

## Opinion No. 26

July 8, 1955

**Schools and School Districts —  
Teachers' Tenure — Hearings On  
Tenure Questions.**

Mr. E. Gardner Brownlee  
County Attorney  
Ravalli County  
Hamilton, Montana

Dear Mr. Brownlee:

HELD: 1. A teacher or principal who has acquired a tenure right by virtue of employment for three consecutive years may be deprived of this right only for legal cause.

2. A school board in taking the right of tenure from a teacher must observe the following provisions of the law:

a. The school board shall, on or before the first day of April, give notice in writing to the teacher that his (or her) services will not be required for the ensuing year;

b. The school board, if requested by the teacher, shall declare clearly and explicitly the specific reason or reasons for the failure to re-employ such teacher;

c. The school board, if requested by the teacher, shall grant a hearing and reconsideration "of such dismissal" to such teacher;

d. The school board must hold such hearing and reconsider its action within ten days after receipt of such request.

3. At the hearing before the board of trustees, evidence must be offered to substantiate the written charges with the right of cross examination on the part of the teacher and the teacher given the right to present evidence to refute the charges.

4. On an appeal to the county superintendent, an additional opportunity of presenting evidence with the right of cross examination is granted to both parties and a written record should be made of all testimony, including a written decision on the part of the county superintendent, which record may be used on an appeal to the State Superintendent of Public Instruction.

You have requested my opinion concerning the rights of a teacher and the power of the board of trustees in the discharge of a teacher with tenure rights. You also ask how hearings shall be conducted both before the board of trustees and on an appeal to the county superintendent of schools.

The statute which gives to a teacher tenure rights is Section 75-2401, R.C.M., 1947, which reads in part as follows:

"After the election of any teacher or principal for the third consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of such request for a hearing and reconsideration . . ."

A recent Montana case, *State ex rel. Saxtorph vs. District Court*, Mont. —, 275 Pac. (2d) 209, 11 St. Rep. 460, considered and interpreted the above-quoted statute and said:

"In taking the right of tenure from a teacher the law provides that certain steps shall be taken:

(1) The school board shall, on or before the first day of April, give notice in writing to the teacher that his (or her) services will not be required for the ensuing year;

(2) The school board, if requested by the teacher, shall declare clearly and explicitly the specific reason or reasons for the failure to re-employ such teacher;

(3) The school board, if requested by the teacher, shall grant a hearing and reconsideration 'of such dismissal' to such teacher;

(4) The school board must hold such hearing and reconsider its action within ten days after receipt of such request."

The court also made the following statement which is pertinent to the questions presented by you:

"The right of a school teacher to teach in a school, or school district, from year to year, having taught in such school or school district for three consecutive years, is called tenure. A teacher's tenure is a substantial, valuable and beneficial right which cannot be taken away except for good cause."

In *State ex rel. Nagle vs. Sullivan*, 98 Mont. 425, 40 Pac. (2d) 995, our court construed cause for removal of a public officer in the following language:

"This phrase 'for cause', as used in this connection, means for reasons which the law and sound public policy recognize as sufficient warrant for removal . . . , that is 'legal cause' . . . , and not merely a cause which the appointing power, in the exercise of discretion, may deem sufficient. . ."

It is to be concluded from the foregoing that the board of trustees in dismissing a teacher with tenure has a limited discretionary power and a teacher may be dismissed only for reasons recognized in law.

In the *Saxtorph* case, the court also said that the failure to re-employ a teacher with tenure constituted a dismissal and, if the teacher had an unexpired written contract

at the time notice of dismissal was given, the provisions of Section 75-2411, R.C.M., 1947, apply, which section provides for an appeal to the county superintendent if the teacher has been dismissed "for alleged immorality, unfitness, incompetence or violation of rules."

It is not possible to define "legal cause" so that all grounds for dismissal of a teacher are enumerated. The closing of a school because the enrollment had dropped to a point that permitted discontinuance under a statute was recognized in *Moses vs. School District No. 53*, 107 Mont. 300, 86 Pac. (2d) 407, as grounds for terminating a teacher's tenure rights. Similar reasons might well come within the meaning of "legal cause." However, the grounds must be substantial and not the mere whim of the board of trustees.

The grounds expressed in Section 75-2411, R.C.M., 1947, "alleged immorality, unfitness, incompetence or violation of rules" are a legislative expression of the type of personal charges which constitute legal cause for the guidance of school trustees.

The manner of conducting the hearing before the board of trustees for the dismissal of a superintendent of schools was discussed in the case of *Howard vs. Ireland*, 114 Mont. 488, 138 Pac. (2d) 569. In this case the court expressed the following guiding principles:

"At a hearing, if such is required, there would need to be charges preferred so that the subject of inquiry be known, and adequate notice to give the accused opportunity to prepare for and attend the meeting to refute the charges made. At such hearing, evidence should be taken; witnesses should be interrogated, with opportunity for cross examination; all to the purpose of determining in a manner judicial the truth or falsity of the charges made. . ."

As Section 75-2401, R.C.M., 1947, provides that, ". . . the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment . . .", this provision furnishes

the written charges against the teacher and the hearing must be held within ten days after receipt of a request for a hearing. The charges made must be substantiated by evidence with the right in the teacher to refute the charges with evidence offered in defense.

The hearing before the county superintendent, which is authorized under Section 75-1518, R.C.M., 1947, is in the nature of a review or an appeal. This was recognized in Howard vs. Ireland, supra. Section 75-1518, supra, authorizes an appeal from the decision of the county superintendent to the State Superintendent of Public Instruction. This statute defines the record, which is certified to the State Superintendent, as a full, written statement of the facts, together with the testimony and the decision of the county superintendent. Therefore, it is the duty of the county superintendent to have made a complete stenographic transcript of all testimony and a copy of all papers and exhibits used at the hearing.

The fact that the hearing before the board and the appeals are before administrative officers precludes the application of judicial procedure and rules of evidence. However, the burden of substantiating the charges before the board is on the board, and the burden of proof on appeal is on the appellant. These conclusions are in accord with the general practice of the courts and may be used as guides in the proceedings before school authorities.

It is therefore my opinion:

1. A teacher or principal who has acquired a tenure right by virtue of employment for three consecutive years may be deprived of this right only for legal cause.
2. A school board in taking the right of tenure from a teacher must observe the following provisions of the law:
  - a. The school board shall, on or before the 1st day of April, give notice in writing to the teacher that his (or her) services will not be required for the ensuing year.
  - b. The school board, if requested by the teacher shall declare clearly and explicitly the specific reason or reasons for the failure to re-employ such teacher;
  - c. The school board, if requested by the teacher, shall grant a hearing a reconsideration "of such dismissal" to such teacher;
  - d. The school board must hold such hearing and reconsider its action within ten days after receipt of such request.
3. At the hearing before the board of trustees, evidence must be offered to substantiate the written charges with the right of cross examination on the part of the teacher and the teacher given the right to present evidence to refute the charges.
4. On an appeal to the county superintendent, an additional opportunity of presenting evidence with the right of cross examination is granted to both parties and a written decision on the part of the county superintendent, which record may be used on an appeal to the State Superintendent of Public Instruction.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General