

OPINION NO. 75-050

Syllabus:

1. R.C. 3319.02 provides that the contract of a principal be a limited contract which may not extend beyond a term of four years.

2. City and exempted village school boards may employ special instruction teachers and special education teachers pursuant to R.C. 3319.07, and such teachers are subject to R.C. 3319.08 with respect to their contract status, rather than R.C. 3319.02.

3. Supervisory personnel may be employed by city and exempted village school boards pursuant to R.C. 3319.02 and therefore such personnel are entitled to limited contracts not to exceed four years in length.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 17, 1975

I have before me your predecessor's request for my opinion which reads as follows:

"Recently several questions have been raised relating to the contract status of certain certificated personnel employed by a board of education. It is requested that you give consideration to questions submitted as follows:

"1. The only reference within Ohio statutes relating to the employment of a principal for all high schools and for such other schools as the board designates, is found in Section 3319.02, Revised Code. Is it the intent of this section that the contract of a principal be a term contract or is he to be placed on a continuing contract when qualified? Further, if he is to be placed on a term contract, how many years would constitute a term?

"2. Section 3319.02, Revised Code, provides that on nomination of a county superintendent of schools, a county board of education may employ supervisors, special instruction teachers and special education teachers with such employees being employed under written contracts for terms not to exceed four years each. Is the thinking in this section equally applicable to supervisors, special instruction teachers, and special education teachers employed by a city and/or exempted village school district, inasmuch as city and/or exempted village school districts are not specifically included within the wording of this section?"

Your first question asks whether it is the intent of R. C. 3319.02 that the contract of a principal be a term contract or a continuing contract; and if he is to be placed on a term contract, how many years constitute a term.

In discussions had with your Office and the State Board of Education, I was informed that the usual and customary practice with regard to school principal contracts has been to enter into limited contracts not to exceed a term of four years. However, since R.C. 3319.02 does not expressly set forth the contract status of principals, you felt it best to request an opinion of our office in order to clarify the law in this area and to determine the correctness of the aforementioned policy. This is especially important in a situation where a teacher who enjoys continuing contract status is elevated to the position of principal. It was also brought to my attention that it is generally agreed among boards of education and teachers alike that a person in a position which entails the exercise of executive and discretionary duties should not be granted "tenure" in that position.

R.C. 3319.02 to which you refer in your request reads in pertinent part, as follows:

"The board of education of each county, city, local, or exempted village school district may appoint one or more assistant superintendents and such other administrative officers as are necessary The board of each city, exempted village, and local school district shall employ principals for all high schools

and for such other schools as the board designates, and those boards may appoint assistant principals for any school that they designate. In the case of assistant superintendents, in city, exempted village, and county districts, employment shall be, and in the case of other administrative officers may be in accordance with nominations of the superintendent of schools of the appointing district for a term not to exceed four years, except as authorized by sections 3319.08 and 3319.09 of the Revised Code. (Emphasis added.)

It will be observed that R.C. 3319.02 provides that in the case of administrative officers, other than assistant superintendents, employment may be for a term not to exceed four years, except as authorized by sections 3319.08 and 3319.09 of the Revised Code.

R.C. 3319.08 reads in part as follows:

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

"Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract is a contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates. . . ."

R.C. 3319.09 reads in part:

"As used in sections 3319.08 to 3319.18, inclusive, of the Revised Code:

"(A) 'Teacher' means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the state board of education requires certification"

Although R.C. 3319.09 includes principals in its definition of teacher, the Supreme Court of Ohio has held that the statutes concerning the continuing contracts of teachers apply only to teachers as such, and do not apply to administrative positions. State, ex rel. Saltsman v. Burton, 154 Ohio St. 272 (1950).

On remand from the Supreme Court, the Court of Appeals of Mahoning County in State, ex rel. Saltsman v. Burton, 91 Ohio App. 271 (1951), stated at page 273:

"[I]t was the intent of the Legislature that the term, 'teacher' should mean classroom teacher.

"Teachers are not to be confused with administrative officers"

"That act [Teachers' Tenure Act (Section 3319 et seq., Revised Code)] is a civil service law to protect teachers who are qualified in the teaching profession. It was not enacted for the protection of executive or administrative officials in the school system."

Although the Saltsman decisions were concerned with the position of superintendent, they are equally applicable to the position of principal because like a superintendent, a principal holds an administrative position involving the exercise of executive and discretionary duties. On this point your attention is directed to 1957 Op. Att'y Gen. No. 1028, page 465, wherein my predecessor said:

"The position of principal involves essentially an administrative office having certain delegated duties to perform as the board of education designates"

See also 1961 Op. Att'y Gen. Nos. 2461, p. 484, and 2481, p. 536.

