1967.

OPINION NO. 35

March 18, 1969

Honorable Harlan A. Gould
Representative - 45th District
Room 201I Capitol Building
Jefferson City, Missouri 65101



Dear Representative Gould:

This official opinion is issued in response to the request of your predecessor as Representative for the 45th District, Robert O. Snyder, which request was renewed by you. A ruling is asked upon the matter of sabbatical leave for public school teachers of six-director school districts within St. Louis County. The request also contains numerous ancillary questions and reads as follows:

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"Please give me an opinion on whether or not a six-director school district in St. Louis County, Missouri, may legally grant a sabbatical leave to a teacher with full pay or part pay, for one or more school semesters or school years, for the purpose of professional improvement which shall directly benefit the school district involved or for any other purpose.

"I would also like to be advised whether the answer to the foregoing question would depend, in any way, on a requirement that, to qualify, a teacher would have to have been employed full time by the district for a specified number of school years and would have to agree to return to the district, after the leave, and teach for a specified number of school years, in the district, refunding all or a portion of such leave pay if this commitment were not kept.

"Further, if the foregoing were legal, would it be legal for the district to agree, at the time the leave is granted, to accept back and retain the teacher on its staff for the term of the teacher's post-leave commitment?

"Assuming the foregoing were legally possible, on what basis could the amounts of the district and teacher payments under the retirement system be computed? Could they be based on the full amount of the teacher's salary for the year preceding the beginning of the sabbatical leave?

"And, finally, what effect, if any, would such leave with pay have on the amount of state aid for the district?"

You also requested our consideration of several cited constitutional provisions, statutes and court decisions.

We do not find that the phrase "sabbatical leave" has any precise legal definition. Although the phrase at times refers to a leave taken during the seventh year of service, the phrase is also used to refer to any period of rest. Webster's Third International Dictionary Unabridged (1961). Thus we shall consider sabbatical leave in the context of this opinion to mean any authorized leave of absence with full or partial pay for the purpose of professional improvement.

Public school boards have only such power as is expressed within the terms of the statutes or as may be implied by necessary implication, Wright, et al. v. Board of Education of St. Louis, Mo., 246 S.W. 43, 45. No statute of this state expressly provides for the granting of

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sabbatical leave to public school teachers. Thus, we turn to consideration of the implication of existant statutes.

The statutes generally governing the employment of public school teachers are Sections 168.101 and 168.111, RSMo Supp. 1967. In addition to these two general statutes, Section 168.191 is applicable to certain districts within counties of the first class. (St. Louis County is a county of the first class).

Section 168.101 provides that a school board "may contract with and employ legally qualified teachers for and in the name of the district. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid * * * ."

These statutes do not direct in specific detail what may or may not be the terms of employment of a public school teacher. The legislative grant is in general terms, thereby leaving to the school boards the exercise of discretion as to the particular terms and conditions of the employment contract.

We are of the opinion that it is within the discretion of the school boards to grant temporary leaves of absence with or without pay subject to the limitations of other applicable laws.

Such leave must be by agreement in writing and incorporated in the employment contract between the board and the teacher. The leave cannot be a gratuity, rather it must be in exchange for service rendered by the teacher. The service rendered in exchange for the leave must be rendered during the contract period. Leave cannot be granted in consideration of past services.

Section 432.070, RSMo 1959, provides as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

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Any leave of absence agreement between the school board and a teacher should be specified in writing in the employment contract. This may be done by incorporating by reference provisions of the rules and regulations of the school board governing leaves of absence. Oral arrangements are invalid and contrary to Section 432.070. See also Opinion No. 71, Pinnell, 5-7-51, and Opinion No. 41, Holman, 8-20-56 (copies enclosed).

A public school board cannot give away public funds for any purpose. Article VI, Section 25, Missouri Constitution 1945 provides:

" * * * No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except (Exceptions not applicable here) * * * ."

A gratuity or gift to a teacher by the public school board is unlawful, Opinion No. 21, Dawson, 5-10-39 (copy enclosed).

