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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

July 28, 2009

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ATTORNEY GENERAL

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Honorable Robert L. Balch
Superintendent, Morgan County Schools
1325 Point Mallard Parkway Southeast
Decatur, Alabama 35601

Education, Boards of -- Funds --
Teachers -- Retirement -- Property

The regulating policies issued by the State Department of Education and state laws governing the proper expenditure of public funds preclude a retiring teacher from taking classroom bonus supplies purchased with public funds with him or her.

Dear Superintendent Balch:

This opinion of the Attorney General is issued in response to your request on behalf of the Morgan County Schools.

QUESTION

Whether a teacher who is retiring may take with her sixty percent of the classroom supplies purchased with the bonus received upon her successful certification by the National Board for Professional Teaching Standards.

FACTS AND ANALYSIS

According to your correspondence, a teacher with the Morgan County Schools, who is certified by the National Board for Professional Teaching Standards ("NBPTS"), plans to retire. Upon retirement, the teacher wishes to take with her sixty per cent of the classroom supplies, materials, and/or equipment ("the classroom bonus items") purchased with the classroom bonus received per the NBPTS Policies for the Alabama

Incentive Program ("NBPTS Policies") issued by the State Department of Education. You seek guidance as to whether the retiring teacher is permitted to do so.

As discussed below, the answer is no. The NBPTS incentive program is funded through a line-item appropriation in the Education Trust Fund. 2008 Ala. Acts No. 2008-552, 1201. The NBPTS funds flow from the State of Alabama to the local board of education and not directly to an individual. In fact, unspent funds must be returned to the State as set forth in the NBPTS Policies. Teachers certified by the NBPTS are to receive a salary bonus of \$5,000 per year, as well as a one-time bonus of an unspecified amount to be used to purchase the classroom bonus items. *Id.* The NBPTS Policies established that amount to be \$5,000 for the classroom bonus items, subject to funding availability and to proration.

The attached NBPTS Policies expressly state that the classroom bonus is for use in Alabama schools only, referring to the public schools of our state. Specifically, "[i]f a teacher retires or leaves employment at an Alabama school system, he/she cannot take any of the items purchased with him/her." NBPTS Policies (revised May 11, 2009). As a result, the NBPTS Policies preclude a retiring teacher from taking all or part of the classroom bonus supplies with him or her.

Additionally, the payment of the classroom bonus constitutes an expenditure of public funds. As such, it is subject to the restrictions of section 93 of article IV of the Recompiled Constitution of Alabama. ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 93 prohibits the state from lending money or credit in aid of a private person, association, or corporation. Stated differently, "[s]ection 93 prohibits the State from spending public funds for private purposes." Opinion to Honorable Tony Petelos, Commissioner, Department of Human Resources, dated February 17, 1999, A.G. No. 99-00112, at 3. The taking of any classroom bonus supplies by a teacher as private property on retirement would violate section 93.

CONCLUSION

In accordance with NBPTS Policies established by the State Department of Education and Alabama law governing the proper expenditure of public funds, a teacher is not permitted to take sixty percent (or any amount) of the classroom bonus items with him or her upon retirement.

Honorable Robert L. Balch
Page 3

I hope this opinion answers your question. If this Office can be of further assistance, please contact Juliana Dean, Legal Division, Department of Education.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/JD

Enclosure: As stated

821595/132662

The National Board for Professional Teaching Standards (NBPTS)

Policies for the Alabama Incentive Program

Appropriation

The Alabama State Legislature makes an annual appropriation to support the NBPTS Incentive Program. This incentive is not an automatic guarantee for the ten-year valid period of the certificate. Continued funding for this program is contingent on the actions of the legislature.

Assessment Fees

1. The state will pay the \$2,500 assessment fee one time only for teachers who pass the Alabama Selection Process
2. Teachers sponsored by the state must commit to work in the state for five years after receiving certification or otherwise repay the state \$2,500 unless the state relieves the teacher for valid reasons.
3. The state does not reimburse candidates for expenses incurred while completing the National Board process.
4. State funds are not available for retakes.

Salary Supplement

1. The state of Alabama will provide an annual salary supplement of \$5,000 to any National Board Certified Teacher (NBCT) employed full time in one of the public school systems on October 1 of each year and is properly certified by the state of Alabama.
2. NBCTs employed on a less than full-time contract on October 1 will receive a pro-rata share of the salary supplement.
3. NBCTs employed full time after October 1 will receive a pro-rata share of the salary supplement.
4. NBCTs who earn National Board Certification in another state and are teaching full time in Alabama on October 1 and is properly certified by the state of Alabama will receive the annual salary supplement.
5. NBCTs employed as a substitute are not eligible to receive the classroom bonus or the salary supplement.
6. NBCTs who are on a leave of absence for more than half a school year will receive a pro-rated amount based on the number of months worked during the school year.

7. NBCTs will receive the salary supplement each year of the valid period of the certificate unless the Alabama Legislature declines to make the annual appropriation.
8. NBCTs must renew their certificate by the year of the certificate's expiration in order to continue receiving the salary supplement.
9. NBCTs employed in the final year of the certificate's valid period will receive a prorated amount based on the number of months worked covered in that valid period.

Classroom Bonus

1. Each Alabama teacher who achieves National Board Certification and who is employed full time on October 1 will be allocated a one-time only \$5,000 classroom bonus for the initial year of certification. Teachers employed after October 1 will receive a pro-rata share of the bonus.
2. The classroom bonus will be mailed to the local school systems no later than February 1 for each Alabama newly certified National Board teacher announced in November of each year.
3. NBCTs employed on a less than full-time contract on October 1 will receive a pro-rata share of the classroom bonus.
4. Teachers must use the local system-adopted purchase policies when requesting funds earmarked for them. The classroom bonus can only be used to purchase classroom supplies, materials, and equipment.
5. The classroom bonus **must** be spent by September 30 of the fiscal year in which funds are received. All funds not spent must be returned to the state.
6. The classroom bonus is for use in Alabama schools only.
7. If a teacher changes schools or school systems in Alabama, he/she must leave 40 percent of items purchased in the school where certification was earned.
8. If a teacher who earns National Board Certification changes schools before National Board Certification recipients are announced in the fall, 40 percent of the funds will be sent to the school where certification was earned.
9. If a teacher transfers to another school system, supplies taken with him/her must be removed from the current school system's inventory and placed on the receiving school system's inventory.
10. If a teacher retires or leaves employment at an Alabama school system, he/she cannot take any of the items purchased with him/her.
11. Teachers who earn National Board Certification in another state and are teaching full time in Alabama the same year of certification are not eligible for the classroom bonus.