

# OFFICE OF THE ATTORNEY GENERAL

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Boards of Education -  
Teachers - Tenure - Contracts

The nonrenewal of a contract between a nontenured teacher and the Decatur City Board of Education is a dismissal which requires joint, concurring action of the superintendent and the board.

The city superintendent must recommend that the board nonrenew the contract of a nontenured teacher in order for the city board of education to nonrenew the contract pursuant to Ala. Code §16-24-12 (1975).

The city board of education cannot nonrenew the contract of a nontenured teacher without the superintendent's recommendation. However, if the board of education votes to nonrenew a teacher's contract pursuant to the superintendent's recommendation, the board must notify the teacher in writing pursuant to Ala. Code § 16-24-12 (1975).

Assuming the city superintendent is appointed by the city board of education, the board of education may issue instructions to the superintendent regarding what the superintendent may or may not communicate to a nonrenewed teacher regarding the reasons the board voted not to renew the teacher's contract.

Dear Mr. Catoe:

This opinion is issued in response to your request for an opinion from the Attorney General.

#### QUESTION I

Is the nonrenewal of a contract between a nontenured teacher and the employing Decatur City Board of Education a dismissal which would necessitate joint, concurring action of the superintendent and the board?

#### FACTS AND ANALYSIS

Ala. Code § 16-24-12 (1975) provides that nontenured teachers shall be deemed offered reemployment for the succeeding school year unless the employing board of education gives notice in writing to the teacher on or before the last day of the term of the school in which the teacher is employed. This section requires a vote by the board to nonrenew a nontenured teacher's contract with the board of education. Shelton v. Lauderdale County Bd. of Ed., 380 So.2d 835, 837 (Ala. 1980). Additionally, the nonrenewal of a nontenured teacher's contract is a dismissal of that teacher. Hayes v. Mobile County Bd. of School Commissioners, 405 So.2d 366, 370 (Ala. 1981); Vodantis v. Birmingham Bd. of Ed., 373 So.2d 320, 321 (Ala. 1979). Most importantly, a dismissal requires the joint action of the recommendation by the superintendent and the board's vote in favor of the dismissal. Vodantis, 373 So.2d at 321.

CONCLUSION

The nonrenewal of a contract between a nontenured teacher and the Decatur City Board of Education is a dismissal which requires joint, concurring action of the superintendent and the board.

QUESTION II

Must the city superintendent recommend the nonrenewal of a nontenured teacher in order for the city board of education to vote to nonrenew the teacher pursuant Ala. Code § 16-24-12 (1975)?

FACTS AND ANALYSIS

Ala. Code § 16-12-16 (1975) provides that the city superintendent shall recommend to the city board of education the dismissal of board employees, including teachers. Ala. Code § 16-11-17 (1975) provides that the city board of education may dismiss an employee on the written recommendation of the city superintendent. Therefore, joint action by the city superintendent and the city board is required to dismiss a nontenured teacher. Vodantis, 373 So.2d at 321. The city superintendent does not have the power to dismiss employees but only to recommend to the board that an employee be dismissed. Marsh v. Birmingham Bd. of Ed., 349 So.2d 34, 35 (Ala. 1977). Accordingly, the board may not dismiss an employee without the recommendation of the superintendent. Armstrong v. Bd. of Ed., 430 F.Supp. 595, 599 (N.D. Ala. 1977).

CONCLUSION

The city superintendent must recommend that the board nonrenew the contract of a nontenured teacher in order for the city board of education to nonrenew the contract pursuant to Ala. Code § 16-24-12 (1975).

QUESTION III

If a city board of education can nonrenew the contract of a nontenured

teacher contrary to the superintendent's recommendation, is the superintendent required to give notice to the nontenured teacher that the board acted contrary to the superintendent's recommendation?

#### FACTS AND ANALYSIS

Because the city board of education cannot nonrenew the contract of a nontenured teacher without the recommendation of the superintendent, the occasion for the superintendent to give notice to the nonrenewed teacher that the board acted contrary to the superintendent's recommendation would not arise. However, if the board does vote to nonrenew a nontenured teacher's contract pursuant to the superintendent's recommendation, the board must give the teacher notice in writing of the nonrenewal of the teacher's contract on or before the last day of the term of the school in which the teacher is employed. Ala. Code § 16-24-12 (1975); Stollenwerck v. Talladega County Bd. of Ed., 420 So.2d 21, 22 (Ala. 1982).

#### CONCLUSION

The city board of education cannot nonrenew the contract of a nontenured teacher without the superintendent's recommendation. However, if the board of education votes to nonrenew a teacher's contract pursuant to the superintendent's recommendation, the board must notify the teacher in writing pursuant to Ala. Code § 16-24-12 (1975).

#### QUESTION IV

Can a superintendent be prohibited from communicating with a nonrenewed teacher the reasons the board voted not to offer a renewed contract to the teacher?

#### FACTS AND ANALYSIS

Assuming that a city superintendent is appointed by the city board of education pursuant to Ala. Code § 16-12-1 (1975), in order to protect itself from various liabilities,

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the board of education can issue instructions to its employee superintendent as to what the superintendent may or may not say regarding the board's decision not to renew a teacher's contract. Government employers, such as a city board of education, have the discretion to limit the speech of employees in furtherance of the government's interest in the effective and efficient fulfillment of its responsibilities to the public. Connick v. Myers, 103 S.Ct. 1684, 461 U.S.138, 75 L.Ed.2d 708 (1983) ("[T]he government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs."); Bates v. Hunt, 3 F.3d 374 (11th Cir.1993) (For government employees "in a confidential or policy-making relation to their public employer, First Amendment Constitutional protection is often slight."); Morales v. Stierhein, 858 F.2d 1145 (11th Cir. 1988) ("[W]here an employee's speech has a detrimental impact on close working relationships or destroys harmony among coworkers, a wide degree of deference to the employer's judgment is appropriate.").

#### CONCLUSION

Assuming the city superintendent is appointed by the city board of education, the board of education may issue instructions to the superintendent regarding what the superintendent may or may not communicate to a nonrenewed teacher regarding the reasons the board voted not to renew the teacher's contract.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Ashley H. Hamlett, Legal Division, Department of Education.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR. *leg*  
Chief, Opinions Division

JS/AHH/jwl  
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