

CASE NO. A09-1134

State of Minnesota

IN SUPREME COURT

STEVEN EMERSON,

Appellant,

v.

**SCHOOL BOARD OF INDEPENDENT SCHOOL DISTRICT 199,
INVER GROVE HEIGHTS, MINNESOTA**

Respondent.

OFFICE OF
APPELLATE COURTS

DEC - 1 2010

FILED

**BRIEF AND APPENDIX OF AMICUS CURIAE EDUCATION
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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION AND INTEREST OF AMICUS CURIAE	1
STATEMENT OF THE ISSUES, CASE, AND FACTS.....	1
ARGUMENT.....	2
I. Appellant’s Position as the District’s Activities Director Did Not Meet the Definition of Teacher Under Minnesota Statutes Section 122A.40.....	2
II. When Determining Whether a License is Necessary for a Position, the Law Requires the Minnesota Department of Education to Consider Job Functions, not Job Titles	3
III. After a Teacher Has Successfully Completed the Probationary Period and Obtained Continuing Contract Rights Under Minnesota Statutes Section 122A.40, the Teacher's Contract Must Remain in Full Force and Effect Unless Mutually Modified by the Teacher and the School Board	4
CONCLUSION	5
APPENDIX.....	7

TABLE OF AUTHORITIES

Cases

<i>Cloud v. Independent School District No. 38</i> , 508 N.W.2d 206 (Minn. Ct. App. 1993).....	2
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Statutes

Minn. Stat. § 122A.40 (2008).....	1, 2, 3, 4, 5, 6
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INTRODUCTION AND INTEREST OF AMICUS CURIAE

Education Minnesota is the state's largest education organization. Education Minnesota has over 70,000 members and represents almost all of Minnesota's K-12 public school teachers. As *amicus curiae*, Education Minnesota wants to provide the Court with a unique perspective above and beyond the parties' interests, and facilitate the Court's decision making process. Education Minnesota seeks to assist the Court in understanding how its decision will impact professional public employees in schools throughout Minnesota.

In the case before the Court, Education Minnesota advocates for affirmance of the limited decision issued by the Minnesota Court of Appeals. The court ruled that Appellant's position as Activities Director did not meet the definition of teacher under Minnesota Statutes Section 122A.40, because the Minnesota Department of Education ("MDE") did not require a license for the position. Therefore, Respondent Independent School District No. 199's actions did not violate Minnesota Statutes Section 122A.40. In light of the many circumstances that arise in schools and the nuances of the continuing contract statute, Education Minnesota wants the Court to be aware of the implications of its decision.

STATEMENT OF THE ISSUES, CASE, AND FACTS

Education Minnesota concurs with the statement of the issues, case, and facts in the brief of Respondent School Board of Independent School District 199, Inver Grove Heights, Minnesota.

ARGUMENT

I. Appellant's Position as the District's Activities Director Did Not Meet the Definition of Teacher Under Minnesota Statutes Section 122A.40.

Education Minnesota agrees with the analysis of the law in Respondent's brief. Minnesota Statutes section 122A.40, subd. 1 provides that, "[a] principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department shall be deemed to be a "teacher" within the meaning of this section." As Respondent pointed out, the Minnesota Court of Appeals has held that whether an employee is a "teacher" under the continuing contract law is determined by MDE licensure requirements. *See Cloud v. Independent School District No. 38*, 508 N.W.2d 206, 212 (Minn. Ct. App. 1993) (holding that an employee meets the statutory definition of a teacher only if the state department that is responsible for determining who must be licensed requires a license to perform the functions of the position). The parties stipulated that MDE did not require that Appellant be licensed in the Activities Director position. (Respondent's Appendix ("App."), page 1.) This should be the end of the Court's inquiry.

The Minnesota Court of Appeals correctly found that that Appellant's position as Activities Director did not meet the definition of teacher under Minnesota Statutes Section 122A.40 because MDE did not require a license for the position. As such, the Appellant was not entitled to continuing

contract rights, and the decision made by Respondent Independent School District No. 199 did not violate Minnesota Statutes Section 122A.40.

II. When Determining Whether a License is Necessary for a Position, the Law Requires the Minnesota Department of Education to Consider Job Functions, not Job Titles.

Appellant argues that the decision issued by the Minnesota Court of Appeals in this case allows a school district to use position titles as a way to deny licensed personnel statutory rights. This is not the effect of the Court of Appeals' decision nor does it accurately reflect the Court of Appeals' reading of the continuing contract statute or case law.

The Minnesota Department of Education does not make licensing decisions based on position titles. Rather, MDE considers the duties of a position when it determines whether a license is required. For example, although there are Title I teachers in many Minnesota school districts, there is not a Title I license. Instead, an individual teaching in a Title I program must hold an age appropriate license allowing them to teach in the content area. For example, an individual teaching Title I Reading at the elementary level must have an Elementary Education license or other license allowing reading instruction. However, there is no question that Title I teachers are teachers under Minnesota Statutes Section 122A.40. Similarly, MDE does not offer a Dean of Students license. However, depending on the position description and duties, MDE may require a license for a Dean of Students position. Likewise, in recent

correspondence with MDE about whether a curriculum coordinator position required a license, a MDE Management Analyst stated that it depended on the description of the position because MDE had seen different duties for different curriculum coordinators. (Education Minnesota's Appendix ("Ed. MN App."), page 1.)

Position title is not the determinative factor when considering whether MDE requires a license for a position, job duties are. Here, the parties stipulated that MDE did not require that Appellant be licensed in the Activities Director position. (App. 1.) Therefore, the Minnesota Court of Appeals correctly found that Appellant's position as Activities Director did not meet the definition of teacher under Minnesota Statutes Section 122A.40.

III. After a Teacher Has Successfully Completed the Probationary Period and Obtained Continuing Contract Rights Under Minnesota Statutes Section 122A.40, the Teacher's Contract Must Remain in Full Force and Effect Unless Mutually Modified by the Teacher and the School Board.

While crafting a decision in this case, Education Minnesota wants the Court to be aware that many teachers move from continuing contract teaching positions to Activities/Athletic Director positions. This move does not eliminate their continuing contract rights.

Once an individual achieves continuing contract status, he or she maintains that status, regardless of the position they occupy. Minnesota Statutes

Section 122A.40, subd. 7, provides that “[a] teacher who has completed a probationary period in any district... shall elect to have a continuing contract with such district... Thereafter, the teacher's contract must remain in full force and effect, except as modified by mutual consent of the board and the teacher....”

Had the Appellant obtained continuing contract rights with the School District prior to moving into the Activities Director position, the outcome in this case would be different. If Appellant had worked for fifteen years as a classroom teacher for the Respondent prior to moving into the Activities Director position, he would have retained his continuing contract rights, despite being assigned to a position that no longer required a license by MDE.

In this case, Appellant did not obtain continuing contract status prior to taking the position as Activities Director. As such, Appellant was not entitled to continuing contract rights and the decision made by Respondent did not violate Minnesota Statutes Section 122A.40.

CONCLUSION

For the reasons discussed above, Education Minnesota respectfully requests that the Court affirm the limited decision issued by the Minnesota Court of Appeals on the grounds that the Minnesota Department of Education did not require a license for the Activities Director position at issue, and therefore, Appellant’s position as Activities Director did not meet the definition of teacher under Minnesota Statutes Section 122A.40. Appellant was not entitled to

continuing contract rights and the decision made by Respondent did not violate
Minnesota Statutes Section 122A.40.

Respectfully submitted,

Dated: November 30, 2010

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