760818.1

STATUTES: Retrospective effect.

TEACHERS: Statute granting benefits to substitute teachers.

In the absence of clear statutory language making it retroactive, a statute furnishing new benefits is not retroactive; nevertheless, the benefits accrue to eligible persons whose eligibility is based upon events that occurred prior to the effective date of the act.

Opinion No. 5003 August 18, 1976.

Honorable James DeSana
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the two following questions:

"1. Pursuant to Public Acts 303 and 306, does the sixty (60) day period of service called for in PA 306 begin to be accumulated on the day the bill was signed into law, December 22, 1975, or does the number of days served prior to that date apply?

"2. Likewise, does the one-hundred-twenty (120) days of service of a substitute teacher called for in PA 306 begin accumulation on December 22, 1975, or can service performed prior to that date be credited?"

In answering your questions, I assume that the language "[p]ursuant to Public Acts 303 and 306" refers to the fact that each Act contained a provision that precluded it from taking effect unless the other was enacted into law.

1975 PA 306, immediately effective December 22, 1975, added § 569d[1] to the School Code of 1955.[2] This section provides:

"(1) A teacher employed as a substitute teacher with an assignment to 1 specific teaching position after 60 days of service shall be granted leave time and other privileges granted to regular teachers by the district including a salary not less than the minimum salary on the current salary schedule for that district.

"(2) A teacher employed as a substitute teacher for 120 days or more during a school year shall be given first opportunity to accept or reject a contract for which the person is certified after all other teachers from the district are reemployed in conformance with the terms of a master contract of an authorized bargaining unit and the employer."

The general rule with regard to whether a statute is given retrospective or prospective effect was stated in *Angell* v *West Bay City*, 117 Mich 685, 688; 76 NW 128, 129 (1898), as follows:

". . . The general rule is that a statute is to be construed as having a prospective operation only, unless its terms show clearly a legislative

[1] MCLA 340.569d; MSA 15.3569(4).

[2] 1955 PA 269, as amended; MCLA 340.1 et seq; MSA 15.3001 et seq.

> intention that its terms should operate retrospectively. *Ludwig* v. *Stewart,* 32 Mich. 27; *Harrison* v. *Metz,* 17 Mich. 377; *McKisson* v. *Davenport,* 83 Mich. 211 (10 L.R.A. 507); *Atherton* v. *Village of Bancroft,* 114 Mich. 241; Cooley, Const. Lim. (6th Ed.) 455. . . ."

Since the language of § 569d does not indicate legislative intent that its terms should operate retrospectively, it must be concluded that this section has a prospective operation only.

However, as noted in *Nash* v *Robinson,* 226 Mich 146, 150; 197 NW 522, 524 (1924):

> " 'A statute which furnishes a new remedy, but does not impair or affect any contractual obligations, nor disturb any vested rights, is naturally applicable to proceedings begun after its passage, though relating to acts done previously thereto."

In *Creighan* v *Pittsburgh,* 389 Pa 569; 132 A2d 867 (1957), the plaintiff, a salaried fireman, was found to be suffering from tuberculosis of the respiratory system in March, 1949. In June of 1954, he was found to be permanently incapacitated because of the tuberculosis. The Pennsylvania "Heart and Lung Act," under which plaintiff claimed, became effective on September 27, 1951. The defendant argued that the Act was prospective in its operation and, since it took effect more than two years after the plaintiff became ill, he was not included within the Act's terms. The court, although agreeing that the act must be given prospective operation, held against the defendant stating:

> ". . . A recognition of appellee's claim does not require that we place a retroactive construction on the Act, but simply that we apply the Act to a condition which existed on the date when the Act became effective even though such condition resulted from events which occurred prior to its effective date. . . . Where, as here, no vested right or contractual obligation is involved, an act is not retroactively construed when applied to a condition existing on its effective date even though the condition results from events which occurred prior to that date. . . . An inclusion of appellee within the orbit of the operation of this statute does not require a retroactive construction thereof." 389 Pa, at 575-576; 132 A2d, at 870-871

The principle enunciated in *Nash, supra,* and *Creighan, supra,* provides the answers to your questions. Therefore, in my opinion, § 569d(1) grants leave time and other privileges granted to regular teachers by the district to a substitute teacher with an assignment to a specific teaching position after the substitute teacher has served 60 days. In other words, the 60 day period of service begins on the date the substitute teacher commences employment with an assignment to a specific teaching position.

Thus, if a substitute teacher assigned to one specific teaching position had accumulated a 60 day period of service prior to the effective date of § 569d, December 22, 1975, and was so employed on December 22, 1975, the teacher would be entitled to the statutory benefits conferred by § 569d(1) beginning on its effective date, December 22, 1975. If a substitute teacher assigned to one specific teaching position accumulates a 60 day period of

service after December 22, 1975, the effective date of § 569d, such teacher would be entitled to the statutory benefits conferred by § 569d(1) commencing on the work day following accumulation of the 60 day period.

The benefits conferred by § 569d(1) are not, in any event, applicable prior to December 22, 1975, its effective date. If § 569d(1) were construed otherwise, it would have a retroactive application.

The same rationale applies to the 120 day period set forth in § 569d(2). Service performed as a substitute teacher during the 1975-1976 school year prior to December 22, 1975, the effective date of § 569d, may be credited when determining whether a substitute teacher is entitled to the statutory benefit conferred upon a teacher employed as a substitute teacher for 120 days or more during a school year.

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760819.2

WEAPONS: License to purchase.

WEAPONS: Safety inspection.

WEAPONS: Employer who furnishes to employee.

PRIVATE SECURITY GUARD ACT: Weapons.

PRIVATE SECURITY GUARD ACT: Banks and savings and loan associations.

Banks and savings and loan associations which employ private police or security guards are exempt from the requirements of the private security guard act.

Employees who are furnished handguns by their employers on a sign in-sign out basis are not required to obtain a license to purchase or a safety inspection certificate before each transfer of the weapon. Only the employer need obtain the license and the certificate.

Employees licensed under the private security guard act do not have to obtain a license or a safety inspection certificate upon receiving a handgun from the employer on a sign in-sign out basis. Only the employer need obtain the license and the certificate.

Opinion No. 5071 August 19, 1976.

Mr. George N. Parris
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You have requested my opinion as to whether employees of certain businesses, including banks and security guard agencies, must obtain (1) a license to purchase and (2) a safety inspection certificate before each