

OFFICIAL OPINION NO. 69-72, Severance Pay for Teachers

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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Dr. Gordon A. Diedtrich  
State Superintendent  
Department of Public Instruction  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-72

**Severance Pay for Teachers**

Dear Dr. Diedtrich:

Reference is made to your request for an official opinion concerning the following specific questions:

1. Can a school district board establish a policy, standard, rule or regulation to allow teachers severance pay when they leave the school system after an extended period of years of service?

There is no statutory authority for the establishment of such rules and regulations, or the payment of severance pay. By SDCL 13-8-39a school board has broad general powers in the direction and management of the schools of the district and has the power to employ any necessary personnel. SDCL 13-43-6 specifies the contents of the contract of employment and provides for a payment of wages per month. The contract may be issued covering any period of years over which a teacher holds a certificate which will remain valid without renewal.

In the case of **Dahl v. Independent School District**, 187 NW 638, the Supreme Court of South Dakota made the following statement:

"To be sure, a board of education has only such powers as are expressly given to it or as a result of fair implication from the powers expressly granted, and can enter into such contracts only as it is empowered expressly or impliedly to make. It cannot engage in business or make contracts outside of its functions touching education. Such boards are usually given extensive discretionary powers in order that they may be assisted in carrying out the general school system adopted by the state and thus promote the cause of education. The courts will not interfere with such boards in the exercise of this discretion, except to prevent an abuse of it. The action of a board of education taken in the reasonable exercise of its discretion and without fraud is not subject to judicial review."

Also, in the 1939-40 AGR 486 appears the following statement of a former Attorney General of this state:

"I am of the opinion that the provisions of Sections 15.3801 and 15.3802, relating to teachers' contracts and what such contracts must provide for and what conditions shall be understood as forming a part of said contract, whether specified therein or not, are not conclusive, and that a school board has the authority to insert in any teacher's contract any reasonable provisions or clauses which do not violate any rule of public policy or which are not prohibited by law, whenever such board determines that it is for the best interest of the school and the public."

On the basis of the authority stated above, I am of the opinion that such a policy could be established by a school district board.

2. Can a school board include in a teacher's contract provisions that severance pay is a part of such contract in accordance with school board standards, rules and regulations?

I am of the opinion that this question should be answered in the AFFIRMATIVE. Section 13-43-6 SDCL states amongst other things, the wages per month and the time of payment thereof that shall be included in the teacher's contract. I do not believe it is mandatory that the teacher receive all of her wages on a pro-rated monthly basis. Severance pay may be included as an incentive for an extended period of satisfactory service.

As above stated, there is no statutory authority for severance pay and while it is believed such an enactment might be advisable in the interest of uniformity, it is not absolutely essential for the legality of such payment.

There being no statutory limitation, previous court decisions or contrary opinions of this office, such a system can be worked out. There are several points, however, that should be mentioned in this respect. We are informed, for illustration, that most teacher's certificates are for a one year period. There are also certificates issued for a five year period. There is a lifetime certificate. The contract with the teacher must be limited to at least a maximum number of years over which a teacher holds a certificate. Most teachers are given a contract on a yearly basis whereas most superintendents are contracted on a basis of three years. This office has repeatedly held that employment contracts made by boards of education for a term of years are valid and binding upon succeeding boards. See: 1959-60 AGR 397.

Questions No.3 and 4 are answered together.

3. Can teachers legally receive severance pay when provided in their contracts based upon the amount of unused sick leave which such teacher has accumulated?

4. Can a teacher legally be paid at the close of her contract for the days of sick leave provided by such contract which have not been used?

The answer to these questions is largely in the discretion of the Board. The yardstick used for the payment of severance pay is in the discretion of the Board and any reasonable exercise of its discretion in this respect would seem to be warranted.

5. Must the teacher or some member of their immediate family actually be sick in order for such teacher to receive sick leave pay?

This depends entirely upon the meaning of the phrase "sick leave," or how it is defined by the particular board.

Actually, this question is for administrative determination. There is no legal objection to the rather broad interpretation of the meaning "sick leave." Teachers do not have annual leave, as their term of employment is usually for nine months of the year, with three months during the summer which is ordinarily vacation time. It must be anticipated that many teachers will have children and, of course, there will be occasions when it will be necessary for the teacher to be absent because of sickness in her family or other emergencies. Sick leave could, of course, be defined to include all of these items.

Sick leave in its ordinary meaning requires that the individual involved be actually sick in order to receive his sick leave pay. But the type and term of the employment of the teacher does require a different interpretation of the meaning.

Respectfully submitted,

Gordon Mydland  
Attorney General