

February 19, 1946

Mr. W. G. Austin, Superintendent  
Chandler Public Schools  
Chandler, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Mr. Austin:

We acknowledge receipt of your letter of February 18, 1946, in which you request our opinion on the following situation:

"March 23, 1945, a teacher in the high school was drafted and reported for service. No one was appointed to fill his position for the remainder of the school year, which was 41 school days. During the Summer months a man was employed to take his place and signed a contract for the school year 1945-46. He is still in school and will complete the year which ends May 29, 1946.

Last month the first teacher returned to civilian life and called at this office concerning his position. He said he was interested in what the Board of Education had in store for him for next year, 1946-47, beginning September 9. I informed him that I would refer his inquiry to the Board. Please bear in mind that before he entered the Service last March he was employed to teach this year. This action was taken by the Board at its regular meeting on March 4, 1945.

The question is, under the law which was passed and approved by the Governor on March 20, 1944, how long is the school required to employ this man. Is it for the remainder of this school year? Or, does the Board have to give him a contract for the year 1946-47? If the school board should employ him for the remainder of the present school term would the requirements of the law be met?"

We must first refer to the Selective Service Act of 1940, as amended, which appears in Title 50 App., Sec. 308, paying particular attention to the re-employment provisions contained therein. This Act provides in part as follows:

Mr. W. G. Austin  
February 19, 1946  
Page Two

"(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year--- \* \* \* \* \*

(c) If such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay."

As will be noted from the reading of subdivision (C) above, the re-employment provisions are not mandatory as applied to a service man who was in the employ of any State or political subdivision thereof prior to his entry into the service. (McLaughlin vs. Retherford, 184 S.W. (2d) 461)

However, although there is no legal obligation placed upon the State or its political subdivision by this Act, Congress clearly declares it to be its intention that there is a moral obligation to re-employ veterans.

The Act of 1944, referred to by you (Sec. 12-107 and 12-109, A.C.A. 1939) reads, in so far as pertinent, as follows:

"12-107. Restoration following military or naval service.--Any appointive officer or employee of the state or of a political subdivision thereof, including any employee of the educational system, having been inducted or ordered into active service in the armed forces of the United States after August 1, 1939, and having served in the armed forces during the time of war, shall, upon completion of his service be restored to the position held by him at the time of induction or of reporting for service, or to a position having similar or other duties which he is qualified to discharge, and of like status and pay, if he: 1. possesses a certificate of satisfactory training and service or of honorable discharge issued by the proper military or naval authority; 2. is still qualified to perform the duties of the position, and 3. applies for restoration within sixty (60) days after separation from the armed forces.

Mr. W. G. Austin  
February 19, 1946  
Page Three

12-109. Expiration of term.--An appointive officer included within the terms of section 1 (12-107) whose term of office is prescribed by law is not entitled to the protection of this act in the event his term of office expires on or before the date he is relieved from military or naval service. In the event he is so relieved prior to the expiration of his term, restoration to his office pursuant to section 1 (12-107) shall be for the unexpired portion of the term. (Laws 1944 (2nd S.S.), ch. 29, 3, p.--.)"

Under our general school laws, a teacher is employed for a period, or successive periods, of one year each under a written contract for each one-year period---therefore, teachers would probably fall within the provisions of Sec. 12-109 above set forth.

In the instant case, the teacher in question was employed for the current school year of 1945-46, prior to his entry into the service. Therefore, upon request, within sixty (60) days after his separation from the armed forces, he would be entitled to be restored to his position as a teacher in the Chandler schools.

In view of the fact that the term of the appointment expires with the end of the current school year, it is solely within the discretion of the school board to determine whether or not to re-employ this particular teacher for the school year 1946-47.

In view of the moral obligation contained in the Selective Service Act, the Board of Education should determine whether or not to re-employ this teacher for the next school year on a basis of whether or not he would have been re-employed had he not entered military service.

Very truly yours,

JOHN L. SULLIVAN  
Attorney General

BURR SUTTER  
Assistant Attorney  
General

BS:jm