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WHERE BOARD OF EDUCATION DECIDES NOT TO RE-EMPLOY HIGH SCHOOL SUPERVISOR AND ELEMENTARY SCHOOL SUPERVISOR, NOTICE MUST BE GIVEN THEM ON OR BEFORE THE FIRST DAY OF JUNE—SECTION 3319.11, R. C. DOES NOT APPLY—§§3319.083, 3319.11, R.C.

SYLLABUS:

Where a county board of education determines not to reemploy a high school supervisor and an elementary school supervisor, notice must be given them on or before the first day of June as provided in Section 3319.083, Revised Code; and the provisions of Section 3319.11, Revised Code, as to notice, do not apply to such situation.

Columbus, Ohio, August 26, 1961

Hon. Richard F. Liggett, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Prior to the beginning of the 1959-1960 school year, the Brown County Board of Education employed a county high school supervisor and a county elementary supervisor. The contracts entered into were for a term of two (2) years. These supervisors did not hold any classes nor directly teach pupils but instead worked with the county superintendent in planning instructions to be held in various schools under the county’s jurisdiction. They also visited classrooms, as a Supervisor ordinarily would do in connection with the teaching of each class. One Supervisor did not have a formal written contract. The other Supervisor had a contract on a teacher’s contract form, and on this contract form it stated that provisions of Section 3319.11 as to expiration applied to all teacher’s limited contracts. Both supervisors have been contributing to the Teacher’s Retirement Fund.

“Written notice of intention not to re-employ these Supervisors was given to them after April 30th, as required in Section 3319.11 of the Revised Code for teachers, but prior to June 1st, as required by Section 3319.083 of the Ohio Revised Code pertaining to non-teaching employees. In fact, notice was delivered

It would seem, therefore, that in viewing only these two statutes, a supervisor (a teacher) would have to be given notice of intention not to re-employ on or before the thirtieth day of April or thirty days prior to the termination of such teacher's school year, whichever date occurs the earlier.

Section 3319.083, Revised Code, must also be considered. This section reads as follows :

"In all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code do not apply, each board of education shall cause notice to be given of its intention not to re-employ said non-teaching employee, at the expiration of his contract. If such notice is not given the non-teaching school employee on or before the first day of June, said employee shall be deemed re-employed."

Sections 143.01 to 143.48, Revised Code, do not apply to those in the position of county supervisor as these sections do not apply to employees of county school districts. Section 143.01 (A), Revised Code.

As will be noticed under Section 3319.083, *supra*, there is provided a different time within which notice must be given of intention not to re-employ than is provided under Section 3319.11, *supra*. Section 3319.083 refers, however, only to a non-teaching employee and not to teachers who are covered by the provisions of Section 3319.11, *supra*.

Supervisors are within the definition of teacher on the one hand, yet act in a non-teaching capacity on the other. Therein lies the quandary. It was stated in *The State, ex rel., Saltsman v. Burton, et al., Mahoning County Board of Education*, 91 O. App., 271, (1951) at page 273 :

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"The terms 'teacher' and 'superintendent', are not interchangeable. The positions of county superintendent of schools and county elementary supervisor are administrative positions. Neither is a teaching position. It was the intent of the Legislature that the term, 'teacher', should mean classroom teacher.

"Teachers are not to be confused with administrative officers, the former being employed by local boards of education as distinguished from county boards of education, which latter are without authority to employ teachers.

"Section 4842, General Code, provides in part :

"Such superintendent shall be the executive officer for the board of education, direct and assign teachers and other em-

ployees of the schools under his supervision * * * to the proper schools and grades * * *.'

"The authority of county boards of education is limited to the employing of executive or administrative officers, superintendents, assistant superintendents, elementary supervisors, etc., and they may hire such employees even though they do not hold certificates to teach as provided by Section 4857-1, General Code.

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Although some of these statements may no longer be true under present law, it still is true that the county board does not hire teaching personnel. Section 3319.08, Revised Code, reads in part as follows :

"The board of education of each city, exempted village, and local school district, shall enter into contracts for the employment of all teachers, * * *."

County boards of education, not being mentioned in this section, do not have authority to hire teachers, as such can only be hired by the enumerated districts. But the county board must necessarily hire administrative and supervisory personnel in order to operate with any degree of effectiveness; and authority for such is granted in Section 3319.02, Revised Code.

It follows that since county boards cannot hire teaching employees, the supervisors concerned must necessarily be in the category of non-teaching employees and fall under the purview of Section 3319.083, *supra*, and the time limits noted therein.

To further establish this conclusion it should be noted that Section 3319.08, *supra*, refers to limited contracts as does Section 3319.11, *supra*. Section 3319.08, *supra*, reads in pertinent part as follows :

"Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts."

It is apparent that this section refers to teachers actively teaching and therefore these "limited contracts" would not have import regarding the non-teaching employee, i.e., the supervisor. A county supervisor would not be hired under a limited contract and therefore the notice requirement regarding teachers under limited contract in Section 3319.11, *supra*, would not be effective as to a county supervisor.

In the case at hand one supervisor had a contract on a teacher's contract form, and on this form it stated that the provisions of Section 3319.11,

supra, as to expiration applied to all teachers' limited contracts. As this contract was not a teacher's limited contract, in spite of the form used, the provisions of Section 3319.11, *supra*, do not prevail.

It is my opinion, therefore, and you are accordingly advised that where a county board of education determines not to re-employ a high school supervisor and an elementary school supervisor, notice must be given them on or before the first day of June as provided in Section 3319.083, Revised Code; and the provisions of Section 3319.11, Revised Code, as to notice, do not apply to such situation.

Respectfully,

MARK McELROY

Attorney General