

Opinion No. 59-178

November 3, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*275} This is in response to your recent inquiry in which you asked the following question:

May the Santa Fe Municipal Board of Education deviate in any way in its teachers contract from that form of contract which has been approved by the State Board of Education?

Our answer to your question is that the Santa Fe Municipal Board {*276} of Education may not deviate in any material respect from a form of contract approved by the State board. However, the State board may not withhold written approval of the total teacher contract of the Santa Fe board if such contract does not impose conditions in derogation of its authorities vested by law, or in the alternative, the Santa Fe board may enact regulations outside of the formal contract giving to such board or the school superintendent, powers vested in such board or superintendent by law.

Before going into the law relating to teacher contracts in New Mexico, we shall first briefly examine the contract in question. You have stated that you are aware of its terms. Such contract follows the form approved by the State board in all material respects except that in the second and fourth paragraphs thereof, reference is made to additional provisions attached thereto and known as Endorsements 1 and 2. Endorsement 1 sets out the method of computing the salary of the teacher concerned, including a base salary, extra service and other increments and "deductions", in the form of decrements, as further explained in Endorsement 2. Endorsement 2, entitled "Conditions of Employment, Tenure, and Continuation on Tenure in the Santa Fe City Schools", generally sets forth the qualifications for hiring and retention of teachers, including those on tenure. It further specifies that salaries may be altered upward or downward (downward only for an ensuing contract year) according to the terms of the endorsement and fixes a mandatory retirement age of 66. Another provision spells out minimum professional and education requirements for those teachers to be hired or retained. You have informed me that such professional requirements are greater than those imposed by the State board for State certification.

We have purposely not gone into detail as to the exact provisions of the endorsements, nor shall we do so, for as we view the request, we are only to decide whether the Santa Fe board may legally add such provisions generally to the approved contract form, and if not, whether the board may legally generally impose like or similar type conditions in

another manner. Therefore, we shall not "fly-speck" the contract to determine whether its exact terms constitute a valid exercise of authority by the Santa Fe board.

Our opinion is that the Santa Fe Municipal School Board may not use this contract without the approval of the State School Board. Section 73-12-14, N.M.S.A. 1953 Comp. reads as follows:

"All contracts for employees, other than those not required to have teaching certificates, shall be on forms approved by the state board of education, containing and specifying the term of service, the salary to be paid, the causes for the termination of the contract, and such other provisions as may be lawfully required by the state board of education."

There is no case authority interpreting this statute nor have we found any cases from other jurisdictions interpreting similar language. Therefore of necessity, our opinion must be based upon what we view to be the most reasonable interpretation of the statute and not upon rules set down by courts who have previously construed like or similar language.

In our opinion, the only way that this statute can be given any meaning at all, and not be completely ignored is to hold that all teachers contracts in New Mexico must be on forms approved by the State Board of Education. See our Opinion No. 5945. However, we do not think that such statute gives to the State board complete and uncontrolled discretion to determine exactly what terms must be in an approved form of contract. Note that in the terms of the statute, the form so approved {277} must specify the term of service, the salary to be paid, the causes for termination of the contract, ". . . and such other provisions as may be lawfully required by the state board of education." It is clear that this language means that all teachers contracts approved by the State Board must contain provisions setting forth the period of employment, salary to be paid and causes for termination, and other lawfully required provisions. In our opinion, this language further means, by implication, that if all the lawful requirements of the State board are met, the State board must as a matter of course, approve any additional provisions inserted by the Santa Fe board if such provisions are within the power of such board to impose, since the State board would have no authority to refuse to approve such lawfully inserted provisions. In other words, the State board may insist on the insertion of provisions it lawfully may require and cannot insist on deletion of provisions the Santa Fe board may lawfully require.

We gather from our reading of the contract that the Santa Fe board is by Endorsements 1 and 2 specifying the method of payment of salary, the minimum scholastic and professional requirements of the board in regard to future contract years, the standards of efficiency expected of teachers in the Santa Fe city schools, and the mandatory retirement age. The contract applies to tenure and non-tenure teachers alike. The question arises, therefore, as to whether the Santa Fe board has the authority to write provisions to this effect in the teachers contract.

In our opinion, the Santa Fe board has the authority generally to insert provisions regulating its teachers in these regards. The powers of the State Board of Education are spelled out in Sections 73-1-1 and 73-1-7, supra. This Section (73-1-7) reads in part as follows:

"The state board of education shall have the following powers:

* * *

(d) To hold or cause to be held, examinations for teachers for all the elementary and high schools of the state, under such regulations as it may prescribe; to fix the fees for all examinations and certifications, and pay the cost thereof from such funds as may be provided therefor.

