

SCHOOLS:
TEACHERS:

The board of education of a six-director school district cannot make the contract between the school district and a permanent teacher, who has reached age 65, subject to a time limitation of one year.

OPINION NO. 268

October 6, 1971

Honorable Lloyd J. Baker
Representative
Ninety-Seventh District
R.F.D. 3, Box 150
Moberly, Missouri 65270



Dear Representative Baker:

This official opinion is issued in response to your request for a ruling on whether the school board of a six-director school district can require a tenure teacher to sign a one-year contract after the teacher reaches 65 years of age. From facts furnished to us with your opinion request, we understand that the school board of a six-director school district does not have a regulation requiring teachers to retire before they reach 70 years of age. However, on March 4, 1970, the Board of Education of this district passed a motion stating that teachers who are 65 years of age or older will be employed on a one-year basis only. You advise that the teacher in question has been employed by the school district for six years prior to the 1970-1971 school year. On September 8, 1970, this teacher was 65 years old. In March of 1971, the Board of Education of the school district tendered to this teacher a nine-month contract commencing August 25, 1971.

The foregoing facts will be used as the basis for this opinion. We understand your question to be whether the board of education of a six-director school district can require a permanent teacher between the ages of 65 and 70 to enter into a one-year contract.

Section 169.060, RSMo 1969, provides that all teachers in the State of Missouri must retire at age 70. However, teachers with five years or more creditable service may retire with full benefits after age 60.

The definition of a "permanent teacher" for purposes of the Teacher Tenure Act, Sections 168.102 to 168.130, RSMo 1969, is found in Section 168.104(4). Under this definition, a teacher must be employed for six successive years as a full-time teacher by the same school district before she achieves permanent teacher status. See Opinion No. 371, October 2, 1970, to Honorable James P. Mulvaney (copy enclosed). Under the assumed facts forming the basis for this opinion, the teacher in

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question has served six successive years in the same school district and is, therefore, a permanent teacher.

Any contract entered into between a permanent teacher and a school district is an indefinite contract. See Sections 168.104(3) and 168.106, RSMo 1969. There is no authority in the Teacher Tenure Act for a board of education to enter into a contract with a permanent teacher which is not an indefinite contract. See Section 168.106, RSMo 1969.

Section 168.106 provides as follows:

"Indefinite contract, what affects. --
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;

"(2) Modification by a succeeding indefinite contract or contracts in the manner hereinafter provided;

"(3) The death of the teacher;

"(4) Resignation of the teacher with the written consent of the school board;

"(5) Termination by the board of education after a hearing as hereinafter provided; and

"(6) The revocation of the teacher's certificate." (Emphasis supplied.)

Under this section, a permanent teacher's contract continues indefinitely except for the enumerated exceptions. That the legislature intended this list of exceptions to be exclusive is apparent from the phrase "subject only to". None of the listed exceptions authorizes a board of education to convert a permanent teacher's indefinite contract into a yearly contract.

CONCLUSION

Therefore, it is the opinion of this office that the board of education of a six-director school district cannot make the

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contract between the school district and a permanent teacher,
who has reached age 65, subject to a time limitation of one year.

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

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the printed name.

JOHN C. DANFORTH