

1555.

TEACHERS—BOARDS OF EDUCATION—RURAL AND VILLAGE SCHOOL DISTRICTS—MAY EMPLOY TEACHERS FOR TERMS NOT LESS THAN ONE YEAR, NOR MORE THAN FOUR YEARS—EXCEPTION—TO FILL VACANCY—EMPLOYMENT PRIOR TO BEGINNING OF TERM—STATUS AS TO SCHOOL PRINCIPAL—CONTRACT TO TEACH—SUPERVISORY WORK—WITHOUT POWER TO EMPLOY SUPERINTENDENT OF SCHOOLS—STATUS, EMPLOYMENT OF SUPERVISOR OR CO-ORDINATOR.

SYLLABUS:

1. *Boards of education in rural and village school districts may employ teachers for terms of not less than one year, except to fill a vacancy, nor for more than four years.*

2. *All teachers employed by rural and village boards of education must be appointed not longer than six months before the beginning of the term for which they are employed.*

3. *A board of education may by rules regularly adopted, or by terms of the contract of employment fix the time which a principal of schools shall devote to actual classroom teaching and may thereby provide that the principal need not devote any time to actual classroom teaching but shall devote his time exclusively to supervisory work.*

4. *A rural or village board of education is without power to employ a superintendent of schools, as such.*

5. *A rural or village board of education may in its discretion employ a supervisor or co-ordinator for the schools of its district who may under the direction of the county superintendent of schools and his assistants supervise the work of the schools of the district.*

COLUMBUS, OHIO, December 9, 1939.

HON. THOMAS J. O'CONNOR, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR: I have your recent request for my opinion which reads as follows:

“A written request for an opinion has been received by this office from A. N. Thurston, County Superintendent of Schools.

Inasmuch as the questions presented by him are of interest to every township in the State, and you would undoubtedly be called upon by some other county in the near future, to answer them, I am taking the liberty of setting forth his letter in full. It reads as follows:

'Senate Bill 99, passed by the last legislature repealed and modified a number of sections of law relative to the appointment of superintendents, principals, and teachers. A number of questions arise in connection with this law.

Section 7705 of the present law and Section 7671 of Senate Bill 99 have to do with the appointment of teachers. The first question in connection with these two sections is—for what length of term may rural and village teachers be employed? Also, when may they be employed?

Other questions that arise are:

1. How much time must a principal devote to actual classroom teaching?

2. Can a rural or village board of education elect a superintendent of the schools of the district?

3. Can a rural or village board of education appoint a supervisor or supervisors for the schools of the district?

We would like to have your opinion on these questions, or, if you deem it necessary, the opinion of the Attorney General.'

It will be appreciated if you will give me your opinion on the questions asked."

In the letter of the county superintendent of schools to you, which letter is quoted in your request for my opinion, there are submitted four questions which will herein be considered in the order they were submitted.

First: The question as to the length of term for which teachers may be employed by village or rural boards of education and when they may be employed is answered by the terms of Section 7691, General Code, as amended in Amended Senate Bill No. 99, of the 93rd General Assembly, which Act became effective September 6, 1939. Before quoting this aforesaid statute as so amended, it should be noted that by the terms of said Act of the General Assembly former Section 7705, General Code, was expressly repealed, and to note further the provisions of that statute as it existed prior to its repeal as well as the pertinent provisions of Section 7691, General Code, prior to its having been amended in the said Act.

Former Section 7705, General Code, provided in substance that the boards of education of village and rural school districts should employ teachers for a period not longer than three school years to begin within four months of the date of appointment. Section 7691, General Code, prior to its amendment in Amended Senate Bill No. 99, supra, provided in part:

"No person shall be appointed as a teacher for a term longer than four school years nor for less than one year, except to fill

an unexpired term, the term to begin within four months of the date of appointment.”

In the case of *State, ex rel. Wipert, vs. Board of Education of Xenia Twp. School District*, 45 O. App., 421, it was held that the provisions of Section 7691, General Code, authorizing the employment of teachers for as long as four school years did not apply to village and rural school districts wherein the employment of teachers was controlled by the provisions of Section 7705, General Code. The third branch of the syllabus of that case, which was decided some few years ago, is as follows:

“Statute limiting appointment of school teachers for terms not to exceed four years, and requiring consideration of teachers in actual employ before choosing others held inapplicable to village and rural school districts which are governed by statute limiting appointment not to exceed three years and requiring no consideration of teachers actually employed. (Sections 7691 and 7705, General Code.)”

