

**OPINION
57-92**

May 1, 1957 (OPINION)

EDUCATION

RE: Scholarships - Rural Teachers - Obligation

We have received your request for an opinion dated April 26, 1957.

You ask our opinion in regard to two questions.

1. Since the State Board of Public Education has under its rulemaking power determined that the first responsibility of a scholarship recipient is to his home county, must such recipient be released by his home county before he can get credit for teaching time for teaching in a rural school in another county?

Section 15-5702 authorizes your board to make rules and regulations for the administration and operation of teacher scholarship law. It is a general rule or law that no body or board can make rules and regulations that are inconsistent with law, nor does rulemaking power authorize a board to legislate or enact laws, or to promulgate rules affecting substantive rights. A board can make only such rules as are necessary and reasonable for the purpose of administering the law. Since the teachers scholarship law (Chapter 15-57) does not provide that a teacher must teach in the county where he resides and from which he is certified, we are forced to the conclusion that the Legislature intended he might teach in any rural school in this state, and thereby fulfill his obligation under the teachers scholarship law.

For the above-stated reasons we must hold your board exceeded its rulemaking power when it ruled a teacher must teach in the county of his residence and which certified him for scholarship, or get a release from the county superintendent before his teaching time could be applied to the discharge of his note.

The last legislative assembly amended section 15-5708 of the 1953 Supplement to the extent that a teacher after July first, 1957, the effective date of the amendment, may teach in any public school rather than a rural school as the old law provided. This is applicable to second year scholarships only.

Your second question then is as follows:

2. Must a teacher who received a scholarship for the 1956-57 school year and signed repayment agreement and note before school opened in 1956 teach in a one-room rural school or is the 1957 amendment applicable in such cases?

Since the contract for scholarship was entered into before the enactment of the amendment, the law in force when the contract was entered into would govern in this case. This is particularly true

because the state will have fulfilled its part of the contract prior to the effective date of the amendment. We, therefore, hold that teachers who were granted scholarships in 1956 and entered into repayment agreements in 1956 for the 1956-57 school year are bound by the law as it existed at that time.

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