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TEACHER EMPLOYED FOR THREE YEARS WITHIN NEXT PRECEDING FIVE YEARS—LOCAL BOARD OF EDUCATION—RECOMMENDATION FOR REEMPLOYMENT MADE BY COUNTY SUPERINTENDENT—TEACHER REEMPLOYED—ENTITLED TO CONTINUING SERVICE CONTRACT.

## SYLLABUS:

When a teacher has been employed by a local board of education for three years within the next preceding five years, and is recommended by the county superintendent for reemployment, and is reemployed, such action gives such teacher a continuing service contract.

Columbus, Ohio, September 12, 1952

Hon. John E. Halliday, Prosecuting Attorney  
Gallia County, Gallipolis, Ohio

Dear Sir:

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

“One of the local boards of education of Gallia county, Ohio, presented the following facts to me:

“A., a teacher, was employed as a substitute teacher in years 1939-1940; years 1940-1941 was employed as a regular teacher; 1941-1942 was employed as a regular teacher. All the above contracts being one year contracts.

“May, 1942 A. was granted a leave of absence for one year as shown by the minutes of the Clerk of the Board. Minutes show that on 7 September, 1943 A. presented her cause in regard to the leave of absence, but no action was taken. I understand this request was for extending leave for another year.

“7 February, 1944 minutes show that A. asked for reinstatement on leave of absence. Board discussed same, but no action taken.

“6 March, 1944 A. reinstated for coming year.

“28 March 1945 A. notified she would not be employed for 1945-1946 school year.

“4 June, 1945, A. employed for school year. A. continued to teach from that time on, but on 29 March, 1949, minutes show she was asked to resign. A. continued to teach then for 1951-1952

school year. A. was notified in accordance with statute in Spring, 1952, that she would not be reemployed.

“The local board contends that A.’s contract for year 1945-1946, 1946-1947 was a two year contract, and that her five year contract beginning in September, 1947, expired in May, 1952. A. claims that she is under a continuing contract, as she was entitled to the same when the continuing contract statutes were enacted.”

The chronological statement relative to this teacher’s service is a little confusing and gives evidence of some inconsistent action on the part of the board of education. However, it appears clear that after the teacher’s leave of absence during the school years 1942-1943 and 1943-1944, she has taught in the school in question continuously up to the end of the present school year 1951-1952.

The statement does not make it clear as to the term of her successive contracts, but I do not consider that that is important for the purpose of our discussion.

Continuing contracts for teachers were introduced into the law by an Act passed May 15, 1941, found in 119 Ohio Laws, page 451. This act consisted of an amendment of Section 7690-1 of the General Code, and the enactment of supplemental Sections 7690-2 to 7690-8, inclusive, of the General Code. Section 7690-1 in substance now appears in the present school code as Section 4842-7. Section 7690-2, General Code in substance appears as Section 4842-8, General Code. In its original enactment, Section 7690-2 contained the following provision :

“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.”

It appears from your statement that at the time of the enactment of that law the teacher in question had been employed as a substitute teacher for the year 1939-1940, and as a regular teacher for the year 1940-1941. If, as I am informed, that was her first employment, then even counting the year of service as a substitute teacher, she had only two years of teaching credit when the law was enacted, and therefore, clearly could not qualify for a continuing contract as a matter of right, at that time.

Your statement shows that after her leave of absence the teacher in question was reinstated on March 6, 1944, and I assume she was given a contract for one year. Your statement further shows that on March 28, 1945, she was notified that she would not be reemployed for the next school year, but it appears that on June 4, 1945, she was employed, and that she continued to teach from that time on.

On March 29, 1949, she was asked to resign, but continued to teach until the Spring of 1952, when she was notified that she would not be reemployed.

Section 4842-7, General Code, provides that a continuing contract shall be granted only to teachers holding professional, permanent or life certificates. I am informed that the teacher in question has possessed this qualification since 1943.

Section 4842-8, General Code, in so far as pertinent, provides 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 reemployment only a continuing contract may be entered into. \* \* \*” (Emphasis added.)

Section 4842-7, General Code, defines “continuing service status” as meaning “employment under a continuing contract.”

It will be noted that a teacher becomes eligible for continuing service status in any school district when he or she has within the last five years

taught for at least three years in the district. Ignoring the year when she was employed as a substitute teacher, it seems quite clear that the teacher in question having taught as a regular during the years 1941-1942, 1944-1945 and 1945-1946, had taught three years within the five years next preceding and accordingly was *eligible* in 1946 for continuing service status.

Eligibility for continuing service status does not mean that the teacher has an immediate right to a continuing contract. In Opinion No. 1384, under date of April 29, 1952, I held:

“A teacher who has taught in a district under limited contracts for four or five years and who is eligible for continuing service status, does not by reason of those facts alone, acquire a right upon re-employment, to a continuing contract.”

That ruling was based on the language of Section 4842-8, General Code, which I have already quoted, which states that teachers who within the last five years have taught for at least three years in the district, are *eligible* for such status.

Section 4842-8, *supra*, provides that upon the recommendation of the superintendent of schools that a teacher eligible for continuing service status be reemployed, *a continuing contract shall be entered into* with such teacher, unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation. It should be observed that it is not necessary that the superintendent recommend the teacher *for a continuing contract*, but merely that he recommend the *reemployment* of the teacher, in which case the continuing contract follows as a matter of right, unless the board by a three-fourths vote rejects the superintendent's recommendation for reemployment.

Your letter does not state that the superintendent recommended this teacher for employment in 1946, but we have a right to assume that he did, because under the provisions of Section 4842-6, General Code, no teacher can be employed unless he is nominated by the superintendent.

Accordingly, when the teacher in question was reemployed in 1946, the result of such reemployment under the terms of the statute quoted, was reemployment on a continuing contract. The fact that the board may have undertaken to limit the term of such contract to one or more years, would not prevent it becoming a continuing contract. Opinion No. 978,

Opinions of the Attorney General for 1946, page 380; Opinion No. 1767, Opinions of the Attorney General for 1947, page 191.

In specific answer to your question it is my opinion that when a teacher has been employed by a local board of education for three years within the next preceding five years, and is recommended by the county superintendent for reemployment, and is reemployed, such action gives such teacher a continuing service status.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General