

Opinion No. 51

UNIVERSITY OF MONTANA; Teachers, Tenure Of; rights not affected by change of regulations—Section 75-403, RCM, 1947

- Held:**
- 1. An employee of the University system who now has a contract which provides for tenure after the third appointment may acquire such tenure upon receiving the third contract notwithstanding any amendments or alterations in the regulations of the board.**
 - 2. The State Board of Education has authority to alter or amend its regulations pertaining to contracts of employment for the University system and such amendments or alterations will be binding on those employees who do not now have any contractual relations with the State Board of Education.**

February 2, 1960

Dr. James E. Short
Chairman, Executive Council
Western Montana College of Education
Dillon, Montana

Dear Dr. Short

As chairman of the Executive Council, you have been instructed by the University Committee of the State Board of Education, ex-officio Regents of the University of Montana, to request an opinion from this office regarding the status of the employees of the University system under written contracts of employment.

Under Section 75-403, RCM, 1947, the State Board of Education has the authority and power to adopt such rules and regulations as may be necessary for the government of the University of Montana. Regulation No. 2, which is a part of the present contract of employment, reads as follows:

"Professors and associate professors are on permanent appointment; provided, however, that the initial appointment to a full professorship or to an associate professorship may be for a limited term. Such limited term appointment may be renewed; provided, however, that reappointment after three years of service shall be deemed a permanent appointment."

In *State ex rel. Keeney vs. Ayers*, 108 Mont. 547, 92 Pac. (2d) 306, the above quoted was recognized as a proper regulation and a part of each contract. The opinion held:

". . . It seems clear that under the constitutional and statutory provisions above noted, the regulations of the State Board of Education made within jurisdiction have the force of law, and become part of the contracts made thereunder to the same effect . . ."

In a recent opinion of this office, Opinion No. 9, Volume 27, Report and Official Opinions of the Attorney General, it was held that provisions of the tenure law are a part of the contract of employment of each teacher and a subsequent amendment of the tenure law after a teacher has received her first contract will not alter the contractual rights of the teacher. In other words, a teacher who was first employed under a law that gave tenure after receipt of the third contract would acquire tenure at that time notwithstanding an amendment to the statute requiring four years of teaching before tenure would be granted. Since the regulations of the Board of Education have the force of law, the reasoning in the above cited opinion applies with equal force here.

It is, therefore, my opinion that an employee of the University system who now has a contract which provides for tenure after the third appointment may acquire such tenure upon receiving the third

contract notwithstanding any amendments or alterations in the regulations of the board.

It is also my opinion that the State Board of Education has authority to alter or amend its regulations pertaining to contracts of employment for the University system and such amendments or alterations will be binding on those employees who do not now have any contractual relations with the State Board of Education.

Very truly yours,
FORREST H. ANDERSON
Attorney General