



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 28, 1978

ATTORNEY GENERAL OPINION NO. 78-215

Mr. Theador E. Jones
Superintendent
USD No. 325
240 South Seventh Street
Phillipsburg, Kansas 67661

Re: Schools--Teachers Contracts--Due Process

Synopsis: A teacher who resigns and although is subsequently re-employed by a school district must again establish tenure as required by K.S.A. 72-5445 before due process rights accrue pursuant to K.S.A. 72-5436 et seq.

* * *

Dear Mr. Jones:

You inquire whether a teacher who resigns from a school district and who is subsequently reemployed by the same district must again establish tenure as required by K.S.A. 72-5445 for the purposes of the due process contract termination procedure of K.S.A. 72-5436 et seq.

The heart of the due process requirements for teacher contract termination is the existing contract of the teacher. This is made evident in K.S.A. 72-5437 which provides as follows:

"All contracts of employment of teachers, as defined in K.S.A. 1976 Supp. 72-5436, and amendments thereto, except contracts entered into under the provisions of K.S.A.

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72-5412a, shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as hereinafter provided. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before the fifteenth day of March. A teacher shall give written notice to the board on or before the fifteenth day of April if the teacher does not desire continuation of said contract. Terms of a contract may be changed at any time by mutual consent of both the teacher and the board."

And by 72-5438 as follows:

"Whenever a teacher is given written notice of intention to not renew the teacher's contract as provided in K. S.A. 1976 Supp. 72-5437, or whenever such a teacher is terminated before the end of his or her contract term, the teacher shall be given a written notice of the proposed nonrenewal or termination including (1) a statement of the reasons for the proposed nonrenewal or termination, and (2) a statement that the teacher may have the matter heard by a hearing committee, upon written notice filed with the clerk of the board of education or the board of control, or the secretary of the board of trustees within fifteen (15) days from the date of such notice of nonrenewal or termination that he or she desires to be heard and designating therein one hearing committee member. Upon the filing of any notice, the board shall, within fifteen (15) days thereafter, designate one hearing committee member. The two hearing committee

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members shall designate a third hearing committee member who shall be the chairman and who shall in all cases be a resident of the state of Kansas. In the event that the two hearing committee members are unable to agree upon a third hearing committee member within five (5) days after the designation of the second hearing committee member, a district judge of the home county of the school district, area vocational-technical school or community junior college shall appoint the third hearing committee member upon application of the teacher or either of the first two hearing committee members."

With the existing contract being the basis of such due process rights, it is clear that a termination of the employment contract will likewise terminate such rights.

The tenure requirements limiting the application of K.S.A. 72-5436 et seq. are found at K.S.A. 75-5445 as follows:

"The Provisions of K.S.A. 1976 Supp. 72-5438 to 72-5443, inclusive, and amendments thereto, shall apply only to those teachers who have at any time completed two (2) consecutive years of employment in the school district, area vocational-technical school, or community junior college then currently employing such teacher, except where the teacher alleges his or her termination or nonrenewal is the result of his or her having exercised a constitutional right. Any board may waive such two (2) year requirement for any teachers employed by it who, prior to such employment, were teachers who have completed not less than two (2) consecutive years of employment in any school district, area vocational-technical school, or community college in this state."

In our view, because the rights accruing to a teacher pursuant

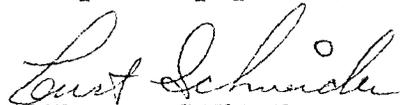
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to K.S.A. 72-5436 et seq. are cut off when the teacher resigns, and because such rights do not again arise until a teacher has been employed for a period of two years as required by K.S.A. 72-5445, a teacher reemployed by a school district after resignation, does not have rights under K.S.A. 72-5436 et seq. unless the tenure requirements of K.S.A. 72-5445 are again met, except of course, when a teacher alleges that his or her termination was the result of having exercised a constitutional right.

Very truly yours,



CURT T. SCHNEIDER

Attorney General

CTS:WEM:jm