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1. CONTRACT, CONTINUING—TEACHER EMPLOYED BY BOARD OF EDUCATION—CONTRACT REMAINS IN FORCE UNTIL TEACHER RESIGNS, ELECTS TO RETIRE OR IS RETIRED UNDER PROVISIONS OF RETIREMENT LAW, OR IS REMOVED—WHILE CONTRACT IN FORCE TEACHER APPOINTED TO ADMINISTRATIVE POSITION—SECTION 3319.16 RC.
2. TRANSFER OF TEACHER—EMPLOYED IN ADMINISTRATIVE CAPACITY—TEACHING POSITION, TRANSFER MAY ONLY BE MADE UPON RECOMMENDATION OF SUPERINTENDENT—SECTION 3319.12 RC.
3. CONTRACT OF EMPLOYMENT—NOT REQUIRED TO BE IN WRITING—TEACHER IN PUBLIC SCHOOLS.

## SYLLABUS:

1. Where a teacher has been employed by a board of education under a continuing contract, such contract remains in force until the teacher either resigns, elects to retire or is retired pursuant to the provisions of the teachers retirement law, or is removed, as provided in Section 3319.16, Revised Code, regardless of the fact that while such contract is in force he has been appointed to an administrative position.

2. The transfer of a teacher employed in an administrative capacity, to a teaching position, pursuant to Section 3319.12, Revised Code, may only be made upon the recommendation of the superintendent.

3. The contract of employment of a teacher in the public schools is not required to be in writing.

Columbus, Ohio, April 4, 1956

Hon. Joseph W. McNerney, Prosecuting Attorney  
Muskingum County, Zanesville, Ohio

Dear Sir:

I have before me your request for my opinion, your letter reading in part as follows:

"Mr. S., the subject of this letter, is administrative head in the New Concord Local School District, formerly known as the New Concord-Union Rural School District. The New Concord Local School District is one of those school districts with under 800 students.

"Mr. S. holds a life high school certificate which was granted him on October 20, 1929; and at the present time he holds an eight year superintendent's certificate which expires in 1957. Mr. S. also held an eight year superintendent's certificate which expired at the time his last eight year superintendent's certificate was granted. He will be eligible at the termination of this last eight year certificate to receive a life certificate as superintendent.

"On September 2, 1941, Mr. S. was hired as a teacher under the following resolution (approved by unanimous vote):

'Moved by Morehead      Seconded by Tavenner  
'A recommendation having been received from County Superintendent F. D. Ring, be it moved that the following members of our administrative and teaching staff be hereby re-employed in the public schools of the New Concord-Union Rural School District beginning September 1, 1941, with continuing contract status as defined by Section 7690-2 General Code, in accordance with the laws of Ohio, and the rules made thereunder by the board

of education and/or as promulgated from time to time by administrative members of the staff under authority of the board. Said continuing contract status to continue until the same is terminated or suspended as provided by Section 7690-1 General Code.

Signed S.'

"On the same date Mr. S. was hired as administrative head under the following motion :

'Moved by Glenn      Seconded by Tavenner

'That S., his nomination having been received from County Superintendent, F. D. Ring, be appointed school head, in accordance with Sections 7705 and 7691, of the General Code. (Approved by unanimous vote.)

"Mr. S. did not receive a written contract from the board of education either as a teacher or administrative head at that time. He has not received any contract subsequent to September 2, 1941, from the New Concord Local School Board, although he has served continually as an administrative head and as a teacher since that time.

"In his position as administrative head, Mr. S. has had charge of the high school and the two elementary buildings; and he has at the same time taught in the high school. The high school itself has a principal who is, of course, under Mr. S.

"While it is conceded that Mr. S. has a continuing contract as a teacher in the New Concord Local School District, the issue before the Board at the present time is whether or not, under the above motion or motions, Mr. S. now has a continuing contract as administrative head of the New Concord Local School District; and if not, what type of contract does he hold at this time, if any.

