

OPINION NO. 70-129**Syllabus:**

A resolution of a board of education, recording the names of substitute teachers and the daily rate to be paid, coupled with the availability of the teacher, does not constitute compliance with the Section 3319.08, Revised Code, requirement for a written contract for the employment of teachers. However, in the presence of such a resolution, and the acceptance of such employment by the teacher, the failure of the parties to execute the required written contract shall not avoid such employment contract.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: Paul W. Brown, Attorney General, September 10, 1970

I have before me your request for my opinion which reads in pertinent part:

"Does the resolution of the board of education wherein the daily rate as well as the names of substitute teachers are recorded, when approved by the substitute teacher by being available for teaching services, constitute compliance with the requirements for a written contract in view of the provisions of Section 3319.08, Revised Code?"

Your request is concerned with the requirement of Section 3319.08, Revised Code, as referred to in Opinion No. 70-042, Opinions of the Attorney General for 1970, which states in part:

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

The written contracts referred to in Section 3319.08, supra, have been defined by Opinion No. 70-042, supra, as limited contracts in the case of substitute teachers. A limited contract is defined by Section 3319.08, supra, which says:

'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.'

In further clarification of the status and employment of substitute teachers, Section 3319.10, Revised Code, states:

Teachers may be employed as substitute teachers for terms not to exceed one year for assignment as services are needed to take the place of regular teachers absent on account of illness or to fill temporary positions created by emergencies; such assignment to be subject to termination when such services no longer are needed."

The requirement of a limited written contract not to exceed one year for the employment of substitute teachers is not obviated by a resolution of a board of education such as you outlined. However, Section 3319.08, supra, further states:

"If a board of education adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract."

The intent of the legislature in enacting the above statute is apparent. While the statute does not eliminate the requirement for a written contract for the employment of teachers, it does provide protection for the parties between the time of the motion

or resolution by a board of education and the acceptance by the teacher, and the execution of a written contract.

In view of the foregoing, it is my opinion and you are advised that a resolution of a board of education, recording the names of substitute teachers and the daily rate to be paid, coupled with the availability of the teacher, does not constitute compliance with the Section 3319.08, Revised Code, requirement for a written contract for the employment of teachers. However, in the presence of such a resolution, and the acceptance of such employment by the teacher, the failure of the parties to execute the required written contract shall not avoid such employment contract.