

Opinion No. 1

SCHOOLS AND SCHOOL DISTRICTS; Teachers, applied music certificates—STATE BOARD OF EDUCATION; Powers, does not have the power to issue applied music certificates—Sections 75-2016, 75-2504, 75-2516, 75-2518, Revised Codes of Montana, 1947—Sections 7 and 11, Chapter 142, Laws of 1949—Chapter 187, Laws of 1959.

- Held:**
1. That by virtue of Section 7, Chapter 142, Laws of 1949, Section 75-2518, Revised Codes of Montana, 1947, teachers who held Applied Music Certificates on May 1, 1949, are entitled to have the same renewed.
 2. The State Board of Education does not have the authority to grant Applied Music Certificates to music teachers.

February 16, 1961

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

Dear Miss Miller:

You have requested my opinion as to whether the State Board of Education has the authority to issue Applied Music Certificates to music teachers.

The granting of certificates in Applied Music was authorized under the provisions of 75-2504, Revised Codes of Montana, 1947. This law was repealed by Section 11, Chapter 142, Laws of 1949, and the present laws enumerating classes of certificates for teachers which may be issued is found in Section 75-2516, Revised Codes of Montana, 1947, as amended by Chapter 187, Laws of 1959. There is not now any statutory authorization for the issuance of Applied Music Certificates. That the Legislature had the power to regulate existing certificates and to repeal a statutory provision providing for the issuance of one type of certificate cannot be questioned. In 47 Am. Jur. 373, it is stated:

"The legislature in the proper exercise of its power may provide for a general system of licenses or certificates for persons qualified to teach in the public schools. Likewise, since teachers'

licenses or certificates, like other licenses, possess none of the elements of a contract protected by the due process clause of the Fourteenth Amendment, but merely confer a personal privilege, the legislature may likewise provide for the revocation of such licenses at its pleasure."

Applied Music Certificates which were outstanding on May 1, 1949, were specifically protected by Section 7 of Chapter 142, Laws of 1949, which is now Section 75-2518, Revised Codes of Montana 1947.

This statute reads as follows:

"No provisions 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 laws."

The above quoted statute was subsequently amended to protect validity of any certificate in force on July 1, 1959.

This office in construing Section 7 of Chapter 142, Laws of 1949, in Opinion No. 122, Volume 23, Report and Official Opinions of the Attorney General, held that teachers who held state certificates on May 1, 1949, were entitled to receive life certificates notwithstanding statutory authority for the issuance of life certificates was repealed. The ruling in the above cited opinion of this office was based on the phrase in Section 75-2518, ". . . or the rights and privileges of the holders by virtue thereof. . ." This opinion held:

"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."

By analogous reasoning, the right of renewal of a certificate is a privilege protected by Section 75-2518, R.C.M. 1947. It should also be noted that Section 75-2016, RCM 1947, which grants credit for musical training received under the instruction of teachers who are holders of Applied Music Certificates, was not repealed. If credit for such private musical instruction is authorized, the Legislature must have contemplated that there would be qualified teachers for the subject notwithstanding the fact the number of teachers could not be increased.

It is, therefore, my opinion:

1. That by virtue of Section 7, Chapter 142, Laws of 1949, Section 75-2518, Revised Codes of Montana, 1947, teachers who held Applied Music Certificates on May 1, 1949, are entitled to have the same renewed.

2. The State Board of Education does not have the authority to grant Applied Music Certificates to music teachers.

Very truly yours,
FORREST H. ANDERSON
Attorney General