Section 7691, General Code, as amended in Amended Senate Bill No. 99, is as follows:

“No person shall be appointed as a teacher for a term longer than four years, nor for less than one year, except to fill an unexpired term, the term, except in the case of an unexpired term, to begin within six months of the date of the appointment. In making appointments teachers in the actual employ of the board shall be considered before new teachers are chosen in their stead. In all high schools (both four-year and six-year), consolidated schools, and such other schools as the board may designate, a principal shall be appointed in accordance with the provisions of law. The board of education of each village and rural school district shall employ the teachers of the public schools of the district. Such local board shall employ no teacher, principal, or supervisor for any school unless each of such persons is nominated therefor by the county superintendent; provided, however, that, by a majority vote, such board may request additional nominations, subsequent to which by a majority vote of its full membership it may employ a person not so nominated.”

It will be noted from the language of the above statute that the limitation as to the term for which teachers may be employed is not confined to any particular class of school district but applies to the employment of teachers of all districts and permits their employment for terms of one, two, three or four years, except in the case of an unexpired term,

and expressly provides that the term of employment, whatever it may be, shall begin within six months from the date of appointment instead of four months as was provided by the former statute.

Second: To my knowledge, the only reference in the statutes to the appointment of a principal of schools, since the repeal of former sections 7691 and 7705, General Code, is that now contained in Amended Section 7691, *supra*, wherein it is provided *inter alia*:

“In all high schools (both four-year and six-year), consolidated schools, and such other schools as the board may designate, a principal shall be appointed in accordance with the provisions of law.”

Nothing whatever is said in this statute or any other as to what duties a principal of schools shall perform. So far as any positive direction of law is concerned, a principal may not be required to teach at all. It has been the practice for many years, in some districts, to employ what are commonly referred to as “supervising principals” who do no actual teaching whatever.

Section 7690, General Code, provides that each city, exempted village, village or rural board of education shall have the management and control of all the public schools in their respective districts, and Section 4750, General Code, authorizes each board of education to make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools.

It would seem to be unquestionable that because of the broad authority extended to boards of education to manage and control the schools within their districts and to make rules and regulations to govern their employes, that such boards would be authorized to fix the duties of a principal of schools whom they might appoint, in the absence of any provision of law fixing such duties. Either by rules of the board or the terms of the contract of employment, a board of education may, in my opinion, fix the time which the principal of schools is required to devote to classroom teaching or may provide that they be required not to do any actual teaching whatever.

Third: The third and fourth questions submitted may be considered together.

In former Section 7690, General Code, it was expressly provided:

“Each city, village or rural board of education * * * may elect to serve under proper rules and regulations a superintendent or principal of schools.”

In a number of opinions of former Attorneys General it was held that since the enactment of the county board of education law in 1914,

and the provision therein for the supervision of schools in rural and village school districts by a county superintendent of schools and his assistants, rural and village boards of education were without authority to elect a superintendent of schools. See Opinions of the Attorney General for 1921, page 684, and Opinions of the Attorney General for 1932, page 830. Disregarding these opinions, many boards of education in rural and village school districts persistently did employ persons whom they designated to be "superintendents" in their schools. Finally, in 1932, the Common Pleas Court of Stark County in a case involving the question, *Lee vs. Brewster Village School District*, 29 O. N. P. (N. S.), page 134 held:

"Section 7690 grants authority to boards of education of rural school districts to employ a supervisor whom they may designate by the title of 'Superintendent of Schools', although he may not exercise the authority conferred upon superintendents of city and exempted village school districts by Section 7706, and he remains subject to the statutory control of the county superintendent of schools and his assistant. This right is limited only by the exercise of proper discretion."

