



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

Opinion No. 2014-062

July 11, 2014

The Honorable Bill Sample  
State Senator  
2340 North Highway 7  
Hot Springs, Arkansas 71909

Dear Senator Sample:

You have requested my opinion on several questions concerning a particular provision of the Teacher Fair Dismissal Act of 1983, as amended ("TFDA"). Your questions pertain to A.C.A. § 6-17-1506(c)(1) (Repl. 2014), which states that "[n]o teacher shall be required to sign and return a contract for the next school year any sooner than thirty (30) days after the contract is issued to the teacher." You ask the following specific questions regarding this subsection:

1. Does the term "issued" mean that the school district must provide a copy of the contract to the teacher?
2. Is it permissible for the school district to retain the contract in the superintendent's office and require the teacher to visit the superintendent's office and sign the contract without any opportunity for the teacher to review the contract beforehand?
3. Would the 30-day period to sign and return the contract granted in the [TFDA] begin on the day the contract availability is announced via e-mail or on the day that the contract was physically or digitally provided to the teacher?

**RESPONSE**

These questions all focus on A.C.A. § 6-17-1506(c)(1)'s reference to the contract being "issued to the teacher," the concern apparently being whether the 30-day

period for signing and returning the contract begins to run upon the teacher's actual receipt of the contract or alternatively upon the school district's providing the teacher with notice of the contract's availability. In my opinion, the latter alternative is the proper reading of this provision. That is, for the reasons discussed below, it is my opinion that the contract is "issued" to the teacher for purposes of subsection -1506(c)(1) when the district makes it reasonably available to the teacher. As to your particular questions, therefore, the answer to your first question is "no," in my opinion, if by "must provide a copy" you mean the district must deliver the contract to the teacher so that the teacher has actually received it in order for the time period under the statute to begin to run. Although the premises of your second question are somewhat unclear, I assume the district in this scenario tells the teacher the contract is in the superintendent's office and does not actually deliver the contract to the teacher. In my opinion, the district will have "issued" the contract, for purposes of subsection -1506(c)(1), when it notified the teacher that the contract is available in the superintendent's office. It is my opinion in response to your third question that the 30-day period will begin to run from the date of the email as long as the contract is reasonably available to the teacher under the particular circumstances.

***Question 1 - Does the term "issued" mean that the school district must provide a copy of the contract to the teacher?***

Given its context, this question appears to reflect a concern that the 30-day period under A.C.A. § 6-17-1506(c)(1) for a teacher to sign and return a contract may not begin to run until the teacher has actually received the contract. In my opinion, such a concern is misplaced.

The term "issued" as used in subsection -1506(c)(1) is not defined, and I of course cannot supply a definition of a term that the General Assembly has left undefined.<sup>1</sup> But under established rules of statutory construction, it will always be presumed in the absence of a controlling definition that the legislature intended to use words in their ordinary and usually accepted meaning.<sup>2</sup> And the Arkansas Supreme Court has sometimes resorted to dictionary definitions in order to determine the meaning of a word or phrase.<sup>3</sup> In this regard, the *New Oxford American Dictionary* defines

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<sup>1</sup> See Op. Att'y Gen. 2007-281 (and opinions cited therein).

<sup>2</sup> See *Garrett v. McDonagh*, 303 Ark. 348, 796 S.W.2d 582 (1990).

<sup>3</sup> E.g., *Arkansas Tobacco Control Board v. Santa Fe Natural Tobacco Company*, 360 Ark. 32, 39, 199 S.W.3d 656 (2004).

the verb “issued” as “supply or distribute (something).”<sup>4</sup> *The American Heritage Dictionary* somewhat similarly defines the transitive verb “issue” as “circulate or distribute in an official capacity....”<sup>5</sup>

While these definitions, standing alone, are not necessarily dispositive of the question you have raised concerning subsection 6-17-1506(c)(1), they are instructive in that they illustrate that the word “issued” is not commonly defined to mean “received” or “delivered.” The common definitions take on further significance, moreover, when they are considered along with another rule of statutory construction. It is well-established that when construing a specific portion of a statute, we must interpret the portion in the context of the statute as a whole.<sup>6</sup> A reading of A.C.A. § 6-17-1506 as a whole reveals that the General Assembly has been clear in specifying when personal delivery is required under the TFDA. Subsection -1506(b) provides as follows regarding a “notice of nonrenewal”:

A notice of nonrenewal shall be delivered in person to the teacher or mailed by registered or certified mail to the teacher at the teacher’s residence address as reflected in the teacher’s personnel file.<sup>7</sup>

This same “notice” procedure applies in connection with a teacher’s recommended termination or suspension. In both cases, notice must be “delivered in person to the teacher or sent by registered or certified mail to the teacher at the teacher’s residence address as reflected in the teacher’s personnel file.”<sup>8</sup> Additionally, and of particular significance in construing the 30-day period under subsection 6-17-1506(c)(1), pursuant to A.C.A. § 6-17-1509, “a teacher who receives a notice of recommended termination or nonrenewal” may request a hearing by filing a written request with the school board “within thirty (30) calendar days after the written notice of proposed termination or nonrenewal is received by the teacher.”<sup>9</sup>

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<sup>4</sup> *New Oxford American Dictionary* 922 (Oxford Univ. Press, 2010).

