

## **Opinion No. 60-105**

June 7, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Honorable Didio B. Salas State Senator, Socorro County 225 Johnson Street Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Can the Bernalillo Public School Board legally require that non-tenure teachers employed by said Board and assigned to teach at the Santo Domingo Elementary School live at residences located on the school site?

#### CONCLUSION

No, but see analysis.

### **OPINION**

#### **{\*474} ANALYSIS**

The Board of Education of the Bernalillo Public Schools on June 11, 1958 at a regular meeting took the following action as shown by the minutes of such meeting:

"Mrs. Howe moved and Mr. Aguilar seconded, that all new teachers be required to live in the community in which they will teach, if housing is available, provided that in case staff employee at Santo Domingo, if not housed at Santo Domingo school site, he or she be required to live in Bernalillo part time or full time as the case may require. Motion carried unanimously."

The Superintendent of Schools for the Bernalillo Public School District informs us that the language "new teachers" has been interpreted by the Board as meaning non-tenure teachers. Nontenure teachers are those who {\*475} have not been employed three consecutive years by a local board of education and signed a contract for the fourth year. Section 73-12-13, N.M.S.A., 1953 Compilation (P.S.).

The Santo Domingo Elementary School is located adjacent to State Highway 22 approximately one-half mile off U.S. Highway 85 some 33 miles northeast of Albuquerque and 29 miles southwest of Santa Fe. The nearest settlements are Santo Domingo Indian Pueblo, Pena Blanca, San Felipe Indian Pueblo, Cochiti Indian Pueblo and Bernalillo, located respectively approximately 5, 9, 13, 15 and 19 miles from the school. The school building was constructed with funds provided by the Federal

Government and is located on land leased for a school site. The lease is between the Pueblo of Santo Domingo, lessor, and the Bernalillo Board of Education, lessee, and is dated January 12, 1956. The lease has since been amended, but none of the amendments pertain to the question before us. The lease was approved by the State Board of Education and a duly authorized representative of the Secretary of the Interior.

Paragraph 2 of the lease provides that the lessee shall, among other things, operate and maintain quarters for teachers and other employees of the school. Paragraph 11 provides that the principal and such other personnel, teachers and otherwise, as may be determined by the lessee and the State, shall reside on the premises.

Nearly all of the students at the school are Indian children from the Pueblos of Santo Domingo, Cochiti and San Felipe. The school is a "day school," the students being transported to and from their classes in school busses operated under contract with the Bernalillo Board of Education.

Teachers employed at the school have signed a standard form New Mexico Teachers Contract, approved by the State Board of Education, which provides in part as follows:

"It is further understood that this contract is also made subject to the rules and regulations of the State Board of Education, and the approved budget.

Said teacher hereby agrees to present himself or herself for duty to the Superintendent of Schools of said school system at such times and places as may be designated from time to time, and agrees to perform faithfully and fully the duties of the position of teacher in the school assigned from time to time, and promises to be prompt, thorough and conscientious, judicious in punishment and watchful of the morals of the pupils and to attend all school meetings called by the Superintendent."

Although the teacher's contract before us does not explicitly provide that rules and regulations of the local board of education in force when the contract is signed are incorporated therein, our opinion is that such rules and regulations, if reasonable, become a part of the contract of employment. 78 C.J.S., Schools and School Districts, § 192; **Rible v. Hughes**, 24 Cal. 2d 437, 150 P. 2d 455, 154 A.L.R. 137; **Fry v. Board of Education**, 17 Cal. 2d 753, 112 P. 2d 229. The question is, therefore, whether the action of the Bernalillo Public School Board is a valid regulation which may be incorporated into the contract. The State Board of Education has not enacted regulations as to the residence of teachers.

We shall assume that the residences located on the school site constitute a "community" within the meaning of the residence requirement of the School Board. An argument can be made that such residences do not constitute a "community" but in view of the opinion which follows, we do not deem it necessary to rule on this question.

{\*476} With this assumption in mind, our opinion is that the action of the School Board if construed to require non-tenure teachers to live at residences on the Santo Domingo School site is unreasonable and cannot be enforced.

Cases have held that a school board may legally require a teacher to live within the school district in which he or she teaches. **Jones v. School District**, 333 Pa. 581, 3 A. 2d 914; **Appeal of Sinton**, 154 Pa. Super. 233, 35, A. 2d 542. On the other hand, we have found no case which holds specifically that a teacher may or may not be required to live in a specific residence. In the case of **Horne v. Chester School District**, 75 N.H. 411, 75 A. 431, the New Hampshire Court stated that a regulation directing a teacher to live in a specific boarding house was unreasonable. However, this statement was dictum, since the case was decided on the theory that the regulation imposing such a requirement was otherwise invalid because not recorded as required by a New Hampshire statute.

We feel that the dictum announced in the Horne case is a correct interpretation of the law as applied to the fact situation before us. The contract between the Bernalillo School Board and the teacher requires merely that the teacher present himself or herself for duty at such times and places as may be designated from time to time. The teacher agrees to perform faithfully and fully the duties of teacher in the school assigned, promises to be prompt, thorough and conscientious, judicious in punishment and watchful of the morals of the pupils and further promises to attend all school meetings called by the Superintendent. Nowhere in the contract is there any requirement, express or implied, that the teacher's duties include residence on the premises. Contrariwise, it would appear that a reasonable interpretation of the duties just enumerated would exclude such a residence requirement. As long as the teacher lives up to the requirements and performs the duties spelled out in the contract, he or she has performed his or her part of the contract fully.

We are aware that the action of the Bernalillo School Board has been construed by such board to apply only to non-tenure teachers and it is clear from § 73-12-13, N.M.S.A., 1953 Compilation (P.S.), that the services of such teachers, being those who have not taught under contract with the board for three consecutive years and hold a contract for the fourth year, may be terminated without the notices of dismissal and appeals to the local board, State Board and the District Court, required by § 7312-13. However, we construe this to mean that the services of a non-tenure teacher can legally be terminated at the end of the contract year without such hearing and appeals, but it does not mean that the services of a nontenure teacher can be terminated during the contract year unless he or she has violated the terms of the teacher's contract. Parenthetically, a non-tenure teacher not entitled to hearing and appeal under § 73-12-13 must nonetheless be allowed a hearing in accordance with § 73-12-15. See Opinion No. 57-227, dated September 10, 1957.

In our opinion, the provisions of paragraphs 2 and 11 of the lease between the Board of Education and the Pueblo of Santo Domingo are not determinative of this question since by their terms the decision as to what personnel shall live in the residences is up

to the Bernalillo Board of Education, as lessee, and the State, and it must be assumed that any action of the Board of Education and the State in this regard must be otherwise legally enacted.

This opinion should not be construed to prohibit the Bernalillo Board of Education from requiring certain personnel employed at the school to reside at the school site. The opinion is limited to the precise question asked, i. e., whether {\*477} teachers employed under the present contract of employment may be required to so reside. If residence of certain personnel employed at the Santo Domingo Elementary School is required for its proper operation, the board might very well have the power to legally require such residence provided the terms of the employment contract so require. We do not rule at this time on what personnel might be required to reside on the school site nor do we rule as to what steps might have to be taken by the Board to legally require such residence.

By: Philip R. Ashby Assistant Attorney General