

OPINIONS OF THE ATTORNEY GENERAL

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OPINION NO. 49

EDUCATION - Teacher tenure and benefits;

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EDUCATIONAL INSTITUTIONS - Teacher tenure and benefits;
LABOR RELATIONS - Teacher tenure and benefits;
SALARIES - Tenured teachers;
SCHOOL BOARDS - Teacher tenure and benefits;
SCHOOL DISTRICTS - Teacher tenure and benefits;
TEACHERS - Tenure and benefits;
MONTANA CODE ANNOTATED - Sections 20-3-107, 20-3-210,
20-4-203, 20-4-204.

HELD: Employment "at the same salary" provided to tenured teachers pursuant to section 20-4-203, MCA, means employment at the same basic pay but does not include fringe benefits. This opinion does not affect the providing of fringe benefits by a collective bargaining agreement.

29 December 1987

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion on the following questions:

1. Does the phrase "at the same salary" in section 20-4-203, MCA, include health and welfare plans, leave allowances and accruals, and other fringe benefits?
2. Should a tenured administrator returned to the classroom due to a reduction in force continue to receive nonsalary economic benefits previously enjoyed in his/her position as a tenured administrator?

Section 20-4-203, MCA, the basic teacher tenure statute, 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 or specialist, the teacher shall be deemed to be reelected from year to

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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 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204. [Emphasis added.]

"Salary" is generally defined by courts as fixed compensation paid regularly for services. See 38 Words and Phrases Salary (1967 & Supp. 1987). Courts have applied both restrictive and broad interpretations of the term, but "salary" has often been held to exclude fringe benefits. See, e.g., Hall v. City of Lincoln, 330 N.W.2d 471 (Neb. 1983) ("salary" includes only basic pay without consideration of extra compensation for overtime, college credits, holiday service and so on); Hilligoss v. LaDow, 368 N.E.2d 1365 (Ind. Ct. App. 1977) (health insurance benefits were not part of "salary" of first-class policeman under pension provisions); Brasher v. Chenille, 251 So. 2d 824 (La. Ct. App. 1971) (under statute governing liability for dismissal of laborer, "salary" includes only the fixed compensation paid at stated intervals, not such other remunerations as bonuses, living expenses, or retirement plan contributions); Swartwout v. City of New York, 369 N.Y.S.2d 865 (N.Y. App. Div. 1975) (pension fund and union health and welfare fund contributions made by employer not included in "salary"); Central Dauphin Ed. Ass'n v. Central Dauphin School Dist., 367 A.2d 385 (Pa. Commw. Ct. 1976) (fringe benefits are not part of "salary" for teachers on sabbatical leave); Taylor v. McGuire, 420 N.Y.S.2d 248 (N.Y. Sup. Ct. 1979) ("salary" means employee's base pay as opposed to "compensation" which includes earned sick leave benefits, vacation time, and other "fringe benefits").

The phrase "at the same salary" in section 20-4-203, MCA, has not been construed by the Montana Supreme Court. However, pursuant to sections 20-3-107 and 20-3-210, MCA, the Montana Superintendent of Public Instruction has construed that language. In a contested case involving a tenured teacher, the State Superintendent found that fringe benefits, such as health insurance benefits, are not included in the term "salary" or as a part of the "comparable position" protected by the tenure statute. Trustee, Missoula County High School District v. Wilbur, No. OSPI 79-84 (State Superintendent issued, July 24, 1985), aff'd on other grounds, Wilbur v. Argenbright, No. BDV 85-803 (Montana First Judicial District, Nov. 11, 1986). In statutory construction problems, great deference must be

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shown to interpretations given the statute by the officers or agency charged with its administration. Montana Power Company v. Cremer, 182 Mont. 277, 280, 596 P.2d 483, 485 (1979).

The legislative history of section 20-4-203, MCA, provides no guidance concerning the intended definition of "salary" in the term "at the same salary." I therefore adopt the interpretation of "salary" set forth by several courts and adopted by the State Superintendent. I conclude that the term "at the same salary" means at the same basic pay, but does not include other fringe benefits. My conclusion is based upon an interpretation of the statute. The entitlement to fringe benefits may be affected by the existence of a collective bargaining agreement.

Your second question specifically concerns "nonsalary" benefits. Section 20-4-203, MCA, guarantees a tenured teacher employment at the same salary in a comparable position unless the teacher is terminated in accordance with section 20-4-204, MCA. As I concluded in answering your first question, fringe benefits are not included in the term "at the same salary." An argument could be made that certain "nonsalary benefits" are integral to "a comparable position." I believe a determination of what is a comparable position must be made on a case-by-case basis and is not appropriate for an Attorney General's Opinion. In asking this question, you cited Sorlie v. School District No. 2, 40 St. Rptr. 1070, 667 P.2d 400 (1983), as the case from which the question arose. In Sorlie, the Montana Supreme Court held that reassignment of a teacher from an administrative position to a teaching position without reduction in salary was not contrary to the tenure law. Nothing in Sorlie changes my view.

THEREFORE, IT IS MY OPINION:

Employment "at the same salary" provided to tenured teachers pursuant to section 20-4-203, MCA, means employment at the same basic pay but does not include fringe benefits. This opinion does not affect the providing of fringe benefits by a collective bargaining agreement.

Very truly yours,

MIKE GREELY
Attorney General