THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

January 15, 1962

Dr. J. W. Edgar
Commissioner of Education
State Office Building
Austin, Texas

Opinion No. WW-1240

Re: Does a teacher awarded a written and approved continuing contract by a common or rural high school district, which specifies no employment period or years it shall cover, have a valid and enforceable contract for services not permitted to be performed, and related questions.

Dear Dr. Edgar:

You have requested this office to render an opinion on the question of whether a teacher awarded a written and approved contract by a common or rural high school district, which contract specifies no employment period or years it shall cover, has a valid and enforceable contract for services not permitted to be performed.

The specific fact situation which gave rise to your question is as follows: In May, 1960, the Board of Trustees of a rural high school district adopted a revised teacher contract form, locally termed "continuing" or "extended." This form of contract, awarded to all the district teachers who had taught in the district for at least one full school term, had a beginning date, but no date of termination. Your letter indicates that it was thought locally that the contract would continue effective until resignation by the teacher or dismissal for justifiable cause. However, neither the contract itself nor other minutes or records of the school district reflect what period of time the contract was intended to cover. A teacher in the district was employed under one of these types of contracts, beginning in September, 1960. She served thereunder, and was paid salary based on the State minimum salary schedule therefor. On July 28, 1961, she was notified that her contract with the district would not be continued for the 1961-62 school year. She has not been permitted to teach in the current 1961-62 school year. There is nothing present in the fact situation which would indicate that the teacher was dismissed for justifiable cause.

In answering the questions posed, we must begin by noting that a Rural High School District is classified as a common school district, and as such is subject to all the statutory provisions regulating common school districts. Article 2922b, Vernon's Civil Statutes.

Under Article 2750a-2, Vernon's Civil Statutes, teacher employment contracts may not be written for a period to exceed three (3) years. This limitation may not be avoided. Fikes v. Sharp, 112 S.W.2d 774 (Civ. App. 1938, error ref.) Thus, a "continuing" contract could not continue in existence for a period in excess of three (3) years, regardless of the lack of a termination date upon the face of the contract. We must now determine just how long the contract in question may run, within the three-year limitation.

The Board of School Trustees has authority to write teacher employment contracts for any period up to and including three (3) years. Paragraph 2 of the sample contract provided by you provides for salary adjustments from year to year, and for salary to be paid in twelve (12) monthly installments. These statements are the only express guide that we have as to the intent of the parties as to duration. In 35 American Jurisprudence 456, Master and Servant §19, the following appears:

> "Where no definite term of employment is expressed, there is no inflexible rule governing the duration of the relationship. In such cases, the duration of the employment must be determined by circumstances in each particular case. It is dependent upon the understanding and intent of the parties, to be ascertained from their written or oral negotiations, the usages of business, the situation and object of the parties, the nature of the employment, and all the circumstances surrounding the transaction.
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> "Regardless, therefore, of the absence of any express stipulation regarding the term of employment, a dispute as to the duration of a contract of employment is to be settled with reference to the terms of the contract, the nature of the services which were agreed to be performed, and the attending circumstances which evidence the intention of the parties, and this is true where the contract is in writing, as well as where it is oral; in either case, the court takes into consideration the situation of the

> parties, and the objects they had in view. In case the contract has been made with reference to a general custom or business usage which enters into and becomes a part of the agreement, the contract is not, of course, indefinite as to its duration if such custom or usage fixes the term of the employment.
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> "As to the presumption to be indulged where the contract appears to have specified no definite period, the authorities are not in harmony. According to some of the decisions, particularly those of the English courts, a general hiring will be taken to have been for one year, regardless of the nature of the service or employment, unless there is shown to have been a custom relating to the duration of the term, and it appears that the contract was made with reference thereto. According to the general rule as laid down by a majority of the courts, however, contracts of employment which mention no period of duration, which are in a true sense indefinite and without stipulation for an implied minimum period, are deemed terminable at will of either party; and the burden of proving the contrary must be assumed by the party who asserts that the employee is engaged for a definite period."

The above, of course, refers to private contracts, while we are dealing with a problem in the public area; nevertheless, the situation is so analogous that it is felt that this particular segment of the law of private contracts will apply.

Texas follows the majority rule laid down above. St. Louis Southwestern Ry. Co. of Texas v. Griffin, 106 Tex. 477, 171 S.W. 703 (1914); Island Lake Oil Co. v. Hewitt, 244 S.W. 193 (Civ. App. 1922, error dism.); Kennedy v. McMullen, 39 S.W. 2d 168 (Civ. App. 1931, error ref.). In the latter case, at page 174, it was stated that "As a general proposition, a contract indefinite as to the time of its performance may be terminated by either party by giving notice of his intention to do so."

In relating the specific fact situation to the general propositions of law found above, we are immediately confronted with the statement made in your request to the effect that "it was thought locally that the contract would continue effective until resignation by the teacher or dismissal for justifiable cause." No further information is given with regard to any negotiations conducted or representations given by or between the various parties to the contracts in question.

In consideration of the foregoing, it is the opinion of this office that: (1) The type of contract in question is indefinite as to time of termination, but may not extend for a period in excess of three (3) years, by virtue of the limitation placed thereon by Article 2750a-2, Vernon's Civil Statutes; (2) the contract is good for a minimum period of one (1) year; (3) the question of whether or not the parties are bound for a second or third year is dependent upon the intention of the parties and is a question of fact, and not resolvable by this office.

S U M M A R Y

A teacher awarded a written and approved "continuing" contract by a common or rural high school district which specifies no employment period or years it shall cover has a valid and enforceable contract for services for one (1) year, but not more than three (3) years. Article 2750a-2, Vernon's Civil Statutes. The question of whether or not the parties are bound for a second or third year is one of fact, and not resolvable by the Attorney General.

Very truly yours,

WILL WILSON
Attorney General of Texas

By Malcolm L. Quick
Assistant

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APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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