

VOLUME NO. 36

Opinion No. 77

SCHOOLS AND SCHOOL DISTRICTS — Teachers — Tenure — Federally funded programs, effect of Sections 75-6101, 75-6103 Revised Codes of Montana, 1947.

HELD: 1. Teachers who are employed by a school district in federally-funded programs are eligible for tenure status upon satisfying the conditions of section 75-6103.

2. Such tennure teachers are subject to dismissal in cases of genuine econmic necessity, as where federal funds are terminated by the United States government.

May 10, 1976

Mr. John G. Winston
Silver Bow County Attorney
155 West Granite Street
Butte, Montana 59701

Dear Mr. Winston:

This is response to your request for my opinion concerning tenure rights of teachers who are employed in federally-funded programs. Apparently a school district in your county wishes to determine such tenure status and its consequences in the event federal funding of these programs is terminated. Teacher tenure is governed by the provisions of Title 75, chapter 61, R.C.M. 1947. Section 75-6103 states:

Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of **employment by a district** in a position requiring teacher certification except as a district superintendent, the teacher shall be deemed to be re-elected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, ... (Emphasis added)

Section 75-6101 states:

“Teacher” means **any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this Title and the policies adopted by the board of education, and who is employed by a district as a member of its instructional, supervisory, or administrative staff.** (Emphasis added)

The main purpose of the teacher tenure act is to give teachers security in their positions, and to that end the act is to be liberally construed. **Smith v. School District No. 18, Pondera County**, 115 Mont. 102, 115, 139 P.2d 518 (1943); **Eastman v. School District No. 1, Lewis and Clark County**, 120 Mont. 63, 71, 180 P.2d 472 (1947). Accordingly, it has been held that a teacher’s tenure is a substantial, valuable and beneficial right not to be taken away except for good cause. **State ex. rel. Saxtorph v. District Court, Fergus County**, 128 Mont. 353, 361, 275 P.2d 209 (1954).

Given the above, I conclude that teachers employed in federally-funded programs would become tenured after the conditions set forth in section 75-6103 are met. Obviously such teachers are hired by the district, and the programs in which they teach are district programs despite supporting federal funds. I can find no authorities in any jurisdiction which even hint that federal funds have a bearing on tenure rights.

It is generally held that teacher tenure acts only affect the nature and scope of a school district’s right to dismiss teachers because of economic necessity, and not the district’s fundamental right to do so. See 100 A.L.R.2d 1158 et seq. Thus, the Montana Supreme Court has upheld an express contractual reservation

allowing the contract of a tenure teacher to be voided by the school district in the event of a school closing. **Moses v. School District No. 53, Lincoln County**, 107 Mont. 300, 86 P.2d 407 (1938). By the same token, termination of federal funds would appear to warrant dismissal of such teachers by the district barring a feasible alternative, such as placing them in different positions.

THEREFORE, IT IS MY OPINION:

1. Teachers who are employed by a school district in federally-funded programs are eligible for tenure status upon satisfying the conditions set forth in section 75-6103.
2. Such tenure teachers are subject to dismissal in situations of genuine economic necessity, as where federal funds are terminated by the United States government.

Very truly yours,
ROBERT L. WOODAHL
Attorney General