

OPINION NO. 70-075

Syllabus:

The board of education of a local school district may appoint a clerk to serve a term less than the two-year probationary term provided for in Section 3313.22, Revised Code, but such clerk must serve a full two-year probationary term before being eligible for appointment for the four-year term also provided for in Section 3313.22, Revised Code.

To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio
By: Paul W. Brown, Attorney General, July 1, 1970

I have before me your request for my opinion as to whether the board of education of a local school district may appoint a clerk to serve a term less than the two-year probationary term provided for in Section 3313.22, Revised Code.

This statute, as changed by Amended House Bill No. 572, 129 Ohio Laws 1503 (1961), reads in pertinent part:

"The board of education of each local * * * school district at an organization meeting shall elect a clerk who may be a member of the board and in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board. The clerk shall initially serve for a two-year probationary term and thereafter, if reappointed, shall serve for a four-year term. Such clerk may be removed at any time for cause by a two-thirds vote of the entire board. If reappointed as provided in this section the board shall execute a written contract of employment for such four-year term and each four-year term thereafter. * * *"

Before amended, there was no provision for removal only for cause, and the clerk served at the pleasure of the board. See State, ex rel. Board of Education v. Thompson, 168 Ohio St. 93 (1958). When House Bill No. 572 was introduced, it contained only the tenure provision but was thereafter amended to include the provision for the two-year probationary term before appointment for a four-year term.

The obvious intent of the legislature was that a board of education be permitted to determine, during the two-year probationary period, if the clerk could satisfactorily discharge the duties of the office before appointing him to a four-year term from which he could be removed only for cause.

The question you have presented for my opinion is simply whether the clerk can be appointed for a term less than the initial two-year probationary term. I find nothing in the legislative history of this statute to indicate that the legislature intended that a clerk could not be appointed for a period less than the two-year probationary term. It is clear, however, that before appointment to a four-year term the clerk must serve a full two-year probationary term.

Accordingly, it is my opinion and you are hereby advised that the board of education of a local school district may appoint a clerk to serve a term less than the two-year probationary term provided for in Section 3313.22, Revised Code, but such clerk must serve a full two-year probationary term before being eligible for appointment for the four-year term also provided for in Section 3313.22, Revised Code.