

Opinion No. 122**Schools and School Districts — Teachers, Certificates of — Life Certificates, Granting of—State Certificates**

Held: That by virtue of Section 7, Chapter 142, Laws of 1949, teachers who held state secondary certificates on May 1, 1949, are entitled to receive life certificates providing they meet the statutory requirements fixed by Section 75-2504, Revised Codes of Montana, 1947, and the rules and regulations of the State Board of Education.

August 8, 1950.

Miss Mary Condon
State Superintendent of Public Instruction
Helena, Montana

Dear Miss Condon:

You have requested my opinion concerning the application of Chapter 142, Laws of 1949 to the holders of State Teaching Certificates on May 1, 1949. You have asked in particular whether such teachers would be entitled to the type of certificates authorized under Section 75-2504, Revised Codes of Montana, 1947, which was repealed by Chapter 142, Laws of 1949.

Chapter 142, Laws of 1949 was approved by the Governor, March 1, 1949, and contained no recital that it would be effective on its passage and approval and as a consequence the provision of Section 43-507, Revised Codes of Montana, 1947, applies and the act was not effective until July 1, 1949. Chapter 142 enumerates the classes of certificates for teaching which the State Superintendent of Public Instruction may issue and does not authorize the issuance of life certificates. Section 75-2504, Revised Codes of Montana, 1947, was repealed by Chapter 142 and prior to its repeal and by its terms the State Superintendent was authorized to issue life certificates. Requirements for life certificates are similar for both elementary and secondary schools. In sub-section 6 of Section 75-2504, Revised Codes of Montana, 1947, the statute reads as follows:

Candidates for elementary life certificates must be holders of an elementary state certificate in full force and effect and must present satisfactory evidence of at least thirty-six (36) months of

successful teaching experience in Montana during the life of a Montana elementary state certificate and satisfactory evidence of having secured subsequent to the issuance of the elementary state certificate such approved academic and professional training as may be prescribed and required by the rules and regulations of the State Board of Education.

Section 7 of Chapter 142, Laws of 1949, contains the following limitation on the provisions of Chapter 142:

No provision of this act shall affect or impair the validity of any certificate for teaching in force on May 1, 1949, **or the rights and privileges of the holders by virtue thereof**, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law. (emphasis supplied)

The question presented is the effect of Section 7, Chapter 142, Laws of 1949, and it is necessary to determine whether the types of certificates authorized by Section 75-2504, Revised Codes of Montana, 1947, which was repealed are available to holders of teaching certificates in force on May 1, 1949. The phrase "or the rights and privileges of the holders by virtue thereof" is the language to be construed.

It is reasonable to assume that the purpose of Section 7 was to preserve the right of a teacher who had taken additional academic training in order to receive a teaching certificate of a higher grade. The protection of the rights of those practicing a profession at the time of enacting a statute with different standards is in accord with general legislative practice. This was recognized in *State v. Bays*, 100 Mont. 125, 47 Pac. (2d) 50, wherein our Supreme Court approved a statutory provision that barbers who were practicing their profession at the time of the enactment of a statute requiring examination were exempt from taking the examination. The court quoted from an earlier Montana case as follows:

"The principle is the same as that involved in the multitudinous laws governing the right to practice professions and to engage in numerous specialty regulated lines of business activity. The erection of new standards of qualification by laws relating to them seldom contemplates the re-examination and re-licensing of those previously licensed and actually operating under the terms of a law in effect at the time of the issuance of the original license. The provision is not obnoxious to, but rather consonant with, generally recognized principles of fairness and justice."

The rule quoted above which recognizes the power of the legislative body to permit the granting of a license without examination to a practicing member of a profession is analogous to the rights granted to teachers by Section 7 of Chapter 142, Laws of 1949. The teachers who had taken additional academic training and who had complied with the rules of the State Board of Education in order to obtain a life certificate

as provided in the law prior to Chapter 142, Laws of 1949, would be deprived of a valuable privilege if such were denied to them. It would be just and fair to grant a life certificate to those who held on May 1, 1949, state certificates and met the statutory requirements and rules for life certificates.

It is to be noted that Section 75-2504, Revised Codes of Montana, 1947, grants to holders of both elementary and secondary state certificates the right to secure life certificates.

It is, therefore, my opinion that by virtue of Section 7, Chapter 142, Laws of 1949, teachers who held state certificates on May 1, 1949, are entitled to receive life certificates providing they meet the statutory requirements fixed by Section 75-2504, Revised Codes of Montana, 1947, and the rules and regulations of the State Board of Education.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.