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1. TEACHER IN PUBLIC SCHOOLS — BOARD OF EDUCATION MAY AWARD CONTINUING CONTRACT TO TEACHER HOLDING A LIFE CERTIFICATE — REQUIREMENT — PRIOR TO APRIL 1938 COMPLETION TWO CONSECUTIVE YEARS OF TEACHING IN PART OF A SCHOOL DISTRICT WHICH WAS TRANSFERRED TO DISTRICT OF SUCH BOARD OF EDUCATION — TEACHER WAS REEMPLOYED — EMPLOYMENT CONTINUED UNTIL PASSAGE OF HOUSE BILL 121, 94 GENERAL ASSEMBLY — SECTIONS 7690-2, 4692 GENERAL CODE.
2. STATUS, TEACHER EMPLOYED PRIOR TO MAY, 1938 — SECTION 4736 GENERAL CODE.
3. SUPERINTENDENT OF SCHOOLS — RECOMMENDATION TO REEMPLOY SUCH TEACHERS — VOTE, THREE-FOURTHS ENTIRE MEMBERSHIP OF BOARD, REQUIRED TO REJECT RECOMMENDATION — NO MANDATORY DUTY OF BOARD TO OFFER CONTINUING CONTRACT.

**SYLLABUS:**

1. *Under the terms of Section 7690-2, General Code, a board of education may award a continuing contract to a teacher holding a life certificate who prior to April, 1938, completed two consecutive years of teaching in a part of a school district which was transferred to the district of such board of education pursuant to the provisions of Section 4692, General Code, and who subsequent to said date was reemployed by said board of education and continued in the employment of such board until the passage of House Bill No. 121 of the Ninety-fourth General Assembly.*

2. *Under the terms of Section 7690-2, General Code, a board of education may award a continuing contract to a teacher holding a life certificate who prior to May, 1938, completed two consecutive years of teaching in a school district which was consolidated with another district pursuant to Section 4736, General Code, so as to form the district of such*

*board of education, where such teacher subsequent to such date was continuously employed by such board of education until the passage of House Bill No. 121 of the Ninety-fourth General Assembly.*

*3. Upon the recommendation of the proper superintendent of schools, each of such teachers was entitled to be employed by the board of education under a continuing contract, unless such board of education by a three-fourths vote of its entire membership rejected such recommendation of the superintendent. Neither of such teachers, however, was entitled to a continuing contract as a matter of right and the board of education was under no mandatory duty to offer a continuing contract to such teacher in the absence of recommendation by the proper superintendent of schools.*

Columbus, Ohio, December 13, 1941.

Hon. Kenneth C. Ray, Director of Education,  
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads:

"In order to clarify the application of the continuing contract law in a number of school districts in the state in which there has been reorganization of territory in recent years, we are writing to request your formal opinion in answer to the following questions:

1. A teacher holding a life certificate completed in April 1938 two consecutive years of teaching in School B. In July 1938 a portion of the school district in which this school was maintained was transferred under Section 4692 of the General Code to a district maintaining School A. School B was located in the territory transferred. Following the transfer, School B was closed and the teacher was employed to teach in School A, in which school she has been continuously employed since that time. Was it the mandatory duty of the board of education maintaining School A to issue a continuing contract to this teacher on September 1, 1941?

2. In July 1938 a county board of education consolidated all of the territory of two school districts by the creation of a new district in accordance with the provisions of Section 4736 of the General Code. In one of these two districts a teacher holding a life certificate completed two consecutive years of teaching in May 1938. Following the creation of the new dis-

strict she was employed by the board of education appointed for the created district. She has since been in the employ of that board and at the close of the 1940-41 school year had completed five consecutive years of teaching in the same school. Did a mandatory duty arise on September 1, 1941 for the board of education of this district to issue a continuing contract to this teacher?"

Section 7690-1, General Code, as amended by House Bill No. 121 of the Ninety-fourth General Assembly, provides in part:

" \* \* \* Contracts for the employment of teachers shall be of two types: limited contracts and continuing contracts. A limited contract for a superintendent shall be a contract for such term as authorized by section 7702 of the General Code, and for all other teachers, as hereinafter defined, for such term as authorized by section 7691 of the General Code. A continuing contract shall be a contract which shall remain in full force and effect until the teacher resigns, elects to retire, or is retired pursuant to section 7896-34 of the General Code, or until it is terminated or suspended as provided in this act and shall be granted only to teachers holding professional, permanent, or life certificates.