In the course of the opinion in the above case the court said on page 137:

"Consequently, no matter that the plaintiff was called 'superintendent of schools' in his contract, he wasn't one and he could not exercise the statutory rights inuring to that office nor be held to the statutory duties thereof; for the defendant had no right to employ a superintendent of schools under the statutes, and it could not alter the plaintiff's status by calling him by that name in the contract.

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Section 7690, as has been at least twice already said, conveys broad powers, and in the court's view these are broad enough to permit the board to employ a person to act in a supervisory capacity, who is not employed as a teacher but as a general supervisor and co-ordinator. He is not a true superintendent, however, since he is subject to the supervision of the county superintendent and his assistants, and is under their statutory control; * * *."

It will be noted that neither by the terms of amended Section 7690, General Code, nor by the terms of Section 7691, General Code, is any express authority granted to village and rural boards of education to employ a superintendent of schools. On the other hand, Section 7702, Gen-

eral Code, as amended in Amended Senate Bill No. 99 provides with respect to the employment of superintendents by boards of education, as follows:

“The board of education in each county, city, and exempted village school district at a regular meeting held not later than July first of the calendar year in which the term of the superintendent expires, shall appoint a person possessed of the qualifications hereinafter provided, to act as superintendent of the public schools of the district, for a term not longer than five years, * * *.”

The authority extended by the above statute for the employment of superintendents of schools is not extended to the boards of education of rural and village school districts and at no other place in the law will be found any such authority. However, the doctrine of the Lee case, supra, is not superseded by any positive prohibition of law preventing village and rural boards of education from employing supervisors or co-ordinators, as the judge in that case speaks of them, under the broad powers extended to boards of education by Section 7690, General Code, to manage and control all the public schools in their district. This fact seemed to have been recognized by the legislature in the enactment of these amended statutes which fact is manifested by the language found in Section 7691, General Code, wherein it provides:

“Such local board shall employ no teacher, principal or *supervisor* for any school unless each of such persons is nominated therefor by the county superintendent.”

The use of the word “supervisor” in the above statute, and it is the only place in the statutes, so far as I have ever found where the word is used in connection with schools and school administration, would seem to indicate that the legislature recognized that although rural and village boards of education were not empowered to employ superintendents they might employ persons whom they designated as “supervisors” in view of the holding of the court in the Lee case.

In conclusion, therefore, I am of the opinion that:

First: Boards of education in rural and village school districts may employ teachers for terms of not less than one year, except to fill a vacancy, nor for more than four years.

Second: All teachers employed by rural and village boards of education must be appointed not longer than six months before the beginning of the term for which they are employed.

Third: A board of education may by rules regularly adopted, or by terms of the contract of employment fix the time which a principal of

schools shall devote to actual classroom teaching and may thereby provide that the principal need not devote any time to actual classroom teaching but shall devote his time exclusively to supervisory work.

Fourth: A rural or village board of education is without power to employ a superintendent of schools, as such.

Fifth: A rural or village board of education may in its discretion employ a supervisor or co-ordinator for the schools of its district who may under the direction of the county superintendent of schools and his assistants supervise the work of the schools of the district.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1556.

TOWNSHIP TRUSTEES, BOARDS OF—NOT AUTHORIZED TO EXPEND PUBLIC FUNDS TO CONSTRUCT, MAINTAIN AND OPERATE SWIMMING POOL IN PARK LOCATED IN TOWNSHIP WHERE PARK NOT UNDER DIRECT SUPERVISION, BOARD OF PARK COMMISSIONERS.

SYLLABUS:

Boards of township trustees are not authorized by law to expend public funds under their control for the purpose of constructing, maintaining and operating a swimming pool in a park located in the township which park is not under the direct supervision of a board of park commissioners.

COLUMBUS, OHIO, December 9, 1939.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR: I have your recent request for my opinion which reads as follows:

“The Trustees of Perrysburg Township, Wood County, Ohio, are desirous of taking care of controlling and improving a public park; to maintain the lawns, construct fountains and keep in good condition the driveways and sidewalks, under Section 3427-1 of the General Code.

The real estate for this park will in all probability be furnished by the Village of Perrysburg, and will not be under the jurisdiction of the Park Commissioners of Wood County, the County being under one board; nor will it be under the control of a Township Commission by election under Section 3415 et seq. of the General Code.