(e) To determine qualifications of persons teaching or desiring to teach school in any of the public, elementary and high schools of the state and to that end promulgate, from time to time, a system of classification of teachers.

(f) To certificate teachers according to law and the prescribed classification of said board, and at its discretion to issue temporary teaching certificates in the interim of examinations, but in no case shall a person under the age of 18 years be certificated.

(g) 1. To revoke teachers' certificates for incompetency, immorality or for any cause which would have withheld its issuance in the first instance, but action hereunder shall only be taken after service of the accusation upon the accused person and hearing or opportunity to be heard thereon shall have been given the accused.

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(i) To make and require the performance of all needful rules and regulations respecting the general powers of supervision of schools by said board.

* * *

(m) To adopt rules and regulations not inconsistent with law, for its own government and for the government of the {278} public elementary and high schools of the state."

You will note that these powers include the power to determine qualifications of persons teaching or desiring to teach in the public schools, the power to certificate teachers according to law and its own prescribed classifications, to revoke such certifications, to make and prescribe regulations respecting the general powers of supervision over the schools, and to adopt rules and regulations, not inconsistent with law, for the government of the public elementary and high schools of the State. Section 73-1-1 supra, provides that the State board shall be the governing authority of all public elementary and high schools of the State and among other duties, shall determine public school policies and have the control, management and direction of all public

schools. As we view this section, the State board is granted broad supervisory powers but still must accede to specific powers vested in local boards, be they municipal, county or otherwise.

You have informed me that insofar as these powers relate to teachers, you and your predecessors and the present and prior State boards have continuously taken the position that the certification and regulatory powers of the State board are in the nature of prescribing minimum standards which must be met before a teacher is qualified to teach in the State and do not interfere with the setting of higher standards by local boards, should they so desire. You further state that absent any specific grant of authority to the State board to set or regulate salaries, such matters are entirely within the province of the local boards.

This view is substantiated by reference to the authorities of municipal boards of education of which the Santa Fe board is one. These authorities are spelled out by reference to the following sections of the statutes. Section 73-10-2, supra, states that a municipal board has the same powers over schools and school districts within its jurisdiction as do county boards of education over schools and school districts within their respective jurisdictions. By referring to Sections 73-9-1, 73-9-7 and 73-9-8, supra, relating to the powers of county boards, we see that except for certain conditions not by reference pertinent to a municipal school board, the municipal board has the power to employ and discharge all teachers and all employees subject to limitations otherwise provided. Such power by this section may be delegated to the county school superintendent and by reference, this probably means such power could be delegated by a municipal board to the municipal superintendent of schools. There can be no question but that the power to employ and discharge teachers carries with it the power to set salaries, impose working conditions and regulations, impose professional standards, and set mandatory retirement ages, subject only to the limitations otherwise imposed by law. See our Opinion No. 4638. The only limitations we know of are those relating to certification of teachers vested in the State board, discussed above, and possible limitations imposed by the Tenure Act, Section 73-12-13, supra.

As we have just stated, the Tenure Act might contain some provisions which limit the powers of the Santa Fe board in regard to the policies behind Endorsements 1 and 2. Generally, the Tenure Act provides a means whereby a teacher who has completed 3 continuous years with the same administrative school unit and holds a contract to teach the fourth continuous year may appeal to the State board and eventually to the courts if such teacher was discharged by said school unit. However, since your request did not ask for our opinion in connection with the interrogation of the Tenure Act to the form of teachers contract used by the Santa Fe board, we shall not further comment upon such a question at this time.

At this point, we wish to point {279} out that in our opinion, the Santa Fe Board may, if it wishes, delete endorsements 1 and 2 from its teaching contract and enact regulations not formally incorporated therein, which regulations, if issued within the board's legal authority accomplish the same result. By using this approach, no State board approval

of the formal contract would be needed, for the remainder of the contract is on a form already approved by the State board in all material respects.

In closing, we wish to emphasize that by his opinion, we are not expressing our views on the legality of each and every provision of Endorsements 1 and 2. The sole purpose of this opinion is to state our view that although Endorsements 1 and 2 must be submitted to the State board for approval, such approval cannot be withheld unless the provisions thereof are outside the authority of the Santa Fe board to act upon.

Philip R. Ashby

Assistant Attorney General