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TEACHER EMPLOYED BY BOARD OF EDUCATION IN SCHOOL DISTRICT OF LESS THAN EIGHT HUNDRED PUPILS—BEGINNING TEACHER OR NEW TEACHER—NOT ENTITLED TO WRITTEN NOTICE ON OR BEFORE MARCH 31 OF LAST YEAR OF CONTRACT THAT BOARD DOES NOT INTEND REEMPLOYMENT—FAILURE TO GIVE SUCH NOTICE NOT REEMPLOYMENT.

SYLLABUS:

In a school district of under 800 pupils, a teacher who has been employed by the board of education either as a beginning teacher or as a new teacher, is not entitled to a written notice on or before the 31st day of March of the last year of his contract that the board does not intend to reemploy him, and the failure to give such notice does not amount to a reemployment of such teacher.

Columbus, Ohio, March 20, 1946

Hon. John C. Furgason, Prosecuting Attorney
New Lexington, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“In the fifth paragraph of section 4842-8 of the General Code of Ohio, concerning the eligibility for continuing service

status and other types of contracts, it is stated that 'any teacher employed under a limited contract shall at the expiration of such limited contract be deemed already employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March, of its intention not to re-employ him.'

However, the last sentence of this paragraph reads as follows:

'Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:' It will be noted that no statement concerning notification of teacher before March 31, is made in the regulations which are to govern districts under eight hundred pupils.

Will you please advise whether or not, in your opinion, districts under eight hundred pupils shall be deemed re-employed unless the employing board gives such teacher legal notice on or before the 31st day of March of its intentions not to re-employ him."

Section 4857 et seq. of the General Code, provide for examination and certification of teachers in the public schools. Different classes of certificates are defined by the law, based on different standards, and qualifying a teacher to teach in the schools for different periods. Without going into precise definitions, it is sufficient to say that provisions are made for professional, permanent and life certificates, also for provisional and temporary certificates.

Section 4857-9 General Code, provides that no person shall receive any compensation for teaching service who has not obtained a certificate of qualification.

Section 4842-7 General Code, divides the contracts which may be made by boards of education with teachers into two classes, to wit, "limited contracts" and "continuing contracts". That section reads in part, as follows:

"Contracts for the employment of teachers shall be of two types; limited contracts and continuing contracts. A limited contract for a superintendent shall be a contract for such term as authorized by section 4842 of the General Code, and for all other teachers, as hereinafter defined, for a term not to exceed five years. A *continuing contract* shall be a contract which shall

remain in full force and effect until the teacher resigns, elects to retire, or is retired pursuant to section 7896-34 of the General Code, or until it is terminated or suspended as provided by law and shall be granted onyl to teachers holding *professional, permanent or life certificates.*" (Emphasis added.)

It will be noted that one of the essentials for the right to a continuing contract is that the teacher shall hold a professional, permanent or life certificate. A limited contract may evidently be made with a teacher who holds any type of certificate. By the same section, it is provided:

"'Continuing service status' for a teacher means employment under a continuing contract."

Section 4842-8 General Code, which is directly pertinent to the question you have raised, reads as follows:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification who within the last five years have taught for at least three years in the district, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district, but the board of education, upon the superintendent's recommendations, may at the time of employment or at any time within such two-year period declare any of the latter teachers eligible.

Upon the recommendation of the superintendent of schools that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between a board of education and such teacher unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation. However, the superintendent may recommend reemployment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years, provided that written notice of the intention to make such recommendation has been given to the teacher with reasons therefor on or before the thirtieth day of April, but upon subsequent re-employment only a continuing contract may be entered into.

Provided, however, that on or before September 1, 1941, a continuing contract shall be entered into by each board of education with each teacher holding a professional, permanent or life certificate who, at the time of the passage of this act, is completing five or more consecutive years of employment by said board.

A limited contract may be entered into by each board of education with each teacher who has not been in the employ of

the board for at least three years and shall be entered into, regardless of length of previous employment, with each teacher employed by the board who holds a provisional or temporary certificate.

