

2457

EDUCATION—TEACHERS, ASSIGNMENT OF—§3319.01 R.C.—
CONTRACT WITH TEACHERS, TERMINATION ONLY IN AC-
CORDANCE WITH §3319.16 R.C.

SYLLABUS:

1. Under the provision of Section 3319.01, Revised Code, the superintendent of a school district has the sole authority in the assignment of teachers, and a board of education is without authority in the matter of such assignment either by provision in the contract of employment or otherwise.

2. A board of education, having entered into a contract of employment of a teacher, pursuant to Section 3319.07, et seq., Revised Code, has no authority to terminate such contract prior to its expiration, except for the causes, and by the procedure set forth in Section 3319.16, Revised Code.

Columbus, Ohio, July 29, 1958

Hon. William H. Weaver, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

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

“I am requesting an informal opinion from you on each of the following set of facts and the same are as follows:

“Case 1. A school teacher is employed to teach intermediate grades (4-5-6) for the school year 1957-58. Subsequently the board of education passed a resolution that said teacher is to teach grade 2 for the school year 1958-59. Said school teacher objects to this assignment by the board of education.

“Question. Does the board of education have the authority to assign said teacher to teach grade 2 for the school year 1958-59 or must a change in teacher assignments be made by the local school executive or by the county superintendent of schools?

“Case 2. One James Hoit, Jr., was employed by the North-Central Board of Education August 5, 1957, as a teacher and also the position of superintendent of schools (local school executive) for two years beginning with the school year 1957-58, a true and correct copy of said contract is enclosed herewith.

“On May 12, 1958, the North-Central Board of Education passed a resolution to the effect that James Hoit, Jr.’s contract as a teacher and as a local school executive would be terminated at

the close of the school year 1957-58. The said James Hoit, Jr. claims he has a legal contract as a teacher and as a local school executive for the school year 1958-59.

“Question: Does the said James Hoit, Jr. have a legal contract as a teacher and a local school executive for the school year 1958-59?”

“Question: Would the North-Central Local Board of Education have the right to terminate his contract by the resolution adopted by the North-Central Local Board of Education on May 12, 1958?”

Your first question is as to the right of a board of education, having employed a teacher to teach certain specified grades, to shift such teacher without his consent to teaching another grade.

The employment, by a board of education, of teachers is governed by Sections 3319.07, *et seq.*, Revised Code. Section 3319.07, Revised Code, provides that in city and exempted village districts no teacher or principal shall be employed unless such person is nominated by the superintendent of schools of such district. It is further provided that in local school districts, no teacher or principal shall be employed unless nominated by the superintendent of schools of the county school district of which such local school district is a part.

The general control of schools is given to the respective boards of education by Section 3313.47, Revised Code in the following language:

“Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. * * *”

Section 3319.08, Revised Code, relates directly to contracts for employment of teachers. In pertinent part, this section reads as follows:

“The board of education of each city, exempted village, and local school district shall enter into contracts for the employment of all teachers and *shall fix their salaries* which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code. Such boards may include in such contract duties beyond the regular duties and for such additional duties the salary of the teacher may be supplemented. Such boards may discontinue at any time the assignments of special duties *beyond the regular classroom teaching duties* and the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties.

* * *

“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.” (Emphasis added)

Nowhere in that statute or any other statute, so far as I can find, is there any provision of law either requiring or authorizing a contract of employment of a teacher to be limited to teaching in a specified grade or grades. It is true that there are provisions in the statute, to-wit, in Section 3319.22, *et seq.*, Revised Code, providing for certification of teachers, with certain classifications which permit a teacher to teach in certain grades only, and it is manifest that no contract of employment made by a board of education could include any specification as to the teacher’s work which would be contrary to the provisions of the statute as to certification.

Therefore, it appears clear that a board of education would not be bound by any provision in such contract of employment which undertakes to limit the assignment of a teacher to certain grades.

However, Section 3319.01, Revised Code, which deals with the appointment and authority of a superintendent, contains the following provision :

“Such superintendent shall be the executive officer for the board, direct *and assign teachers* and other employees of the schools under his supervision, except as provided in section 3319.04 of the Revised Code. * * *” (Emphasis added)

The exception as to Section 3319.04, Revised Code, relates to the optional appointment of a business manager, who is given control of all “non-educational employees.”

Returning to Section 3319.22, Revised Code, relating to certification of teachers, we find that certificates are classified as follows :

“(A) Kindergarten-primary, valid for teaching in kindergarten, first, second, and third grades ;

“(B) Elementary, valid for teaching in grades one to eight, inclusive ;

In view of this classification, it is evident that a teacher qualified to teach the 4th, 5th and 6th grades, could be assigned to teach the second grade. But in answer to your first question, it is my opinion that the power of assignment, including power of reassignment, is vested in the superintendent, and that the school board is wholly without authority to make such assignment either in the contract of employment of a teacher or otherwise.

Your second inquiry appears to raise the question as to the right of a board of education, which has entered into a contract with a teacher for his employment for a period of two years as teacher and local school executive, to terminate such contract summarily as of the end of the first year.

On examination of the contract in question, a copy of which is attached to your letter, it appears to be in proper form, except that it includes what I regard as a wholly irrelevant but harmless provision designating the grades to be taught, and the contract appears to be properly executed. Your letter gives no information as to the grounds on which the board attempted to cancel the contract. A teacher under contract can only be removed from his employment, for the causes and by the procedures set out in Section 3319.16, Revised Code. That section reads in part:

“The contract of a teacher may not be terminated except for gross inefficiency or immorality ; for willful and persistent violations of reasonable regulations of the board of education ; or for other good and just cause. Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its clerk of its intention to consider the termination of his contract with full specification of the grounds for such consideration.
* * *”

In the absence of any showing of cause or compliance with this statute, I have no hesitancy in holding that the board of education was wholly without authority to terminate the contract summarily in the manner indicated. Such action would be manifestly a violation not only of the statute just quoted but would be contrary to all recognized laws relating to contractual obligation.

Accordingly, in specific answer to your questions, it is my opinion and you are advised :

1. Under the provision of Section 3319.01, Revised Code, the superintendent of a school district has the sole authority in the assignment of

teachers, and a board of education is without authority in the matter of such assignment either by provision in the contract of employment or otherwise.

2. A board of education, having entered into a contract of employment of a teacher, pursuant to Section 3319.07, et seq., Revised Code, has no authority to terminate such contract prior to its expiration, except for the causes, and by the procedure set forth in Section 3319.16, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General