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1. TEACHER—PART TIME—EMPLOYED FIVE YEARS OR MORE BY BOARD OF EDUCATION—NOT GIVEN ACTUAL TEACHING SERVICE OF AT LEAST 120 DAYS, EXCLUSIVE OF LEAVE OF ABSENCE FOR PROFESSIONAL ADVANCEMENT DURING ANY YEAR—NOT ELIGIBLE FOR CONTINUING CONTRACT.
2. CONTINUING CONTRACT INVALID—VALID LIMITED CONTRACT—SECTION 4842-8 G. C.
3. MAXIMUM TERM—LIMITED CONTRACT—TEACHER OTHER THAN SUPERINTENDENT—FIVE YEARS—SECTION 4842-7 G. C.
4. LIMITED CONTRACT—CIRCUMSTANCES MAY GRANT MAXIMUM TERM PERMITTED BY LAW TO GIVE EFFECT TO INTENTION OF PARTIES.
5. AUTOMATIC REEMPLOYMENT OF TEACHER—LIMITED CONTRACT—NOTICE—SECTION 4842-8 G. C.
6. PART TIME TEACHER GRANTED FIVE YEAR LIMITED CONTRACT—PURPORT, CONTINUING SERVICE STATUS—ABSENCE, NOTICE OF BOARD OF EDUCATION TO GRANT CONTINUING CONTRACT—NO NOTICE—INTENTION NOT TO RE-EMPLOY—CONTRACT AUTOMATICALLY RENEWED.
7. NOTICE TO TEACHER APRIL, 1951, OF INTENTION TO REVISE TERMS OF EXISTING CONTRACT WITHOUT ASSENT OF TEACHER IS UNLAWFUL AND INVALID.

SYLLABUS:

1. A part-time teacher in the public schools who has been employed for five years or more by a board of education but who has not rendered actual service of at least 120 days, exclusive of leave of absence for professional advancement for such board during any such year, does not become eligible for a continuing contract.

2. The action of a board of education in such case purporting to grant such teacher a continuing contract is invalid as such; but such action does, under the provisions of Section 4842-8, General Code, have the effect of creating a valid limited contract.

3. The maximum term of a limited contract, in the case of a teacher other than a superintendent, is prescribed by the provisions of Section 4842-7, General Code, as five years.

4. Where a limited contract is created in such circumstances the term thereof will be deemed to be the maximum term permitted by law in order to give effect, as far as possible, to the intention of the parties.

5. The provisions of Section 4842-8, General Code, relating to the automatic re-employment of a teacher serving under a limited contract where the board of education fails within a particular time to give such teacher notice of intention not to re-employ, are applicable to a part-time teacher who is serving under a limited contract created in the manner indicated in paragraph two of this syllabus.

6. Where a part-time teacher is granted a five year limited contract in 1941 by action of a board of education purporting to grant such teacher continuing service status, such contract is deemed to have been automatically renewed for successive five year periods in 1946 and 1951 in the absence of notice by such board, given such teacher prior to March 31 in each of such years, of intention not to re-employ.

7. In such circumstances a notice by such board of education given to such teacher in April, 1951, of intention to revise the terms of the then existing contract without the assent of such teacher is not authorized by law and is invalid.

Columbus, Ohio, September 7, 1951

Hon. Danny D. Johnson, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads:

"The Mill Township School Board has presented to me the following facts and requested an opinion thereto. The facts are as follows:

"1. V. K., on the 2nd day of September, 1941, was granted a continuing contract by the Mill Township School Board. Miss K., for the immediate preceding five years, had been employed by this school board three days per week. During this time she was also employed by another school board for two days a week.

"2. Back in 1918, and for a year or two thereafter, she had been employed by the same school board five days a week.

"3. Miss K. has, until April of this year, worked under this supposed continuing contract. At that time the school board then presented to Miss K. a new term contract cutting her down to a day and a half a week, but increasing her salary proportionately. Miss K. at this time refused to sign the new term contract stating that she had a valid continuing contract.

"From the above stated facts, I am requesting your opinion on the following questions:

"1. Does Miss K. have a valid continuing teachers contract?

"2. If she does not have a valid continuing teachers contract, what is the status of the contract she has been working under and is there any notice as required by the statute needed in tendering a new term contract?"

Although your inquiry does not specifically so state, I assume for the purpose of this discussion that since September, 1941, this teacher has continued to serve in the Mill Township schools for only three days each week.

