S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 31, 2000

Opinion No. 00-168

Local Education - Personnel; Compensation; Conflict of Interest

QUESTIONS

1. Does Tenn. Code Ann. § 49-2-301 allow the school director to hire all school personnel, assign all personnel and transfer all personnel while this action deprives the board of its right to rule on the employee's competency, compatibility and suitability for the proposed position (Tenn. Code Ann. § 49-5-510)?

2. In the case where an employee's service is unsatisfactory, in the opinion of the director, is the director still bound to make written charges against the employee and present such charges to the board? (Tenn. Code Ann. § 49-5-511)

3. In the case where a high school basketball coach asked for and was granted permission by the school board to hold a basketball camp in a high school gymnasium and was given no further oversight by the school system, should the coach be made to pay back funds that he assumed were his salary?

4. A teacher was placed in a first grade position that was newly created using Clinton Funds and later informed that this was an interim position, although no other teacher was on leave from that position (Tenn. Code Ann. § 49-2-203). In this case, is the teacher entitled to another position? This teacher was not notified by April 15th that her position was not to be renewed.

5. Is the Blount County maintenance supervisor entitled to be paid a $7000 per year supplement from the Career Ladder program even though he has no instructional duties?

6. Is there a conflict of interest when the chairman of the school board is an official of the insurance company that manages the school system's Cafeteria Insurance programs?

7. In the case where the superintendent's term had expired and he was not appointed to the director's position, is he entitled to be paid at the same rate as when serving as superintendent?

OPINIONS

1. The director of schools hires, assigns, and can transfer school personnel. The school board does not have this authority.

2. As a general rule, to dismiss an unsatisfactory employee, the director of schools does not have to file written charges with the school board. To dismiss an unsatisfactory tenured teacher, however, the director must file written charges with the school board.

3. This Office cannot respond to your question whether the coach can be required to pay back funds that he assumed were his salary because the analysis will depend upon the facts and circumstances, such as any terms or conditions placed upon the granting of the program funds.

4. This Office cannot respond to your question whether a teacher hired for a federally funded position, later terminated, should be given another position because the answer will depend upon an analysis of the facts and circumstances.

5. It is possible that the Blount County maintenance supervisor, who has no instructional duties, is not eligible for a pay supplement under the Career Ladder Program. A definite answer to your question, however, will depend upon an analysis of the facts and circumstances, such as whether this supervisor meets the eligibility criteria.

6. The fact that a school board member is an official of the insurance company that manages the school systems' Cafeteria Plan may be a conflict of interest. A final conclusion on this question, however, will depend upon an analysis of the facts and circumstances, such as what interest the chairman has in the company's contract with the school board.

7. This Office has found no authority for paying a teacher a superintendent's salary when the teacher is no longer the superintendent of schools.

ANALYSIS

1. School Director's[1] Authority to Hire, Assign and Transfer Personnel

State statutes define the roles of the school board and the director of schools in hiring, assigning and transferring school personnel. A director of schools has the authority to hire, assign and transfer

[1] The terms "director of schools" and "superintendent" are used interchangeably throughout this opinion, and in all instances the terms refer to the appointed position now called "director of schools." Tenn. Code Ann. § 49-2-301(d).

school personnel. The director's actions must be within the approved school budget and must be consistent with existing state laws, board policies and locally negotiated agreements covering licensed personnel. Tenn. Code Ann. § 49-2-301(f)(12), (31), (32); § 49-5-510. The school board is responsible for assigning these duties to the director of schools. Tenn. Code Ann. § 49-2-301(f). In addition, the transfer of tenured teachers must be necessary to the efficient operation of the school system and must be to a position for which the teacher is qualified and licensed. Tenn. Code Ann. § 49-5-510.

2. Dismissal or Suspension of a Tenured Teacher

A school director's general authority to dismiss an employee is found in Tenn. Code Ann. § 49-2-301(f)(33).[2] Your question uses the term "employee," but because the question also refers to Tenn. Code Ann. § 49-5-511, we have assumed your question applies to tenured teachers and not other personnel categories.[3]

A director of schools may suspend or seek to dismiss a tenured teacher for the causes listed and in the manner set out in Tenn. Code Ann. § 49-5-511. Under certain circumstances, the director may or must suspend a tenured teacher. Tenn. Code Ann. § 49-5-511(a)(3) and (c)(1). To dismiss a tenured teacher, the director would have to file written charges with the school board. Tenn. Code Ann. § 49-5-511(a)(4).

The school board also has dismissal authority, "[e]xcept as otherwise provided in this title." Tenn. Code Ann. § 49-2-203(a)(7). As noted above, the director of schools can seek to dismiss and can suspend tenured teachers. Reading the two statutes in harmony, we conclude that the director may dismiss or suspend tenured teachers in the manner noted above. The role of the school board would be to determine whether the charges are of such nature as to warrant dismissal. If so, the board would hold the hearing required by Tenn. Code Ann. § 49-5-511, based upon the written charges filed by the director, and then decide.