The board of education is also prohibited from paying additional compensation for services that have been already rendered. Article III, Section 39(3), Missouri Constitution 1945, provides:

"The general assembly shall not have power:

* * * * *

(3) To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;"

Also, see: Section 432.070, supra; Opinion No. 16, Chamier, 4-23-38 (copy enclosed).

It is our information that public bodies commonly provide for vacations, leaves and sick leave for public employees as part of the employment contract. Also, it is a common practice for school boards to pay teachers in twelve monthly installments although the teacher may be required to actively serve only during nine or ten months of the year. We assume that under this practice, a teacher who would actually serve twelve months would receive a higher compensation than an equivalent teacher who serves only nine months.

The law requires that public funds be paid only in exchange for actual service. However, this does not prohibit the compensation from being paid in so many dollars and so many days paid vacation or leave so long as both compensations are in exchange for the service rendered.

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It might be contended that sabbatical leave serves a significant public purpose in addition to the private benefit to the teacher in that the pupils in school will benefit from the increased competency of the teacher. However, such declarations of public policy are within the domain of the legislature. The rulings of this office must be based upon existing statutes. Our ruling here is limited to leaves of absence which are based upon contract consideration.

As we have stated above, a leave of absence with pay is authorized only as part of the term of the employment contract. We are informed by the State Department of Education that all school districts within St. Louis County are six-director districts maintaining approved high schools employing full-time superintendents. Therefore, all school districts within St. Louis County are governed by Section 168.191, RSMo Supp. 1967, which reads:

"In all counties of the first class, any school board, other than boards in urban districts, in charge of a public school system maintaining a classified high school, previously approved by the state board of education, and employing a superintendent devoting his full time to supervisory and administrative work, may employ and enter into contract with a superintendent of schools for the school district for a period of not to exceed three years. The superintendent of schools so employed in the district shall have had not less than five years' experience as the chief administrative officer of a school system working under the direction of a board of education and having administrative charge of all public schools within a six-director district, in which one-half or more of his time was devoted to administrative or supervisory duties, or shall have been employed as a teacher in the immediate high school district for a period of two years or more. The school board of such high school districts may enter into contracts, for a period not to exceed two years, with school teachers if the contracts are made upon the recommendation of the superintendent of schools of the high school district, but the contracts thus approved by the superintendent of schools shall not extend for a period of more than one year beyond the time for which the superintendent was employed to supervise the public schools of the high school district. This law shall not invalidate or repeal any other law of this state relating to the employment of teachers, principals or superintendents of public schools." (Emphasis added)

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Thus, the authority of school boards within St. Louis County to provide by contract for a leave of absence is limited by this section which limits the term of employment contracts for superintendents to a period "not to exceed three years" and for teachers to a period "not to exceed two years."

It can be readily seen that the two and three year limitation renders impossible a sabbatical leave in the sense of a seventh year leave. Furthermore, this limitation on the contract period practically eliminates a one-year leave. For the board to pay a teacher for two years in exchange for services rendered only during one year would be per se a gift and in violation of the Constitution.

We believe that it is legally possible for a board to agree to a leave of absence for a short period during a two or three year contract. Whether or not this would be practicable is an administrative and not a legal question.

In summary, we are of the opinion that public school boards may grant leaves of absence with pay to teachers for the purpose of study and professional improvement. The agreement to grant leaves must be incorporated in the written terms of the employment contract and must be in exchange for services actually rendered during the contract period and not a gratuity.

Whether or not the teacher has been employed for a specified number of years or has agreed to return after the leave does not affect our conclusion. However, the leave cannot be in consideration of past services. At the choice of the parties, the contract may contain an agreement to return after leave. The board may also agree to accept the teacher after completion of leave. But, in St. Louis County, such an agreement would be limited to the period of the contract under Section 168.191. The board cannot make any contractual promise in excess of Section 168.191.