Section 4842-8, General Code (formerly Section 7690-2, General Code), authorizes the granting of continuing contracts to teachers otherwise qualified who have been employed for a stated minimum number of years by the board which proposes to grant such contract. In Section 4842-7, General Code, the term "year" is defined as follows:

"* * * 'Year' as applied to term of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service. * * *"

Almost the precise question here involved was considered in Opinion No. 4401, Opinions of the Attorney General for 1941, p. 891, the first paragraph of the syllabus which is as follows:

"Teachers in the public schools who were employed by a board of education during each of five school years immediately preceding the time of the passage of House Bill No. 121 of the 94th General Assembly, but who did not render actual service for said board during one or more of such years of at least 120 days including time covered by an authorized leave of absence for professional advancement, do not qualify for continuing service status so as to require the said board to grant them continuing contracts as provided in Section 7690-2, General Code, for teachers who are qualified as to certification and who have completed five or more years of consecutive employment by said board at or near the end of the school year 1940-1941."

In view of the plain language of the statute, I am unable to perceive how any conclusion other than that above stated could logically be reached, and I must conclude, therefore, that the rule so stated is correct and is applicable to the situation here involved.

Accordingly, since it appears that the teacher here in question did not render actual service of 120 days for the Mill Township board during any one year of her employment by such board, it follows that she was not eligible in September, 1941, and has not since become eligible, for a continuing contract. Not being so eligible, I conclude that the so-called continuing contract granted her in 1941 is not valid as such.

Your second question relates to the possible necessity of notice to this teacher in tendering her a new contract. In this connection your attention is invited to Section 4842-8, General Code, which reads in part 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 three-fourths vote of its full membership rejects the superintendent’s recommendation. However, the superintendent may recommend re-employment 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 re-employment only a continuing contract may be entered into.

“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.

“A limited contract may be entered into by each board of education with each teacher who has not been in the employ of the board for at least three years and shall be entered into, regardless of length of previous employment, with each teacher employed by the board who holds a provisional or temporary certificate.

“Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment

provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June, and a contract for the succeeding year shall be executed accordingly. * * *

Since the teacher in the circumstances here under consideration "has not been in the employ of the board for at least three years," it is obvious that the provisions of the fourth paragraph in the quotation above are applicable. These provisions were in effect in September, 1941, as a part of Section 7690-2, General Code, being a part of the original teacher tenure act. In view of this situation I conclude that the action of the board in September, 1941, although not effective in creating a continuing contract, did have the effect, by operation of law, of creating a limited contract. Since it is provided in Section 4842-7, General Code, that limited contracts for all teachers other than superintendents shall be "for a term not to exceed five years," it follows that such is the maximum term for which the contract here under scrutiny could have been granted.

It is not precisely clear whether such limited contract was effective for a period of five full calendar years or for a lesser period, but when it is considered that the board's action in 1941 attempted to create a contract of *indefinite* duration, and when it is further considered that the provisions of a teacher tenure act are to be liberally construed in favor of the teachers (State ex rel., Bishop v. Board of Education, 139 Ohio St., 427, 40 N. E. (2d) 913), I think it entirely logical to conclude that such limited contract must be considered to have comprehended a period of five calendar years, thus giving effect, as nearly as possible, to the evident intent of the parties.

In the fifth paragraph of Section 4842-8, General Code, there is found a provision for the automatic re-employment of a teacher currently employed under a limited contract, if the board fails to give notice of intention not to re-employ such individual. This language is broad in scope and contains no indication of a legislative intent that it shall not apply to regular part time teachers employed under a limited contract as well as to regular full time teachers so employed. Again, having regard to the liberal construction rule indicated in the Bishop case, I am impelled to conclude that this automatic re-employment provision is applicable in the instant case.

In this view of the matter it will follow, under the provisions of the fifth paragraph of Section 4842-8, General Code, that in the absence of any notice to the teacher to the contrary, the limited contract in this case was successively extended for five year periods in 1946 and 1951. This being the case, I must conclude that the board's action in April, 1951, not having been taken with the teacher's assent nor within the time limit prescribed by law for notice of intention not to re-employ her, was ineffective; and that such teacher is presently employed under a limited contract beginning on July 1, 1951, and ending on June 30, 1956.

Respectfully,

C. WILLIAM O'NEILL

Attorney General