\* \* \* 'Continuing service status' for a teacher means employment under a continuing contract."

Section 7690-2, General Code, as enacted in said House Bill No. 121, in so far as the same is pertinent to your question, provides:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification who 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 recommendation, 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 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 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. \* \* \* ”

Each of the teachers in question had taught for three years in her respective district and was therefore eligible for continuing service status therein and, upon recommendation of the proper superintendent of schools that such teacher be reemployed, the board of education of her district was under a duty to enter into a continuing contract with such teacher, unless such board by a three-fourths vote of its full membership rejected the superintendent's recommendation. Furthermore, a board of education could employ a teacher eligible for continuing contract status on a continuing contract without recommendation of the superintendent of schools, if it desired to do so.

If at the time of the passage of House Bill No. 121 of the Ninety-fourth General Assembly such teachers had been completing five or more consecutive years of employment by their respective boards of education, they would have been entitled, as a matter of right to be reemployed under continuing contracts and their boards of education had no power to refuse to employ them. In my Opinion No. 4027, dated August 2, 1941, I advised your predecessor that the time of the passage of such House Bill No. 121, as the term "passage" is used in Section 7690-2, General Code, was June 2, 1941.

However, neither of the teachers to whom you refer in your letter had been employed for five years or more by the board of education in whose employ they were on the second day of June, 1941. The language in the statute is clear and unambiguous and there is therefore no occasion to interpret it. In 37 O.Jur., 514, Section 278, it is said:

“ \* \* \* Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the general assembly. \* \* \* An unambiguous statute is to be applied, not interpreted. \* \* \* ”

I recognize that the plain meaning of the language employed by the

General Assembly will result in hardship and injustice. If the meaning of the language employed by the General Assembly were doubtful and if there were therefore occasion to resort to the ordinary rules of construction, the apparent harshness and injustice of the statute would be a very material factor for consideration. However, as I have heretofore stated, there is no ambiguity in the language used by the General Assembly and hence no reason to construe it. In 37 O.Jur., 642, Section 351, it is said:

“Thus, considerations of hardship are resorted to only in cases of construction of statutes of doubtful meaning and should never prevail against the positive provisions of the statute. If the meaning of a statute is plain and its provisions are susceptible of but one interpretation, the courts, in construing the statute, may not take into consideration the hardship, inequality, unfairness, or injustice which may be caused thereby. In other words, it would be highly improper for the court to distort the language or the evident meaning of a statute in such manner as to give the statute a construction consistent with their own feelings of justice when such construction would manifestly defeat the intention of the legislature. If the provisions seem harsh or unjust, the place to seek the remedy is in the legislature, not in the courts.”

Moreover, the General Assembly gave consideration to the transfer of territory from one school district to another and the consolidation of districts, in connection with the enactment of House Bill No. 121. Section 7690-8, General Code, as enacted therein, provides:

“If an entire school district or that part of a school district which comprises the territory in which a school or schools are situated is transferred to any other district, or if the districts of a township or the schools of a rural school district are consolidated or centralized, or if a new school district is created, the teachers in such districts or schools employed on continuing contracts immediately prior to such transfer, consolidation, centralization, or creation shall, subject to the limitations imposed by section 7690-7 of this act, have continuing service status in the newly centralized, consolidated, or created district, or in the district to which the territory is transferred.”

By reason of this section, any teacher *employed* on a continuing contract immediately prior to transfer, consolidation, centralization or creation has continuing service status in such new district, but no provision is made in the act for teachers who were not employed on continuing contracts immediately prior to transfer, consolidation, centralization or creation. Since the General Assembly had under consideration

questions as to the status of teachers arising by reason of transfer, centralization, consolidation and the like and made specific provision in connection therewith but failed to make any provision with respect to the particular situation set forth in your letter, it is not within the power of the executive or judicial departments to supply this omission; rather it must be regarded as studied and deliberate on the part of the General Assembly, and the remedy, if any, lies with that body.

Although the conclusion I have reached may appear to be harsh, the rigors and injustice of this law can be ameliorated by boards of education and I assume that in almost all instances the sense of justice which is inherent in most of our people will indicate to the various boards of education the proper action to be taken in situations similar to that outlined in your letter.

The specific answer to each of your questions must be in the negative.

Respectfully,

THOMAS J. HERBERT,

Attorney General.