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MUNICIPAL UNIVERSITY—DIRECTOR OR TRUSTEES AUTHORIZED TO EMPLOY SUPERANNUATED TEACHERS FOR SERVICES OTHER THAN REGULAR TEACHING AFTER AUGUST 31, 1947.

SYLLABUS:

The directors or trustees of a municipal university are authorized to employ superannuated teachers after August 31, 1947, for services other than regular teaching.

Columbus, Ohio, September 15, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

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

“We are enclosing a copy of a letter received from our State Examiner in charge, located in the City of Toledo, with reference to the authority for a municipal corporation to provide additional compensation for superannuated teachers, supplementing the pensions received from the State Teachers’ Retirement System, and to pay the same out of University funds raised by general taxation, fees, etc.

“Will you kindly give us your Opinion as to the legal authority of a municipality to expend public funds for the employment of superannuated teachers in a Municipal University, in answer to the following questions:

“1. Under the Law and Rule adopted by the retirement board have the trustees of a municipal university the authority to continue to pay, subsequent to August 31, 1947, superannuates who do no teaching service, or render very little or any special service for the institution?

“2. What statute authorizes the State Teachers Retirement Board to provide by rule the employment of superannuated teachers after the expiration of Section 7896-36a, General Code?”

Attached to your letter is a communication from your state examiner, containing substantially the same statements and raising the same questions. It further appears from that letter that the University of Toledo has by resolution provided that in consideration of the rendition of any special service requested of them, the University shall pay to retired teachers the difference between their retirement allowance received from the state teachers retirement system, and \$900 in case of unmarried teachers, and \$1200 in case of married teachers. It is further stated that these teachers are not expected to do any regular or temporary teaching, but are to render any special service requested of them.

References are made in Sections 7896-35 and 7896-36a, General Code, to the reemployment of teachers who have been retired and are receiving a superannuation retirement allowance from the state teachers retirement system. Section 7896-35 provides in part:

“It shall be unlawful subsequent to August 31, 1947, for any employer as defined in this act to employ as a regular teacher, as defined by the retirement board, a person receiving a retirement allowance from this system and such person shall be ineligible for such employment.”

Section 7896-36a contains an almost identical provision authorizing the board to define “regular teacher.”

It will be observed that by the terms of these statutes, the privilege of reemploying superannuated teachers for *regular* teaching service is limited to the 31st day of August, 1947. There is nothing in either of the above sections or so far as I can find in any other section of the law

forbidding the employment of superannuate teachers for *occasional or temporary* service either by way of teaching or otherwise.

Section 7896-36a, General Code, after making further provision relative to the rights of teachers while reemployed, concludes with the following :

“The retirement board shall have authority to make all necessary rules and regulations not inconsistent with the provisions of this section, to carry into effect the provisions thereof and prevent abuse of the privileges thereunder.”

Pursuant to the authority thus given, the retirement board on June 26, 1947, adopted the following definition :

“Pursuant to the authority vested in the Retirement Board by Section 7896-35, paragraph 5, of the General Code, a ‘regular teacher,’ subsequent to August 31, 1947, shall be defined as one employed in the same full-time position for twelve or more consecutive school weeks in any school year, or who is employed continuously in a part-time position for a portion of any school year which would equal twelve or more school weeks of actual teaching service.”

While your letter is not explicit on this point, I assume that this is the rule to which you refer. So far as I can learn, it is the only rule the board has adopted relative to this matter.

In this connection, attention should be called to the definition given by the legislature of the term “regularly employed.” Section 7896-1, General Code, defines these words as meaning “full-time employment in any year for twelve or more consecutive school weeks in the same position.”

Since your letter and the letter of your examiner both plainly indicate that the service for which the University of Toledo is now making certain payments to its superannuated teachers is not in any sense regular teaching service, it seems clear to me that the provision of the statutes and rule above referred to, have no direct bearing on the question. They relate exclusively to the service of a regular teacher. Whether the Trustees of the University of Toledo have or have not the authority to pay for this occasional and indefinite service on the part of their retired teachers, does not in any way depend on the rule in question or the statute by which it was authorized.

Coming to the question of the right of the Trustees of the University of Toledo to employ and pay these teachers for such services as are indicated, I find upon examination of the statutes relative to municipal universities, that it is provided by Section 4001, General Code, as follows:

“In any municipal corporation having a university supported in whole or in part by municipal taxation all the authority, powers and control vested in or belonging to such corporation with respect to the management of the estate, property and funds given, transferred, covenanted or pledged to such corporation in trust or otherwise for such university, as well as the government, conduct and control of such university shall be vested in and exercised by a board of directors consisting of nine electors of the municipal corporation.”

Section 4002, General Code, provides for a board of directors of such university appointed by the mayor and Section 4003, General Code, provides as follows:

“Such directors shall serve without compensation and shall have all the powers and perform all the duties conferred or required by law in the government of such university, and the execution of any trust with respect thereto imposed upon the municipal corporation.”

Until the enactment in 1943 of Sections 4003-1 to 4003-20, General Code, the law seemed to have been silent as to any more specific enumeration of the powers of the directors of a municipal university. By the enactment of those supplementary sections, the board of directors of a university was given specific authority relative to the management and control of the property of the university and especially to the construction of buildings and other matters, and provision was made for the issuance of bonds for buildings, secured only by the revenue therefrom.

While the powers given to the directors of a municipal university by the above statutes are couched in quite general terms, I have no doubt that they confer on such directors abundant authority to determine what teachers and other employes they will hire, what shall be their duties and what compensation they shall be paid. In the case you present, emphasis is placed on the fact that the superannuated teachers perform slight and occasional services. However, it is indicated that they are subject to call for whatever service is required of them.

Under these circumstances, I am not prepared to hold that the directors are acting without authority or exceeding their authority.

As to your second question in which you ask what statute authorizes the state teachers retirement board to provide by rule for the employment of superannuated teachers after the expiration of Section 7896-36a, General Code, it appears to me that what has already been stated herein sufficiently disposes of that question.

In specific answer to your inquiry I am of the opinion that the directors or trustees of a municipal university are authorized to employ superannuated teachers after August 31, 1947, for services other than regular teaching.

Respectfully,

HUGH S. JENKINS,
Attorney General.