Accordingly, in answer to your first question a person appointed as a principal pursuant to R.C. 3319.02 is not eligible for a continuing contract as a principal, but is limited, along with other administrative officers of a city, exempted village, or county school district, by the provisions of R.C. 3319.02, to contracts for a term not to exceed four years.

Your second question asks whether R.C. 3319.02 is equally applicable to the employing of supervisors, special instruction teachers, and special education teachers by city and/or exempted village school districts inasmuch as the latter are not specifically included within the wording of this section. In order to answer your question, your attention is once again directed to R.C. 3319.02 which reads in pertinent part:

"On nomination of the county superintendent of schools a county board of education may employ supervisors, special instruction teachers, and special education teachers. Such employees shall be employed under written contracts of employment for terms not to exceed four years each. Such contracts may be terminated by a county board of education pursuant to section 3319.16 of the Revised Code. Any supervisor, special instruction teacher, or special education teacher may terminate his contract of employment at the end of any school year after giving the county board of education at least thirty days written notice prior to such termination. On the recommendation of the county superintendent of schools the contract or contracts of any supervisory teachers, special instruction teachers may be suspended for the remainder of the term of such contracts where there is a reduction of the number of approved supervisory teacher units or special instruction teacher units allocated to the school district pursuant to section 3317.05 of the Revised Code."

I understand from my discussions with your Office that some city and exempted village school districts have employed supervisors and special education teachers. However, you question their

authority to employ such personnel and are concerned as to the propriety of issuing warrants for the payment of their salaries in the absence of the necessary authority. Accordingly, you have requested an opinion of this Office in order to obtain a clarification of the law with respect to whether city and/or exempted village school districts may hire such personnel and, if so, what their contract status must be.

As you have noted in regard to your second question, R.C. 3319.02 specifically provides that county boards, on the nomination of the county superintendent of schools, may employ supervisors, special instruction teachers, and special education teachers, under contracts for terms not to exceed four years each. However, there is no similar provision in R.C. 3319.02 referring to the boards of education of city and exempted village school districts.

Under the well settled maxim of expressio unius est exclusio alterius, the specific mention of one thing implies the exclusion of all others. See State, ex rel. Jackman v. Court of Common Pleas of Cuyahoga County, 9 Ohio St. 2d 159 (1967); Beatty v. Alston, 40 Ohio App. 2d 545 (1974); 1974 Op. Att'y Gen. No. 74-010; 1974 Op. Att'y Gen. No. 74-002; 1973 Op. Att'y Gen. No. 73-115. It appears then that the language in R.C. 3319.02 to which you refer applies only to supervisors, special instruction teachers, and special education teachers of a county school district, and not to such employees of a city or exempted village school district. However, your attention is directed to R.C. 3319.07 which reads in pertinent part:

"The board of education of each city, exempted village, and local school district shall employ the teachers of the public schools of their respective districts. . . ."

Authority to employ special instruction and special education teachers is specifically conferred upon city and exempted village boards under R.C. 3319.07. Accordingly, since such authority arises under R.C. 3319.07 and not R.C. 3319.02, which refers specifically to county boards, city and exempted village boards are not subject to the limited, four year contracts set forth in R.C. 3319.02 for teachers employed by a county board, but on the contrary, special instruction and education teachers employed by city or exempted village boards are entitled to continuing contract status pursuant to R.C. 3319.08 and 3319.09. As to supervisors, however, a different conclusion is warranted. While the last quoted portion of R.C. 3319.02 excludes any reference to supervisors employed by city or exempted school districts, these employees are nevertheless encompassed by that portion of R.C. 3319.02 which was earlier quoted. That is, supervisors employed by city or exempted school districts are other administrative officers whose employment may be "for a term not to exceed four years."

In specific answer to your request, it is my opinion and you are so advised that:

1. R.C. 3319.02 provides that the contract of a principal be a limited contract which may not extend beyond a term of four years.
2. City and exempted village school boards may employ special instruction teachers and special education teachers pur-

suant to R.C. 3319.07, and such teachers are subject to R.C. 3319.08 with respect to their contract status rather than R.C. 3319.02.

3. Supervisory personnel may be employed by city and exempted village school boards pursuant to R.C. 3319.02 and therefore such personnel are entitled to limited contracts not to exceed four years in length.