

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 84-301
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of	:	<u>MAY 30, 1984</u>
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THE HONORABLE BILL LOCKYER, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Do Education Code sections 44427-44438 confer authority upon a county board of education to revoke the license to teach in that county of school teachers, administrators, and other certificated employees employed by the school districts of the county or by the county superintendent of schools?

CONCLUSION

Education Code sections 44427-44438 do not confer authority upon a county board of education to revoke the license to teach in that county of school teachers, administrators, and other certificated employees employed by the school districts of the county or by the county superintendent of schools.

## ANALYSIS

Education Code section 44427<sup>1</sup> states: "County boards of education may revoke or suspend, for immoral or unprofessional conduct, evident unfitness for teaching, or persistent defiance of, and refusal to obey the laws regulating the duties of, teachers, the certificates granted by them." The charges "shall be presented to the board in writing and shall be verified under oath." (§ 44429.) The certificate holder is given notice of the charges (§ 44430), has the right to be represented by counsel (§ 44431), and is "given a fair and impartial hearing" (§ 44430). Certain specified acts are grounds for revocation or suspension by the county board. (§§ 44433, 44435-44437.)

The question presented for resolution is whether this statutory scheme authorizes a county board of education to revoke the license to teach in that county of school teachers, administrators, and other certificated employees employed by school districts of the county or by the county superintendent of schools. We conclude that it does not.

A superficial reading of these statutory provisions might lead one to the opposite conclusion. As quoted above, section 44427 appears to authorize some form of revocation or suspension. The answer is found, however, by comparing the phrase "the license to teach" contained in the question with the phrase "the certificates granted by them" contained in section 44427. The two are not the same.

A person is "licensed to teach" by the *state* issuing a "credential." Section 44001 states: "A 'credential' is a document issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, authorizing a person to engage in the service specified in the credential." The state issues various types of credentials that "license" the person "to teach." (§§ 44250-44279.)

The state (the Commission on Teacher Credentialing and its Committee of Credentials) also assumes the responsibility for revoking or suspending the "license to teach" by revoking or suspending the state credential. (§§ 44420-44438.)

What then are the "certificates" granted by county boards of education specified in section 44427? At one time both a state credential and a county certificate were required for teaching employment. (See *Matteson v. State Board of Education* (1943) 57 Cal.App.2d 991, 995-996.) A certificate was a "document issued by a county board of education to license the holder to perform the service specified in the certificate."

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<sup>1</sup> All section references hereafter are to the Education Code.

(§ 44004.)<sup>2</sup> This dual licensing system, however, was eliminated by the Legislature, and the Education Code now does not authorize county boards of education to grant certificates to teach.<sup>3</sup> One holdover provision of the dual licensing system remains that allows the renewal of a county certificate:

"County boards of education may renew any certificate legally issued by them prior to October 1, 1945, and now in force; provided, that no certificate granted upon a credential issued by the State Board of Education or commission for a limited period shall be renewed or extended unless the credential upon which it was issued has been renewed or extended, and then only for the period of the renewal or extension of the credential." (§ 44331.)

Because of the length of time involved and the absence of any particular purpose for renewal, we understand that such certificates no longer exist.<sup>4</sup>

Nevertheless, a county board of education may be involved in the procedure where a credential is being suspended or revoked by the state. Section 44422 provides:

"Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing is charged with immoral or unprofessional conduct or evident unfitness for service or persistent defiance of, and refusal to obey, the laws regulating the duties of his position, the commission in its discretion after notifying the person charged of its intention to do so, may require the county board of education of the county in which he is serving or has last served to give notice of, and conduct, a hearing of the charges in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by a county board of education.

"The county board of education, after the hearing, shall report to the commission its findings, and a summary of the evidence, and shall make a

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<sup>2</sup> Currently the state issues certain specialized types of certificates. (See §§ 44253.5, 44253.7, 44325, 56362.7.)

<sup>3</sup> Under limited circumstances, such boards "may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed . . . ." (§ 44332.)

<sup>4</sup> The question concerns in part "certificated employees." These are persons who hold one or more documents "which singly or in combination license the holder to engage in the school service designated in the document or documents." (§ 44006.) For teaching, the appropriate document is a state credential and not a county certificate. (See §§ 44007, 44065, 44256-44258.)

definite recommendation concerning the revocation or suspension of the credential.

"Upon receipt of a copy of the findings, summary of evidence, and recommendation, the commission may privately admonish the holder of the credential, or suspend or revoke the credential for the causes stated, or order the charges dismissed."

Accordingly, a county board of education may conduct a hearing, report findings, summarize the evidence, and recommend to the state the revocation or suspension of a credential.

In answer to the question presented, we conclude that sections 44427-44438 do not confer authority upon a county board of education to revoke the license to teach in that county of school teachers, administrators, and other certificated employees employed by the school districts of the county or by the county superintendent of schools.

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