

**OPINION  
48-219**

April 16, 1948 (OPINION)

TEACHERS

RE: Continuing Contracts - 1947 Law

This will acknowledge your letter of April 12 in which you seek the clarification and interpretation of our office concerning chapter 146 of the 1947 Supplement to the North Dakota Revised Code of 1945. You refer to this law as "the continuing contract law of North Dakota."

I will endeavor to interpret section 15-4727 of the 1947 Supplement in such a manner as to clarify the same for your use as well as that of other teachers. There are three provisions of this section which must be taken into consideration.

1. Any teacher employed by any school district or by the State Board of Higher Education in this state during any school year shall be notified in writing by the school board, board of education or the State Board of Higher Education, as the case may be, on or before the fifteenth of April in any school year in which such teacher has been employed of the board's determination not to renew the teacher's contract for the ensuing year. Failure of the board to give such written notice shall constitute an offer on the part of the board to renew the contract for the ensuing year on the same terms and conditions as the contract for the current year.
2. On or after April fifteenth in any year the board may notify all teachers of a date, which shall be not less than fifteen days after the date of such notice, upon which they will be required to accept or reject proffer of re-employment. Failure on the part of the teachers to accept and offer within the fifteen days shall be deemed a rejection of the offer.
3. Any teacher who shall have been offered employment, either by action of the board or the non-action of the board on or before April fifteenth shall be entitled to the usual written contract for the ensuing year.

For the purpose of clarifying these three situations, let us suppose that the board, and that includes all those mentioned within the terms of the statute, does not notify its teachers on or before April fifteenth in any school year that the board will not renew the teachers' contract for the ensuing year. If the board fails to give this notice in writing, then the teachers, if they so desire, are entitled to a contract from the board on the same terms and conditions for the ensuing year as the then existing contract for the current year.

If the board notifies all the teachers of the school system that they

are being proffered a contract for the ensuing school year, then the teachers have fifteen days in which to accept or reject the offer of the board. If the teachers fail to notify the board, such failure shall constitute a rejection of the offer of the board.

In either case, if the board does not notify the teachers on or before April fifteenth of the school year that it will not renew the teachers' contract for the ensuing school year, or if it on or after April fifteenth notifies the teachers that it will employ them and the terms on which they will be re-employed, for the ensuing school year, the teachers will be entitled to a written contract which shall be consummated as provided by law.

As we view the law, there is no requirement that the teachers notify the board under the first proposition. The failure of the board to notify any teacher that it will not re-employ such teacher or renew his or her contract by written notice sent to such teacher before the fifteenth of April of any year, will entitle such teacher to his contract on the same terms and conditions as the contract that such teacher holds for the current year. The initiative is up to the board.

It is under the second proposition where the board has notified the teachers that it will employ them and of the terms and conditions under which they will be re-employed that the failure of the teachers to reply, that the board could not be compelled to employ them. In such case the school board has taken the initiative and the failure of the teacher to accept or reject the offer shall be deemed a rejection. Thus, if a teacher had intended to accept within the fifteen days, but overlooked doing so, such failure would constitute a rejection, and if for any reason the board did not see fit after the fifteen days had expired to enter into a contract with the teacher, there would be no basis for compelling the board to do it.

Under the first proposition, the failure of the school board to give written notice that it will not enter into a contract with a teacher results in a contract for the teacher, if the teacher so desires, and the board could be compelled to give the written contract as provided by law.

Under the second proposition, if all the teachers have been notified in any school system and offered contracts, the failure of the teachers to accept or reject the same within the fifteen days would result in a situation whereby the school board would not be bound to do anything, as all its offers are deemed rejected.

If the school board does not wish to be bound by the terms and conditions of the contracts held by its teachers for the ensuing year, then it must notify any teacher or all teachers in its system that it will not renew the contract and such notice must be in writing and must be sent to the teacher on or before April fifteenth of any year. The school board must set to protect itself. It can either act by notifying the teachers that it will not renew its contract with such teachers or it can act by offering the teachers an opportunity to accept or reject the contract.

I believe that the foregoing discussion clarifies the situation

sufficiently to enable any teacher to know his or her rights under the law.

NELS G. JOHNSON

Attorney General