

Opinion No. 61-115

November 8, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mr. A. J. Garde, Superintendent, Belen Consolidated Schools, Belen, New Mexico

QUESTION

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Can a local School Board require teachers to live within the administrative boundaries?

CONCLUSION

See analysis.

OPINION

ANALYSIS

We assume from your letter of request that the Belen School Board is contemplating requiring teachers, employed under the standard Teacher's Contract and approved by the State Board of Education, to reside within the the school district boundaries, and that this rule would be made effective during the current contract year. Upon these facts we feel that Opinion No. 60-105, dated June 7, 1960, is determinative and that your question must be answered in the negative. The relevant portions of that opinion read:

". . . The contract between the Bernalillo School Board and the teacher requires merely that the teacher present himself 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."

The contract currently in use is substantially the same one referred to in that opinion. Although the opinion related specifically to the question of compelling teachers to reside at a school site, we feel that any restriction upon a teacher's residency promulgated during a contract year would violate the terms and conditions of the standard contract

now in use. The standard teacher's contract recites that it is made subject to (1) the rules and regulations of the State Board of Education; (2) reasonable rules, regulations and standards relating to professional qualifications established by the local Board of Education.

No serious argument could be made that residency requirements are in any way related to the professional qualifications of the teacher, thus precluding, by terms of the contract itself, the school board from imposing any further substantial duties, obligations, or restrictions upon the teacher during the term of the contract.

Since the State Board of Education has adopted no rule or regulation pertaining to the question presented here, the provision in the standard contract making the contract subject to the rules and regulations of the State Board of Education also fails to provide the local school board with authority to impose residency restrictions during the contract year. Opinion No. 60-105 referred to above makes it clear that whether or not the teacher concerned has tenure status, the services of the teacher cannot be terminated during the contract year unless he or she has violated the terms of the Teacher's Contract.

Whether the State Board of Education might properly refuse to approve local regulations of the type here discussed on the grounds that such subjects are more properly of state-wide concern and within the sole province of the State Board of Education, we do not determine. Nor are we concerned with a possible conflict between State Board of Education regulations and local regulations. Our opinion is limited to the factual situation heretofore assumed, in determining that a local school board cannot, under the standard Teacher's Contract presently in use, require a teacher, during a contract year, to live within the administrative boundaries of the district.