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Opinion No. 01-013

Interfacing roles of the Director of Schools and local Board of Education regarding teacher reemployment, dismissal and tenure

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QUESTIONS

1. Does the school board's re-election of a teacher for a fourth year of employment result in the granting of tenure in the absence of:

   a. the director of schools' recommendation that tenure be granted; *and*

   b. notification by the director of schools that the Board's renewal of contract, without more, will result in a grant of tenure ?

2. When voting on tenure, may school board members add teachers to the director of schools' list of eligible teachers recommended for tenure?

3. Did the 1992 reallocation of authority between the local school board and the superintendent (now "director of schools") affect local board policies allowing certificated employees to appeal a superintendent's decision not to renew a contract?

OPINIONS

1. No.

2. No. The Board's vote on tenure is restricted to those teachers recommended by the director of schools.

3. Upon such appeal, the Board may still vote to overrule the director of schools' decision

not to renew a teacher's contract.

ANALYSIS

1. (a) This question is the subject of a prior opinion of this office.[1] A copy of this opinion is attached. Also attached is a copy of a prior opinion of this office that addresses the statutory allocation of powers and duties between the county school board and the school superintendent.[2]

(b) This question is the subject of the recent decision of the Tennessee Supreme Court in *Bowden v. Memphis Board of Education*[3]. In this case, the school board reelected the Plaintiff for a fourth year of employment. However, the director of schools had not notified the Board that the Plaintiff would obtain tenure if reelected by the Board. The Court held that the teacher did not acquire permanent tenure upon the teacher's reelection because the director of schools failed to advise the Board that renewal of his contract would result in an award of tenure.

The Court held that the completion of the three-year probationary period set forth in TENN. CODE ANN. § 49-5-503(2)(A)-(D) is "'merely a condition precedent to eligibility for tenure'" that "does not automatically confer permanent tenure."[4]

2. This opinion request has posited the following hypothetical: The Board overturns the Superintendent's decision not to renew the contract of a probationary teacher who has worked for the school system for three years. The Superintendent had not recommended the teacher for tenure. Does the Board's action confer tenure on the teacher, despite the fact that the teacher had not been recommended by the Superintendent?

Before the revisions to the governance of public schools occasioned by the Education Improvement Act of 1992[5], the Board's decision to renew a teacher's contract for a fourth year automatically conferred tenure on the teacher, with all its benefits. Under the EIA, as before, only the Board can confer tenure.[6]

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[1]Op. Tenn. Atty. Gen. 98-009 (Jan. 9, 1998)(copy attached).

[2]Op. Tenn. Atty. Gen. 93-66 (Nov. 29, 1993)(copy attached).

[3]29 S.W.3d 462 (Tenn. 2000).

[4]*Id*. at 465, quoting *Sanders v. Vinson*, 558 S.W.2d. 838, 843 (Tenn. 1997).

[5]1992 Tenn. Pub. Acts, ch. 535.

[6]TENN. CODE ANN. § 49-2-203(a)(1).

However, the Board may confer tenure *only* upon the positive recommendation of the superintendent.[7]

In order for a teacher to be awarded tenure, the law requires that, in addition to completion of three years of employment, and a favorable recommendation of the Superintendent, the Superintendent *must* advise the Board that renewal of the teacher's contract for another year will result in an award of tenure.[8] The latter requirement addresses the following scenario: A teacher has completed the three-year probationary period. The Superintendent recommends tenure. The Board determines that it wishes to reject the positive recommendation of the Superintendent for tenure. However, the Board does not want to dismiss the employee. Rather, the Board wants to hire the employee for an additional year and revisit the tenure issue again after the employee has completed another year of employment, assuming the Superintendent again recommends tenure.

If under this scenario the Board simply renews the contract, without more, the teacher would be awarded tenure. The reason for this is that the employee has met the only other requirements for tenure: completion of three years of employment and the favorable recommendation of the superintendent. TENN. CODE ANN. § 49-5-504(b) requires the Superintendent to explicitly notify the Board that renewal of the contract, without more, will result in the award of tenure despite the fact that this is not what the Board wants to do under this scenario. In this circumstance the Superintendent's notification required by TENN. CODE ANN. §49-5-504(b) enables the Board to take a separate tenure vote on this employee in question, and to reflect this separate vote and the result, in the minutes of the meeting.

Taken together, these revisions of teacher tenure law enacted by the legislature in 1992 represent a distinct departure from prior law. Under prior law teachers automatically received tenure if their contracts were renewed for a fourth year by the board. Under the 1992 Education Improvement Act, teachers rehired by the Board for a fourth year will only receive tenure (a) if recommended by the Superintendent, *and* (b) if the Superintendent notifies the Board prior to the reelection that the teacher, if reelected, will attain tenure status. It is apparent, however, that the legislature did not want these new requirements to result in an "up or out" system, in which teachers who were not granted tenure after three years service would be required to leave. The provisions discussed above enable a Board to continue to review the contract of a teacher that either the Superintendent or the Board, or both, does not want to confer with all the rights of a tenured employee.

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[7] *Id. See* Op. Tenn. Atty. Gen. 98-009 (Jan. 9, 1998)(Copy attached).

[8] *Bowden v. Memphis Board of Education, supra.*

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