<sup>5</sup> *The American Heritage Dictionary of the English Language* 931 (5th ed. 2011). See also *Black’s Law Dictionary* 960 (Bryan A. Garner, ed., 10th ed., 2014) (defining “issue” in relevant part as “[t]o send out or distribute officially”).

<sup>6</sup> *E.g., Green v. Mills*, 339 Ark. 200, 4 S.W.3d 493 (1999).

<sup>7</sup> A.C.A. § 6-17-1506(b)(2)(A).

<sup>8</sup> A.C.A. §§ 6-17-1507 (termination recommendation) and -1508 (suspension) (Repl. 2014).

<sup>9</sup> A.C.A. § 6-17-1509(a) and (b) (Repl. 2014) (emphasis added).

Had the legislature intended for the 30-day period under subsection 6-17-1506(c)(1) to run from the time the teacher actually receives the contract, it could easily have so stated as it did in these other TFDA provisions.

Based on a reading of both section 6-17-1506 and the TFDA as a whole, therefore, I conclude that, if faced with the question, our court would hold that the word “issued” under -1506(c)(1) means supplied, distributed, or sent out, and cannot be properly interpreted as “received” or “delivered.”<sup>10</sup> Thus, the answer to your first question is “no,” in my opinion, to the extent the question suggests the district must deliver the contract to the teacher so that the teacher has actually received it in order for the time period under -1506(c)(1) to begin to run.

***Question 2 - Is it permissible for the school district to retain the contract in the superintendent's office and require the teacher to visit the superintendent's office and sign the contract without any opportunity for the teacher to review the contract beforehand?***

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<sup>10</sup> My conclusion is reinforced by the prospect of our court looking to other jurisdictions for guidance in this instance, given the absence of controlling precedent on the question. According to my research, a state appellate court in at least one other jurisdiction has interpreted the word “issued” in the manner set out above. In *Zimmer v. Susquehanna County Planning Commission*, 14 Pa. Commw., 435, 322 A.2d 420 (1974), the Commonwealth Court of Pennsylvania addressed the question of an untimely filing of a zoning appeal under a statute requiring that appeals to court are to be taken “by appeal filed within thirty days after notice of the decision is issued.” 14 Pa. Commw. at 438. After noting the common definition of “issued,” the court held that when the legislature used this word, it intended it to mean “sent out” or “mailed” rather than “received.”

Understanding the common usage of the word “issued” to be “sent forth,” “emitted,” or “put into circulation,” it would appear that the Legislature intended that the event from which the time for appeal is to be measured is the date that notice of the Planning Commission was sent forth or mailed to the appellants. Does the context of the Code allow the word “issued” to be properly interpreted as “received” or “delivered” rather than “sent out”? We think not.... Had the Legislature intended to measure the appeal period from the event of “receipt” or “delivery” of the notice of the decision, as argued by appellants, it could have employed the language “after notice of the decision is received” or “delivered” in Section 1006, rather than the word “issued.”

I assume the district in this scenario tells the teacher the contract is in the superintendent's office and does not actually deliver the contract to the teacher. For the reasons explained above, there is no requirement that the contract be delivered to the teacher. Rather, subsection 6-17-1506(c)(1) refers to the contract being "issued" to the teacher; and in my opinion, the district issued the contract to the teacher for purposes of -1506(c)(1) when it notified the teacher that the contract is available in the superintendent's office.

***Question 3 - Would the 30-day period to sign and return the contract granted in the [TFDA] begin on the day the contract availability is announced via e-mail or on the day that the contract was physically or digitally provided to the teacher?***

A definitive answer to this question may depend upon what is meant by the contract's "availability." While there is no requirement that the contract be delivered to the teacher, physically or otherwise, the contract must in my opinion be reasonably available to the teacher. With regard, therefore, to an announcement via email, it is my opinion that the 30-day period under the statute will begin to run from the date of the email as long as the contract is reasonably available to the teacher under the particular circumstances.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL  
ATTORNEY GENERAL

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