

Opinion No. 9**Schools and School Districts—Tenure—Amendment to Teachers'
Tenure Statute**

Held: A teacher who has been elected to teach for one or more years prior to February 20, 1957, may attain tenure status upon being elected for the third consecutive year.

A teacher who is elected and enters into a contract to teach for the first time after February 20, 1957, will not attain tenure status until the election for the fourth consecutive year.

April 4, 1957

Miss Harriet Miller
State Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Miller:

You requested my opinion concerning the effect of the amendment to Section 75-2401, Revised Codes of Montana, 1947, by Chapter 26, Laws of 1957. The amendment changed the requirement from three to four years for the attainment of tenure by teachers. You ask in particular what effect this has on teachers who have been elected for

one or more years but have not attained tenure status by February 20, 1957, the effective date of the amendment.

Section 75-2401, R.C.M., 1947, prior to the amendment 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 reelected from year to year thereafter at the same salary * * * * ." This statute has been considered by our Supreme Court many times. In *McBride vs. School District Number 2*, 88 Mont. 110, 290 Pac. 252, the court held that Section 75-2401, R.C.M., 1947, became a part of the contract of employment and the provisions of the section were binding upon both the teacher and the board of trustees. In the most recent case of *Saxtorph vs. District Court*, 128 Mont. 353, 275 Pac. (2d) 209, it was held, "A teacher's tenure is a substantial, valuable and beneficial right, which cannot be taken away except for good cause." That the provisions of our laws pertaining to the rights of teachers are made a part of the contract was recognized in *Kelsey vs. School District No. 25*, 84 Mont. 453, 276 Pac. 26. From the foregoing, it must be concluded that the tenure rights of a teacher are contractual in nature.

The Supreme Court of the United States in *Indiana ex rel. Anderson vs. Brand* 303 U. S. 95, 82 L. Ed. 685, 58 S. Ct. 443, 113 A.L.R. 1482, held that the tenure of a township teacher was a contractual right which could not be taken away by the repeal of the tenure law. The Court said:

"In 1927, the State (Indiana) adopted the Teacher's Tenure Act under which the present controversy arises. * * * By this Act it was provided that a teacher who has served under contract for five or more successive years, and thereafter enters into a contract for further service with the school corporation, shall become a permanent teacher and the contract, upon the expiration of its stated term, shall be deemed to continue in effect for an indefinite period, shall be known as an indefinite contract, and shall remain in force unless succeeded by a new contract or cancelled as provided in the Act. * * * By an amendatory Act of 1933 township school corporations were omitted from the provisions of the Act of 1927. The court below construed this Act as repealing the Act of 1927 so far as township schools and teachers are concerned and as leaving the respondent free to terminate the petitioner's employment. But we are of opinion that the petitioner had a valid contract with the respondent, the obligation of which would be impaired by the termination of her employment."

Section 11 of Article III of the Montana Constitution provides that any law impairing the obligation of contracts shall not be passed by the legislature. As our Supreme Court has held that the tenure law is a part of a teacher's contract, any teacher who had taught under a contract prior to the amendment of Section 75-2401, by Chapter 26, Laws of 1957, is entitled to achieve tenure status after the election to

teach for the third consecutive year. As the provisions of Section 75-2401 were incorporated in a teacher's first contract the teacher would have the right to expect and the law grants the identical provisions of the tenure act throughout the period necessary to acquire permanent status. Such conclusion must be reached if the tenure act creates a contractual relationship.

Other jurisdictions which have construed tenure acts to confer a "legislative status" subject to amendment as contrasted to contractual status have held that the repeal of the tenure act would not take away any rights of the teacher under the law. See *Greenway vs. Board of Education*, 129 N.J.L. 461, 29 A (2d) 890, 145 A.L.R. 404, and *State ex rel. McKenna vs. Milwaukee (Wis.)* 10 N.W. (2d) 155. As was indicated above, Montana treats the statutes relative to teachers contracts as incorporated in the contracts and as a consequence these cases are not applicable in our State.

It is, therefore, my opinion that a teacher who has been elected to teach for one or more years prior to February 20, 1957, may attain tenure status upon being elected for the third consecutive year.

It is also my opinion that a teacher who is elected and enters into a contract to teach for the first time after February 20, 1957, will not attain tenure status until the election for the fourth consecutive year.

Very truly yours,
FORREST H. ANDERSON
Attorney General