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ATTORNEY GENERAL

May 6, 1975

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ARIZONA ATTORNEY GENERAL

The Honorable Moise Berger
Maricopa County Attorney
101 West Jefferson
Phoenix, Arizona 85003

Re: Concurring Opinion No. 75-20-C

Dear Mr. Berger:

Returned herewith please find a copy of your letter (School Opinion No. 75-9) dated April 10, 1975, directed to Dr. Russell A. Jackson, Superintendent, Roosevelt School District #66, concerning whether probationary teachers whose contracts are not renewed because of reasons of economy, pursuant to A.R.S. § 15-257, are entitled to hearing.

We concur in the conclusion stated in your opinion.

Sincerely,

BRUCE E. BABBITT
Attorney General

BEB:lf

Enclosure

R75-245
75-115

April 10, 1975

School Opinion 75-10

REQUESTED BY:

Dr. Russell A. Jackson, Superintendent
Roosevelt School District #66
6000 S. Seventh Street
Phoenix, Arizona 85040

QUESTION: Are probationary teachers whose contracts are not renewed because of reasons of economy pursuant to A.R.S. §15-257, entitled to a hearing under Title 15, Article 3?

ANSWER: No.

A.R.S. §15-257 provides in pertinent part as follows:

"Nothing in this article shall be interpreted to prevent a school board from reducing salaries or eliminating teachers in a school district in order to effectuate economies in the operation of the district ..."

This section does not contain language which entitles a teacher to a hearing. The section does not even distinguish between probationary and continuing teachers, treating both equally. To show its concern, the legislature gave teachers thus dismissed a preferred right of reappointment for a period of three years. The legislature has granted the teachers no privileges beyond this.

It should also be noted that A.R.S. §15-252 which indicates the action of the board which is required if it fails to renew contracts, contains the following introduction:

"Subject to the provisions of §15-253, §15-254, §15-255 and §15-257..."

Thus, this section which requires a hearing in the case of dismissal of a continuing teacher, is subject to the provisions of §15-257

which provides for lay-offs without hearing.

Interpreting these two sections together, it appears that dismissals for reasons of economy are in a separate category which do not fall under the requirements of A.R.S. §15-252.

Additionally, the teachers involved in your question are all probationary teachers, who have different rights from continuing teachers.

A probationary teacher is only entitled to a notice of non-renewal which is timely and in the proper form set out in A.R.S. §15-252(3). This was reaffirmed by the very recent case of Rottenberg v. Cartwright School District #33, 528 P.2d 859.

It is settled that probationary teachers whose contracts are not renewed because of reasons of efficiency or performance are not entitled to hearings. It is not settled by litigation in Arizona courts as to whether or not the same procedure is followed in the case of non-renewal for reasons of economy. Therefore, we cannot state positively that the answer is the same. However, it is our best opinion based on interpretation of the statute and consideration of all of the cases involving probationary teachers that they are not entitled to hearings provided that the appropriate notice of non-renewal of contract has been given.

A copy of this opinion is being sent to the Attorney General for review.

Very truly yours,

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By ALBERT I. FIRESTEIN
ALBERT FIRESTEIN
Chief Civil Deputy

53/13-14