Any teacher employed *under a limited contract* shall at the expiration of such limited contract *be deemed re-employed* under the provisions of this act at the same salary plus any increment provided by the salary schedule *unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him.* Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June, and a contract for the succeeding school year shall be executed accordingly. *Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:*

a. Beginning teachers, who have not previously been employed as a teacher in any school, shall be hired for one year.

b. New teachers, who have had at least one year's experience as teachers in other schools, shall be employed for a period of time commensurate with their past experience at the discretion of the hiring board of education, provided that no such contract shall be for more than five years.

c. *Upon re-employment* after the termination of the first contract, the new contract shall be for not less than two years nor more than five years provided that the teacher's educational qualifications have been fulfilled and the teacher's work has been satisfactory.

d. *Upon re-employment* after the termination of the second contract, the teacher's contract shall be for five years and subsequent renewal thereof shall be for five-year periods, or the board of education may at any time grant a continuing contract."
(Emphasis added.)

Your question relates to a district which has less than 800 pupils and involves primarily a consideration of the second proviso contained in that section and the four paragraphs following, designated as (a), (b), (c) and (d), but it also involves the provision of the preceding paragraph which requires the employing board to give a teacher employed under a "limited contract" written notice on or before the 31st day of March, in case it does not intend to reemploy him, the precise question submitted being whether this provision as to notice is involved in the employment of teachers falling within the second proviso in districts having less than

800 pupils. This section and particularly what has been referred to as the "second proviso," has been the subject of several opinions and some adjudications. The Supreme Court in the case of *State, ex rel. Bishop v. Board of Education*, 139 O. S., 427, held as disclosed by the fifth branch of the syllabus:

"The second proviso of Section 7690-2, General Code, relating to a contract system in school districts of less than eight hundred pupils, has reference to beginning teachers, new teachers *and to their re-employment*, and is without application to a certificated teacher completing five or more consecutive years of employment in such a school district." (Emphasis added.)

Section 7690-2, since repealed, was the predecessor of present Section 4248-8, and contained substantially identical provisions. The background of the syllabus above quoted is found in the fact that under the first proviso contained in said Section 7690-2, it was provided that on or before September 1, 1941, which was the effective date of the section, a "continuing contract" should be entered into by each board of education with each teacher holding a professional, permanent or life certificate who at the time of the passage of this act was completing five or more consecutive years of employment by said board. The teacher in question in the *Bishop* case was employed in a district containing less than 800 pupils, and the effect of the holding of the court was that he qualified under the first proviso for the continuing contract notwithstanding the fact that his employment fell within the second proviso relating to schools of under 800 pupils. It will be noted that according to the language of the syllabus as quoted, this second proviso has reference to "beginning teachers, new teachers *and to their reemployment*". The conclusion, therefore, from the language used by the court, would be that beginning teachers and new teachers *and to their reemployment*." The conclusion, therefore, from the two paragraphs (c) and (d) for their rights as to *reemployment* and would not have the benefit of the preceding paragraph relating to teachers generally, who are also employed under a limited contract and who are given the right to specific notice of the intention of the board not to reemploy them.

It would appear that the General Assembly saw fit to make quite different provisions for the qualifications and employment of teachers in districts having less than 800 pupils, from those applicable to larger

schools. In an opinion by my immediate predecessor found in 1941 Opinions Attorney General, page 749, it was held that the educational qualifications and satisfactory work of the teacher in such smaller district were matters that could be determined under rules adopted by the board of education and that the board might even exact higher qualifications than are required generally by the state as to certification. In a further opinion found in 1942 Opinions, Attorney General, page 368, in answer to a question involving the status of a teacher in a school district having less than 800 pupils, it was held in effect that such teacher, if he possessed the requisite qualifications for continuing service status, by reason of years of service and certification, was eligible to receive a continuing contract if recommended for reemployment by the county superintendent of schools subject to the right of the board by a three-fourths vote to reject his recommendation. Neither of these opinions, however, go to the extent of giving a teacher who has been employed in such district the benefit of the provision contained in the earlier portion of the section, as to automatic reemployment.

It follows, therefore, that while a teacher employed in one of the smaller schools may have been entitled to a continuing contract under the "first proviso", or may have earned that right by reason of having the necessary qualification by way of certification and length of service, his *employment* and *reemployment* rights are confined strictly to the provisions of paragraphs (c) and (d) of the "second proviso."

It is accordingly my opinion in specific answer to your question that in a school district of under 800 pupils, a teacher who has been employed by the board of education either as a beginning teacher or as a new teacher, is not entitled to a written notice on or before the 31st day of March of the last year of his contract, that the board does not intend to reemploy him, and that the failure to give such notice does not amount to a reemployment of such teacher.

Respectfully,

HUGH S. JENKINS,
Attorney General