

non-residents was not in violation of Article IX, § 7 of the Michigan Constitution of 1963.

Thus it is undisputed that the people, in approving the Michigan Constitution of 1963, clearly intended that the legislature possess the power to grant exemptions from any flat rate income tax imposed by it pursuant to Article IX, § 7.

Therefore, it is the opinion of the Attorney General that Article IX, § 7 of the Michigan Constitution of 1963 does not bar the legislature from exempting a certain dollar amount of gross income or a certain specified portion of a taxpayer's income, or from providing exemption for a taxpayer and his dependents similar to those provided for under the federal income tax law.

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SCHOOLS: Teachers on continuing tenure – failure to perform a valid written contract.

Under Article V, Section 1 of the Tenure of Teachers Act, a teacher on continuing tenure not under written contract for the ensuing school year may discontinue his services without penalty by giving written notice 60 days prior to September 1, or by mutual consent thereafter. A teacher on continuing tenure and under written contract for the ensuing school year cannot discontinue his services, and is subject to suspension of his teacher's certificate under Section 861 of the School Code of 1955, except when he discontinues his services with the consent of the controlling board.

No. 4397

March 1, 1965.

Honorable Russell Hellman
State Representative
The Capitol
Lansing, Michigan

Act 4, P.A. 1937 (Ex. Sess.) as amended,¹ is known as the Tenure of Teachers Act. Section 1 of Article V of the Act provides that:

“No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least sixty (60) days before September first (1st) of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.”

You point out that the quoted section permits one on continuing tenure to resign and preserve his rights to continuing tenure if the terms thereof are complied with.

¹ C.L. 1948, § 38.71 et seq.; M.S.A. 1959 Rev. Vol. § 15.1971 et seq.

Section 861 of the School Code of 1955,² however, states in part that:

"The state board of education shall have authority to suspend for the reasons and in the manner herein provided any certificate issued to any teacher who refuses without sufficient cause, in the opinion of said board, to perform a lawful contract to teach in any school in this state in which such teacher is required to hold a certificate issued by such board before entering into a contract to teach."

You ask if the two quoted provisions are conflicting and your question can be stated as follows:

If there is a written contract between a board of education and a teacher on continuing tenure, covering the subsequent school year, and the teacher gives appropriate notice to the board of education at least 60 days before September 1st that he is discontinuing his services, does Section 1 of Article V of the Tenure of Teachers Act prevent the State Board of Education from acting under Section 861 of the School Code of 1955?

It is a well recognized principle of statutory construction that statutes will not be regarded as conflicting where by any reasonable construction they can be reconciled. (*People v. Buckley*, 302 Mich. 12). Study of the provisions involved, together with accompanying sections, reveals that such a construction is possible, if not compelled, here.

It is clear from examination of the provisions of the Tenure of Teachers Act that achieving the status of continuing tenure is not the same as being under contract or employed. Section 1 of Article III³ requires that a teacher shall be continuously employed after satisfactory completion of the probationary period. Employed means that a teacher is required to perform services for a compensation based upon a written contract (1961-62 O.A.G., March 22, 1961, p. 66, 72). The same section permits certain provisions dealing with administrative capacity to be inserted in contracts.

Section 2 of Article III speaks of one on continuing tenure being employed by another board. Section 2 of Article X provides that no teacher can waive rights or privileges under the Act in any contract or agreement made with a controlling board. The same section prohibits certain conditions in contracts that would violate the underlying policy of the Act.

The Attorney General has previously ruled that written contracts should be issued to teachers on continuing tenure (1939-40 O.A.G., June 14, 1940, p. 539). Achieving tenure is therefore not synonymous with being under contract.

Additionally, it is clear that one can leave the employ of a board without forfeiting one's rights to tenure. This is apparent from Section 2 of Article III which protects one on continuing tenure when he is employed (or contracts) with another controlling board, and requires that he be immediately placed on continuing tenure by his new employer at its option or serve a probationary period of not more than one year.

² C.L.S. 1961, § 340.861; M.S.A. 1959 Rev. Vol. § 15.3861.

³ As last amended by Act No. 242, P.A. 1963.

It thus becomes obvious that in allowing resignation, Section 1 of Article V, quoted above, is referring to teachers on continuing tenure but not bound by contract to teach during the subsequent period. Tenure, not necessarily meaning under contract, should not be read so broadly in this section.

A teacher not under written contract for the subsequent school year can preserve his tenure by resigning with the appropriate notice at least 60 days before September 1 of the ensuing year. (Such teacher may also resign within the 60 days with the board's consent.) If he is under contract for the subsequent period, however, he may not resign merely by giving notice 60 days before September 1. He must honor the contract unless the board agrees to release him from it.

Such an interpretation is in accordance with the purpose of the Tenure of Teachers Act. One on continuing tenure knows he is entitled to a contract and thus is provided security in this regard. Correspondingly, the board has a right to know within 60 days of September 1 whether or not the teacher will be employed by it if it does not offer him a written contract prior to that time.

Many boards, however, desire to make arrangements for the ensuing year much earlier. Teachers also like to reach an agreement on wages earlier than the time that they would be required to stay with the same board. Thus contracts are often entered into in the spring of the preceding school year.

After execution of such a contract, neither the board nor the teacher can fail to observe its terms without mutual consent. If the teacher breaks the contract, suspension of his certificate by the State Board of Education is authorized by Section 861 of the School Code quoted above.

The two statutory provisions you cite are therefore consistent. Section 1 of Article V would not allow a teacher to fail to perform a valid written contract merely by giving the notice prescribed therein to the controlling board and such teacher would be subject to appropriate action by the State Board of Education under Section 861 of the School Code of 1955. Section 1 of Article V of the Tenure of Teachers Act refers to a situation where there is no written contract already executed, requiring performance during the subsequent year. In such a situation, a teacher by giving appropriate notice 60 days before September 1st of the ensuing school year would continue to be protected by the Tenure of Teachers Act.

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