For other school personnel, including nontenured teachers, the director would follow the procedures in Tenn. Code Ann. § 49-2-301(f)(33), which require a hearing but not before the board. The board can hear the appeal of an adverse decision against any nontenured, licensed employee. *See* Tenn. Code Ann. § 49-2-301(f)(33)(E).

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[2] *See Morris v. Bd. of Educ.*, 1997 WL 5168 at 2 (Tenn. App. 1997).

[3] Tenn. Code Ann. §§ 45-5-501, *et seq.* (Teachers' Tenure). *See Ryan v. Anderson*, 481 S.W.2d 371, 374 (Tenn. 1972) (The basic purpose of the Teacher Tenure Act [Tenn. Code Ann. §§ 49-5-501, *et seq.*] is to afford a measure of job security to those educators who have tenure status.).

3. Coach's Compensation for Summer Program

From your question, we understand that the school board permitted the high school basketball coach to use the school gymnasium for a summer program. We assume this coach is a teacher in the school system. Funds for the program are mentioned but not specifically identified.

As a teacher, the coach would have a teaching contract. Tenn. Code Ann. §49-5-408; *see also Op. Tenn. Atty. Gen.* (August 2, 1977) (copy attached). He might also have a separate contract for summer programs. The terms of the coach's contract(s) should be consulted to determine whether summer programs are a part of the contract, and, if so, what provisions are made for salary. In addition, the source of the funds for the summer program and any conditions placed on their use should be reviewed. Whether the coach may be required to pay back funds would depend on an analysis of the facts and circumstances, such as the nature of the school board's permission, the terms of any relevant contract and the nature of the funds involved.

4. Teaching Position Not Renewed

From your question, we understand that a teacher was hired in a position created with "Clinton" funds and then, when the position was terminated, was not given another assignment. It is our understanding that "Clinton" funds are federal funds (Federal Class Size Reduction), and we assume that the teaching position was subject to and dependent on continued federal funding. We are unable to determine whether the teacher should have been given another teaching position because the answer requires an analysis of the facts and circumstances.

5. Career Ladder Supplement for Maintenance Supervisor

From your question, we understand that a county maintenance supervisor receives a career ladder supplement of $7000 and that this employee does not have any instructional duties.

To be eligible for a career ladder supplement one must be a full-time teacher, principal or supervisor. Tenn. Code Ann. § 49-5-5002(b)(1), (4) and (15). In addition, a supervisor must be certificated as such by the State Board of Education. Tenn. Code Ann. § 49-5-5003(6); *see also* Tenn. Code Ann. § 49-5-5501(c); Tenn. Admin. Rules, *Education,* 0520-2-2-.20.

If the maintenance supervisor to whom you refer meets all applicable eligibility criteria for career ladder supplements, the supervisor may be due a supplement. Based upon the information supplied in your question, however, it appears the maintenance supervisor might not be eligible for career ladder supplements. *See Lyons v. Rasar,* 872 S.W.2d 895, 897 (Tenn. 1994)(A food supervisor is not a teacher

under the teacher tenure statutes.) A determination on whether the maintenance supervisor is entitled to a career ladder supplement would depend upon an analysis of the facts and circumstances.

6. Conflict of Interest for School Board Member

From your question, we understand that the chairman of the school board is an official in the company with which the board contracts to administer the school system's Cafeteria Plan.[4]

State law prohibits state, county, municipal and other officials from having a direct interest in work or in a contract in which the official entity (*e.g.*, a school board) is interested. A "direct interest" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. Tenn. Code Ann. § 12-4-101(a)(1).

In addition, the same prohibition applies if the official has an indirect interest unless the official publicly acknowledges his interest. The term "indirect interest" means any contract in which the official is interested but not directly so, but also includes contracts where the official is directly interested but is the sole supplier of the goods or services. Tenn. Code Ann. § 12-4-101(b).

These statutory prohibitions apply to school board members. *See State ex rel. Abernathy v. Anthony*, 206 Tenn. 597, 335 S.W.2d 832 (1960). The situation you describe may be a conflict of interest. *See Op. Tenn. Atty. Gen.* No. U94-086 (May 19, 1994) and *Op. Tenn. Atty. Gen.* No. 93-73 (December 28, 1993) (copies attached). Whether this situation is a conflict of interest will depend upon an analysis of the facts and circumstances.

7. Rate of Pay for Former Superintendent

From your question, we understand that a superintendent's term expired and that he was not appointed as director of schools. We assume the former superintendent continues to work in the school system as a teacher.

Tenn. Code Ann. § 49-2-203(a)(15) prohibits decreasing the salary of a director of schools transferred during the term of his contract for the remainder of the contract period. We have found no authority, however, for a teacher to continue to receive a director's salary when his term ends and he is no longer in that position.

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[4] 26 U.S.C. § 125. A cafeteria plan (or "flexible benefit plan") is a written plan (1) under which participants may choose among two or more benefits consisting of cash and "qualified benefits," and (2) in which all participants are employees. 26 U.S.C. § 125(d)(1).

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