"Another question that we would like to have answered is, that in the event it is found that Mr. S. does not at this time hold any contract as administrative head of the New Concord Local School District, is it necessary that the superintendent of schools make a recommendation that Mr. S. be returned to a teaching position and that it be approved by the board in order for Mr. S. to again return to the status of teacher in the New Concord Local School District; or will Mr. S. be returned to the status of teacher by a majority vote of the New Concord Local School Board without the recommendation of the Superintendent of the county schools?

"If there is any additional information that is required in this matter, we shall be glad to obtain it for you if it is available."

1. The first question presented is as to the teacher's present contract status. Section 7690-1 of the General Code, in force at the time this

teacher was given a continuing contract, defined a teacher's continuing contract, as follows :

"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."

This provision is now embodied in substantially the same language in Section 3319.08, Revised Code. It will be noted that it is a *teacher's* contract, and nothing else. The provisions for terminating or suspending such a contract are found in Section 3319.16, Revised Code, and contemplate the establishment of charges of gross inefficiency, immorality, willful and persistent violation of the regulations of the board of education, "or for other good and just cause."

Note, too, that "teacher" is defined in Section 3319.09, Revised Code, as including "all persons certified to teach, who are employed \* \* \* as instructors, principals, supervisors, superintendents, or in any other educational position." Accordingly, your Mr. S. remained a teacher under a continuing contract, regardless of his appointment as "school head." That conclusion appears to be supported by the case of State ex rel. Van Ausdale v. Board of Education, 88 Ohio App., 175, where it was held :

"A continuing contract held by a teacher pursuant to the Teachers' Tenure Act can not be invalidated by the board of education without such teacher's consent or retirement, except for cause pursuant to the provisions of the statute for the termination of such continuing contract."

2. It appears that the board of education is now desirous of transferring Mr. S. from his administrative position to a teaching position. That the board has a right to make such transfer is clearly shown by Section 3319.12, Revised Code which, so far as pertinent, reads as follows :

\* \* \* "A teacher employed as assistant superintendent, principal, supervisor, or other administrative head may be transferred to a lesser administrative position or to a teaching position *upon recommendation of the superintendent of schools* and approval of the board." \* \* \* (Emphasis added.)

From the language of this statute it appears very clear that the board has the right to take this action but only upon the recommendation of

the county superintendent. This proposition is affirmed, as shown by the holding in *State ex rel. Freshcorn v. Board of Education*, 89 Ohio App., 196, the first headnote of which reads as follows:

“The recommendation of the county superintendent of schools, contemplated by Section 4842-9, General Code, is a condition precedent to the consideration and adoption by a local school board of a resolution of transfer of a teacher employed under a continuing contract as local school head from his administrative position to that of a teacher with classroom duties only, and such recommendation is not by the statute required to be in writing, but may be oral.”

I held to the same effect, in Opinion No. 2734, Opinions of the Attorney General for 1953, page 261.

3. A third question is suggested in your letter, whether a teacher's contract must be in writing. Certainly the statutes make no such requirement. Furthermore, Section 3319.11, Revised Code, manifestly contemplates employment of teachers without any writing by providing that unless the board gives a teacher having a limited contract written notice of its intention not to re-employ him, he shall be “deemed re-employed at the same salary plus any increment” etc.

Accordingly, in specific answer to your questions it is my opinion:

1. Where a teacher has been employed by a board of education under a continuing contract, such contract remains in force until the teacher either resigns, elects to retire or is retired pursuant to the provisions of the teachers retirement law, or is removed, as provided in Section 3319.16, Revised Code, regardless of the fact that while such contract is in force he has been appointed to an administrative position.

2. The transfer of a teacher employed in an administrative capacity, to a teaching position, pursuant to Section 3319.12, Revised Code, may only be made upon the recommendation of the superintendent.

3. The contract of employment of a teacher in the public schools is not required to be in writing.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General