You further inquire as to the proper computation and payment of teachers retirement contributions where the teacher is granted leave. Section 169.010(16), RSMo Supp. 1967, defines a teacher as:

" * * * a teacher * * * who shall teach or be employed by any public school, * * * on a full-time basis and who shall be duly certificated under the law governing the certification of teachers * * * ."

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Section 169.030, RSMo Supp. 1967, authorizes school boards to deduct from teachers salaries a certain per cent which deduction plus the contribution by the school district must be transmitted to the Board of Trustees of the Retirement System.

We have held that leaves of absence with pay are authorized only in exchange for services rendered. We are of the opinion that teachers retirement contributions should be calculated during the teacher's leave of absence in the same manner as contributions are calculated during periods of actual service. We find nothing in the Teachers' Retirement System Statutes which require different handling.

You next ask the effect leave of absence with pay would have upon the amount of state aid received by the district.

Section 163.011(3), RSMo Supp. 1967, defines teacher as follows:

"'Teacher' means any teacher, supervisor, principal or superintendent regularly employed for grades kindergarten through twelve more than one-half time in the public schools and who is certified under the laws governing the certification of teachers in Missouri."

The only state aid based upon teachers is the teacher preparation allowance authorized by subsection 2 of Section 163.031, RSMo Supp. 1967. That subsection reads as follows:

"2. A teacher preparation allowance shall be made to each district based on the education and preparation of the teachers employed by the district in grades one through twelve. The preparation of the teacher shall be based on semester hour credits earned at an accredited college or university and shall be paid as follows:

For each teacher with 150 or more semester hour credits-----\$492.00

For each teacher with 120 or 149 semester hour credits-----\$320.00

The teacher preparation allowance shall be granted to a district for each qualifying teacher regularly employed for more than one-half time in grades one through twelve. A school district shall spend for teachers' salaries each year at least eighty per cent

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of the state school funds received under this section that year as provided by section 163.061 and not less than eighty per cent of the funds received under section 163.033 and as much of the revenue produced by local tax levies as was spent for teachers' salaries the previous year. In the event a district fails to comply with this provision, the amount by which the district fails to spend funds as provided herein shall be deducted from the district's apportionment for the following year provided that the state board of education may exempt a school district from this provision if the state board of education determines that circumstances warrant such exemption."

We are of the opinion that a teacher employed on a regular full-time basis who is granted a temporary leave with pay is a teacher within the definition of Section 163.011 and that the district would be entitled to the teacher preparation allowance authorized by Section 163.031 without reduction for the period during which the teacher is on temporary leave.

CONCLUSION

It is the official opinion of this office that:

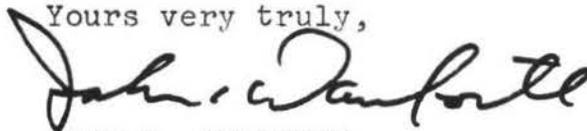
1. The power of a public school board to employ teachers includes the discretion to grant temporary leaves of absence with or without pay subject to the limitations of other applicable laws.
2. Leave of absence must be set out in writing and incorporated in the employment contract between the board and the teacher. The leave cannot be a gratuity, but must be in exchange for service rendered by the teacher during the contract period.
3. Leave agreements by school boards of St. Louis County must be in accord with requirements of Section 168.191, RSMo Supp. 1967, which limits the terms of teaching contracts.
4. Public school teachers' retirement system contributions under Section 169.010, et seq., RSMo, should be calculated during the teacher's leave of absence in the same manner as contributions are calculated during periods of actual service.

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5. A temporary leave of absence of a teacher employed on a regular full-time basis does not affect the eligibility of the school district for state aid known as "Teacher Preparation Allowance" under subsection 2 of Section 163.031, RSMo Supp. 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Louis C. DeFeo, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Encs. Op. No. 71, Pinnell, 5-7-51
Op. No. 41, Holman, 8-20-56
Op. No. 21, Dawson, 5-10-39
Op. No. 16, Chamier, 4-23-38