

within the scope of the School Code of 1955, § 358, *supra*, and the child is, for public school enrollment purposes, an educational resident of the Michigan school district in which he is living.

FRANK J. KELLEY,
Attorney General.

7605/4.2

TEACHERS: Tenure

WORDS AND PHRASES: "Controlling board"; "Teacher"

A teacher who has acquired tenure in another state and subsequently comes to Michigan to teach must serve a 2 year probationary period before acquiring tenure in a Michigan public school district.

Opinion No. 4976

May 14, 1976.

Honorable Philip Mastin
State Representative
P.O. Box 119
Lansing, Michigan 48901

You have requested my opinion on the following question:

"If a teacher has been passed under tenure in a state other than Michigan, and then comes to Michigan to teach, must he then serve the two year probation period for tenure in Michigan?"

Teacher tenure in Michigan is controlled by the provisions of 1937 PA (Ex Sess) 4; MCLA 38:71 *et seq*; MSA 15.1971 *et seq*, the teachers' tenure act.

This act is specific that all teachers must serve a probationary period as seen in the following section:

"All teachers during the first [1st] two [2] school years of employment shall be deemed to be in a period of probation: . . ." MCLA 38.81; MSA 15.1981

The purpose of the tenure act is to protect teachers from any capricious and arbitrary employment policies of local school boards after the teacher has satisfied the controlling board of his or her competence during the probationary period. *Munro v Elk Rapids Schools*, 385 Mich 618; 189 NW2d 224 (1971).¹

The teachers' tenure act grants continuing tenure "[a]fter the satisfactory completion of the probationary period." MCLA 38.91; MSA 15.1991.

In the teachers' tenure act, the legislature has provided the following:

"If a *teacher on continuing tenure* is employed by *another controlling board*, he shall not be subject to another probationary period of more than 1 year beginning with the date of employment, and may at the

¹ On rehearing adopting the minority opinion of 383 Mich 661; 178 NW2d 450 (1970).

option of the controlling board be placed immediately on continuing tenure. . . ." (emphasis added) MCLA 38.92; MSA 15.1992

Thus, to qualify for a probationary period of one year, a person must be a "teacher" who has already acquired continuing tenure from a "controlling board."

The teachers' tenure act defines the term "controlling board" as follows:

"The term 'controlling board' shall include all boards having the care, management, or control over *public school districts* and public educational institutions." (emphasis added) MCLA 38.73; MSA 15.1973

The teachers' tenure act provides:

"This act shall apply to all school districts of the state." MCLA 38.151; MSA 15.2051

In *Shaw v Macomb Community College*, 389 Mich 69; 204 NW2d 129 (1973), the court concluded that only public educational institutions operated by school districts are included within the teachers' tenure act. Further, the court held, with respect to the meaning of the phrase school district, as employed in the teachers' tenure act, the following:

". . . The phrase 'school district' is not open to judicial determination, its meaning having been settled by the Legislature:

"Sec. 2. Hereafter, except as otherwise provided in this act, each and every school districts shall be organized and conducted as:

"1. A primary school district; or

"2. A school district of the fourth class; or

"3. A school district of the third class; or

"4. A school district of the second class; or

"5. A school district of the first class.

"P.A. 1955, No. 269, § 2, Eff. July 1." MCLA 340.2; MSA 15.3002."

389 Mich, at p 75; 204 NW2d, at p 132

Further, the teachers' tenure act defines the word "teacher" as follows:

"The term 'teacher' as used in this act shall include all certificated persons employed for a full school year by any board of education or controlling board of any public educational institution." MCLA 38.71; MSA 15.1971

The teachers' tenure act also provides:

"The term 'certificated' shall be as defined by the state board of education." MCLA 38.72; MSA 15.1972

The State Board of Education has defined the term "certificated" in the following manner:

"a. For the purposes of teacher tenure under the provisions of article 2, Act No. 4, Public Acts of 1937, Extra Session, 'certificated' as it refers to teachers shall include any teacher *holding a Michigan cer-*

tificate which is valid for the position to which he is assigned, but shall not include nondegree persons holding special certificates as teachers or teacher aides in training in experimental programs." (emphasis added) Administrative Code 1964-1965 AACs, R 390.661

Under the above quoted rule, a person teaching in a public school district in another state would not be a teacher within the meaning of Article II of the teachers' tenure act for the reason that such person would not hold a Michigan teaching certificate valid for the position to which he or she is assigned. Further, Article II of the teachers' tenure act deals with the initial probationary period, the satisfactory completion of which entitles one to continuing tenure under Article III of the statute. Thus, a person who had acquired tenure as a teacher in another state would not be a teacher on continuing tenure within the meaning of MCLA 38.92; MSA 15.1992.

In conclusion, there is no provision in the teachers' tenure act which would reduce the two year probationary period required of all teachers new to Michigan's public schools. It is, therefore, the opinion of the Attorney General that a teacher who has acquired tenure in another state and then comes to Michigan to teach must serve a two year probationary period before acquiring tenure in Michigan's public schools.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION OF MICHIGAN: Article 3, section 2

CONSUMERS COUNCIL: Powers, duties and functions

The Michigan Consumers Council is an agency of the legislature and may not exercise executive functions.

Opinion No. 4872

May 18, 1976.

Honorable Dan Angel
State Representative
Capitol Building
Lansing, Michigan 48933

Inasmuch as the Michigan Consumers Council is, by statute, placed under the general control of the legislative council for budgeting, procurement and related management functions,¹ you have asked whether the statute creating the Council is unconstitutional as an attempt to vest the legislative branch of government with powers exercisable only by the executive branch in violation of Const 1963, art 3, § 2. This constitutional provision states:

"The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one

¹ 1966 PA 277, § 8; MCLA 445.828; MSA 2.660(8).