

Opinion No. 60-92

May 18, 1960

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

TO: Hon. David C. Montoya State Representative San Miguel County 511 West National Avenue Las Vegas, New Mexico

QUESTION

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May the Board of Education of the Mora Independent School District enforce a regulation pertaining to maternity leave against Mrs. Juanita Montoya, a teacher in the school district, which regulation was enacted after Mrs. Montoya had signed her contract to teach school for the 1959-1960 school year?

CONCLUSION

No, but see analysis.

OPINION

{*456} ANALYSIS

We base our opinion on the assumption that the facts presented below present a complete picture of the situation giving rise to your request.

Mrs. Juanita Montoya is a duly certified teacher employed by the Mora Independent School District. On August 28, 1959, she signed a standard form State Board of Education approved teacher's contract with the board of education of said district, which contract provides, as pertinent:

"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."

"It is also further understood that said teacher shall not be discharged during the term of this contract, except upon proven disability, disqualification, immorality, incompetency, insubordination, or for any other good and sufficient cause, and after hearing on written charges. A copy of said charges shall be served upon the teacher together with a written notice of the time and place of the hearing thereof, at least five (5) days prior to such hearings."

"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 {*457} and conscientious, judicious in punishment and watchful of the morals of the pupils and to attend all school meetings called by the Superintendent."

This contract makes no reference to it being subject to the rules and regulations of the Mora board of education. Sometime in September, 1959, the Mora board enacted a regulation regarding leaves of absence as follows:

"Section 3. No leave of absence will be granted or extended except for full-time study in a field directly related to the teaching position, for military service, or for personal illness as recommended by a physician. Teachers who are in the stage of pregnancy on or before the first day of the teaching year, must give proper notice to the Board of Education of this condition and request a leave of absence from their position. Under no circumstances shall a teacher be allowed to continue with her position in the system beyond four (4) months pregnancy stage during the interim of the teaching year; namely, from September through May 30th. A teacher may resume her duties six weeks after confinement provided it is done within the first six months of the school term. Failure on the part of the teacher to apply for such a leave shall be deemed neglect of duty and shall constitute cause for dismissal."

There is no statute granting to a local school board the power to incorporate subsequently enacted regulations into teachers contracts. Further State Board of Education has not enacted any rules or regulations in regard to maternity leaves, but has merely passed a resolution recommending that the local boards of education enact such rules and regulations.

On December 3, 1959, Mrs. Montoya applied for a three months leave of absence from January 6, 1960 to March 30, 1960 "due to illness," which leave was granted. At the time, she contemplated major surgery, but such surgery was not performed because she was pregnant. A child was born to Mrs. Montoya on February 16, 1960. On March 10, 1960, at a regular meeting of the local board, her leave of absence was extended by the board without her consent through the 1959-1960 school year. You question the right of the board to take such action. Mrs. Montoya was, and still is on a non-pay status during such leave of absence.

We shall assume, without deciding, that prior reasonable rules and regulations of the local board are incorporated into the contract in question despite the fact that no such incorporation by reference is found in the language of the contract. We shall further assume, without deciding, that the regulation of the local board enacted in September, 1959 relating to leaves of absence, is a reasonable regulation. The question is, then, whether a valid, reasonable, subsequent regulation of the local board is effective as to Mrs. Montoya's contract entered into before the regulation was effective.

In our opinion, the subsequently enacted regulation is not effective as to Mrs. Montoya's contract. The contract does not recite that the parties thereto are subject to regulations

of the local board enacted at any time during the contract term. Mrs. Montoya was not on notice that any such regulation would be enacted afterwards and did not assent to the action of the Mora board in this regard. Therefore, the regulation is not a part of such contract of employment and cannot be enforced in this situation, since it amounts to an attempt on behalf of one party to a bilateral contract to amend the terms thereof. See **Rible v. Hughes**, 24 Cal. 2d 437, 150 P. 2d 455 (1944) holding that valid regulations of local school board, in effect at the date of making of a teacher's contract, are integral parts of such contract. See also **Backie v. Cromwell {*458} Consolidated School District.**, 186 Minn. 38, 242 N. W. 389 (1932) and **Ansorage v. City of Green Bay**, 198 Wis. 320, 224 N. W. 119 (1929).

We have answered your question; however, we deem it necessary to bring to your attention certain other aspects of this situation which arise because of our ruling that the September regulation cannot be enforced against Mrs. Montoya.

First, Mrs. Montoya requested a leave of absence from January 6, 1960 to March 30, 1960, which leave was granted by the local board. This action was, in our opinion, a modification of the contract mutually agreeable to both parties and enforceable upon both parties. Therefore, the board may legally withhold payment of her salary for that period.

Secondly, the contract recites that Mrs. Montoya agrees to present herself for duty to the Superintendent of Schools at such times and places as may be designated from time to time. This means, as to this situation, that she must have been ready, willing and able to perform her duties as a teacher on March 30, 1960 in order to be paid her salary from that time on. We do not rule on whether she was so ready, willing and able to teach, since we have no facts before us necessary to make such a determination.

By: Philip R. Ashby

Assistant Attorney General