

Opinion No. 74-41

December 4, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Senator James S. Peironnet, Jr. 4701 Comanche Road, N.E. Albuquerque, New Mexico 87110

QUESTIONS

QUESTION

Can an individual employed under contract as a classroom teacher by the Albuquerque Board of Education and elected as a legislator be limited in the number of days he is permitted to serve on an interim legislative committee?

CONCLUSION

See Analysis.

OPINION

{*84} ANALYSIS

A classroom teacher employed by the {*85} Albuquerque Board of Education is governed by the agreement entered into between the Board of Education of the Albuquerque Municipal School District and the Albuquerque Classroom Teachers Association as that agreement was amended for the years 1973-74 and 1974-75 (hereinafter referred to as "Agreement"). That Agreement provides:

"The parties agree that the terms and conditions of teacher employment for school years 1972-73 through 1974-75 will be as follows:

...

"1.01, Definitions

A. The term 'teacher' for the purpose of this agreement shall mean all certified employees of the District except the following:

1. All professional personnel included in the 100 Series of the budget,
2. Principals, Assistant Principals, Teaching Principals,
3. Supervisors, and

4. Coordinators."

* * *

"3.10, Political Leave

A. . . .

D. Leave of absence with substitute docking shall be granted to teachers who are elected or appointed to part-time, non-salaried positions including but not limited to state representatives and senator, city commissioner, and various appointive boards of city, county, and state government. **This leave shall be limited to the number of days, from time to time, that are necessary for the teacher to serve the functions of the elective or appointive position.** He shall maintain the position in the school system that he normally holds when not serving in political office."

It is the understanding of this office that the following events have occurred:

1. On May 15, 1974, the Associate Superintendent for Personnel of the Albuquerque Public Schools issued a memorandum to the Superintendent of the Albuquerque Public Schools recommending that:

"When these legislators are required to attend committee meetings between sessions, I recommend that they be permitted a maximum of ten additional days with the percentage deductions rule. Any additional leaves for these purposes will be leave without pay. All of these leave requests should be verified by letter from the appropriate committee chairman."

2. A meeting was held on September 30, 1974 between various legislators who are employees of the Albuquerque Public Schools and numerous administrative personnel including the Associate Superintendent for personnel to discuss the May 15, 1974 memorandum.

3. As a result of questions raised in this discussion, the above question has been referred to this office to determine whether or not the Board of Education of the Albuquerque Municipal School District can take the action contemplated in the May 15, 1974 memorandum.

From the above quoted portions of the Agreement, it is clear that the Agreement applies to teachers who are legislators and that Section 3.10 D is a binding contractual obligation between the teacher-legislator and the Board of Education of the Albuquerque Municipal School District (hereinafter referred to as "Board").

The question that must be addressed is whether or not the Board can determine that no more than ten days are "necessary" for the teacher-legislator to fulfill the responsibility of serving {*86} on interim committees.

Generally, the character of an instrument is to be determined from the intention of the parties as shown by the contents of the instrument. **Transamerica Leasing Corp. v. Bureau of Revenue**, 80 N.M. 48, 450 P.2d 934. If ambiguity exists in the language of a contract the intent of the parties may be ascertained from the conduct of the parties and surrounding circumstances. **Ashley v. Fern**, 64 N.M. 51, 323 P.2d 1093 (1958); **Leonard v. Barns**, 75 N.M. 331, 404 P.2d 292 (1965); **Sierra Blanca Sales Co. Inc. v. Newso Industries Inc.**, 84 N.M. 524, 505 P.2d 867 (Ct. App. 1972), **cert. denied**, 84 N.M. 512, 505 P.2d 855.

According to the Agreement, the number of days that the teacher-legislator is entitled to political leave with substitute docking shall be "limited to the number of days from time to time **that are necessary** for the teacher to serve the functions of the elective or appointive position." (Emphasis added). The teacher-legislator, therefore, has a contractual right to that number of days.

As recognized by both the teacher-legislators and the Board, the offices of state representative and state senator include the responsibilities of service on interim legislative committees. The Board and the administrative staff of the Albuquerque Public Schools are aware that the responsibilities of interim committees may, and in the past have, required not only ten days but at times in excess of twenty days of the teacher-legislator's time.

It is common knowledge that the demands of an interim committee upon a legislator's time may vary greatly. The demands of the interim committee are subject to many factors which will vary according to the responsibilities of the committee and the subject matter with which the committee deals.

Although the term "necessary" is a general term not subject to precise definition, when examined in light of past experience and practice and the acknowledged responsibility of legislators to serve on interim committees, it would seem that the number of days "necessary" are the actual number of days that are required of the teacher-legislator to fulfill his responsibilities as a member of the interim committee. In any event, in view of the circumstances, a ten-day limitation would appear to depart from the intent of the parties when the Agreement was negotiated.

The Board may certainly require documentation of the authenticity of the function for which the teacher-legislator is taking leave. Therefore, the sentence of the memorandum stating "all of these leave requests should be verified by letter from the appropriate committee chairman" is a reasonable provision by which the Board may attempt to carry out its responsibilities under the Agreement.

By: David Metz McArthur

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