



*Ginger*  
Attorney General  
1275 WEST WASHINGTON  
Phoenix, Arizona 85007

Robert R. Corbin

October 18, 1982

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**ARIZONA ATTORNEY GENERAL**

Mr. David S. Hunt  
Deputy Cochise County Attorney  
P.O. Drawer CA  
Bisbee, AZ 85603

Re: I82- 113 (R82-114)

Dear Mr. Hunt:

We have reviewed your opinion dated July 26, 1982, to Dr. John Sinclair, the superintendent of the Sierra Vista Public Schools. In that opinion you address the following questions:

1. When a teacher fails to return a teaching contract within the statutory time period, does he retain any right to tenure or continued employment?
2. Under what circumstances would reemployment of a teacher who had lost continuing teacher status lead to a reinstatement of that status?

We concur with your conclusion that when a teacher fails to return a teaching contract or accept in writing within the statutory time period, the teacher loses the rights afforded him under the Arizona Teacher Tenure Act, A.R.S. § 15-536, et seq.<sup>1/</sup>

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1. A.R.S. § 15-536.A provides in pertinent part:

The probationary or continuing teacher's acceptance of the contract for the ensuing year must be indicated within thirty days after receipt of the contract or contract renewal by signing and returning the contract or contract renewal or by an acceptance in writing which is delivered to the governing board or the offer of contract or contract renewal is revoked.

Mr. David S. Hunt  
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As to the second question, we decline to review your opinion since the question does not provide a sufficient factual background upon which we could base an opinion.<sup>2/</sup>

Sincerely,



BOB CORBIN  
Attorney General

BC:VBW:lm

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2. We note, however, that we find nothing in Atty. Gen. Op. No. 78-153 to be inconsistent with the holding of Mish v. Tempe School District No. 3, 125 Ariz. 258, 609 P.2d 73 (App. 1980).



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CHIEF CRIMINAL DEPUTY

July 26, 1982

9-2-82 jpc  
LASSEN  
R82-114

Robert K. Corbin  
Attorney General  
State Capitol  
Phoenix, Arizona 85007

EDUCATION OPINION  
ISSUE NO LATER THAN  
9-26-82

Dear Mr. Corbin:

Pursuant to the provisions of A.R.S. §15-253.B, I am forwarding a copy of this opinion to the Sierra Vista Public Schools dealing with teacher tenure rights, for your concurrence or revision.

Very truly yours,

BEVERLY H. JENNEY  
Cochise County Attorney

By: DAVID S. HUNT  
Deputy County Attorney

DSH:pf

Enclosure



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# Cochise County Attorney

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July 26, 1982

John Sinclair, Ed.D., Superintendent  
Sierra Vista Public Schools  
4001 Fry Boulevard  
Sierra Vista, Arizona 85635

Re: Teacher Tenure Rights

Dear Dr. Sinclair:

This opinion is in response to your request for advice regarding the employment and tenure rights of a teacher who has failed to comply with the requirements of the Teacher Tenure Act. The specific questions presented are:

1. When a teacher fails to return a teaching contract within the statutory time period, does he retain any right to tenure or continued employment?
2. Under what circumstances would reemployment of a teacher who had lost continuing teacher status lead to a reinstatement of that status?

Based upon the information you have presented, it is my understanding that your present inquiry involves a teacher who, despite admonitions by the district, failed to return the contract offered him for the 1982-83 academic year.

The issues raised in your first question were recently addressed in Attorney General's Opinion No. 81-109, in which the Attorney General declined to review an opinion of the Apache County Attorney concluding that continuing teachers whose resignations are accepted by a school district have relinquished continuing teacher status.

The general rule set forth in that opinion was that a continuing teacher's contract must be "renewed" in accordance with statutory requirements if that teacher

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is to maintain tenure and that failure to comply with such requirements leads to revocation of a board's contract offer as a matter of law.

The situation presented in Attorney General's Opinion No. 81-109 differs from that in the present case only in that in the Apache County situation, the teacher resigned while here the teacher failed to return a contract within the statutory time period. Both situations are inconsistent with the clear requirements of A.R.S. §15-536.

The necessity of strict compliance with the teacher tenure statutes was recently emphasized by Division One of the Arizona Court of Appeals in Mish v. Tempe School District No. 3, 125 Ariz. 258, 609 P.2d 73. In that case the appellant, a certified teacher, asserted tenure rights based on a claim that her contract had been renewed for a fourth year. In affirming the lower court's grant of the district's motion for summary judgment, the Court of Appeals held that the nature of her employment failed to comply with the statutory requirement. The Court noted that:

"Tenure emanates solely from the statutes and one must substantively fulfill the requirements of the act to become tenured. The school districts do not have the power to extend tenure to any individual let alone to one who does not meet the requirements of the tenure act."

Thus, failure to comply with the requirements of the tenure statute will automatically cause a loss of tenure and once lost, that tenure can only be reacquired as prescribed by statute.

An answer to your second question is implied in the response to your first. Once tenure is lost, no action by the parties can restore it unless such actions comply fully with the Teacher Tenure Act. If your board subsequently offers

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a teacher a full-time contract for 1982-83, any reemployment pursuant to such offer is not a "renewal" of the previous contract, but an establishment of a new contractual relationship, in essence a "first year" agreement. Since the acceptance of a teaching contract does not, by statute, entitle a teacher to tenure until the fourth consecutive year of employment, no tenure would be conferred until that time. Under the holding in Mish, not only would the board not be required to treat the teacher as a continuing teacher, but it would lack the power to do so.

You have posed the related question as to whether acceptance of part-time employment by a teacher who had previously attained continuing teacher status would be entitled to a return to continuing teacher status upon acceptance of a subsequent full-time contract. The possibility of such a result was suggested by a footnote contained in Attorney General's Opinion 78-153 which stated that:

"Should the board choose to offer a subsequent full-year contract to a part-time teacher who had previously obtained tenure, that teacher would revert to 'continuing teacher' status under contract 'as a full-time classroom teacher'. In previously obtaining tenure status the teacher would have satisfied the requirement of having his contract renewed for his fourth consecutive year of such employment."

This conclusion appears to be based upon a determination that the renewal for the fourth year of employment places a teacher in a privileged status which, although it cannot be maintained during a period of part-time employment, can be immediately restored upon a return to full-time status. Such an assumption is clearly contradicted by the interpretations in Attorney General's Opinion 81-109 and in Mish. Acceptance of a less-than-full-time contract by a continuing teacher is fully as inconsistent with the requirements of the Teacher Tenure Act as is resignation or failure to return a contract. Once these rights are severed they can

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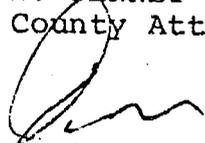
only be restored as provided by statute. In a case involving part-time employment, tenure rights could not be restored until the fourth consecutive year of renewal following a return to full-time employment.

In conclusion, it is my opinion that a teacher failing to return his contract within the statutory time limit has relinquished any claim to rights under the teacher-tenure statute and that those rights can only be restored in the manner set forth in that statute.

Pursuant to the provisions of A.R.S. §15-253.B, I am forwarding a copy of this opinion to the Attorney General for his concurrence or revision.

Very truly yours,

BEVERLY H. JENNEY  
Cochise County Attorney

  
By: DAVID S. HUNT  
Deputy County Attorney

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