

6999

1. CIVIL SERVICE REGULATIONS — PERSONS WHO HAVE BEEN DRAWN FROM CLASSIFIED SERVICE AND EMPLOYED BY BOARD OF EDUCATION FOR PUPIL-PERSONNEL WORKERS, SECTION 4857-1 G. C. MAY BE CHANGED FROM EMPLOYEE STATUS UNDER CLASSIFIED SERVICE AND APPOINTED TO SAME DUTIES UNDER STATUS AS TEACHERS.
2. EMPLOYEES SO APPOINTED AS TEACHERS COME UNDER PROVISIONS OF CONTINUING CONTRACT LAW — PROVISIO, THEY HAVE QUALIFICATION OF SERVICE AS TEACHERS AS PRESCRIBED IN SECTION 4842-8 G. C.—SERVICE AS CLASSIFIED CIVIL SERVICE EMPLOYEES WILL NOT BE COUNTED FOR CREDIT TO REACH SUCH QUALIFICATION.

SYLLABUS:

1. Persons who have been drawn from the classified service under civil service regulations and employed by a board of education for pupil-personnel work, and are thereafter granted teachers' certificates as pupil-personnel workers pursuant to the provisions of Section 4857-1 General Code, may be changed from their status as employees under the classified service and appointed to the same duties under their status as teachers.

2. Such employees, when so appointed as teachers, come under the provisions of the continuing contract law, provided they have the qualification of service as teachers as prescribed in Section 4842-8 of the General Code, but service as classified civil service employees will not be counted to their credit in reaching such qualification.

Columbus, Ohio, June 22, 1944

Hon. Kenneth C. Ray, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 4857-1, paragraph 11, of the General Code, provides for the certification of ‘pupil-personnel workers, such certificate to be valid for the conduct of all home-school-community relations incident to the adjustment of the pupils to the facilities available for their education.’

The department of education has established regulations for the certification of school psychologists, visiting teachers, and guidance counselors. Prior to the enactment of this section, many of these school employees were employed under civil service regulations. I am requesting your opinion as to whether a board of education may legally transfer these employees from the civil service classification to the list of certificated employees as provided in the above section, providing, of course, that all such employees are qualified for and hold valid certificates as provided above.

Secondly, I also request your opinion as to whether or not such transferred employees come under the provisions of the continuing contract law.”

By an act found in 116 O. L. 548, effective September 5, 1935, the legislature established a system of certification of teachers for the public schools of the state. This act was codified as Sections 7805-1 to 7805-11, inclusive, General Code.

Section 7805-1 of that law read as follows:

“Teacher’s certificates of state-wide validity shall be issued pursuant to law or in accordance with standards, rules and regulations authorized by law. The grades of certificates shall be designated as temporary certificates, provisional certificates, professional certificates, permanent certificates. Each of such grades of certificates may be issued in each or any of the following types:

(1) Kindergarten-primary, valid for teaching in kindergarten, first, second and third grades.

(2) Elementary, valid for teaching in grades one to eight inclusive.

(3) High school, valid for teaching the subjects named therein in grades seven to twelve, inclusive.

(4) Special, valid for teaching any subject or subjects named therein in all grades of the elementary and high schools, or in such other special fields as may be included in public school curricula.

(5) Elementary principal, valid for teaching, or supervision in the elementary schools.

(6) High school principal, valid for teaching the subjects named therein or for supervision in junior or senior high schools.

(7) Supervisor, valid for supervising and teaching subjects named therein in elementary, special or high school fields.

(8) Superintendent, valid for teaching the subjects named therein, for supervising in elementary and high schools or for administrative duties in a school system.

(9) Vocational (by concurrence of the state board for vocational education), valid for teaching and supervising any of the following named therein: vocational, agriculture, vocational home economics, vocational trades and industries."

In the enactment of the new School Code by the 95th General Assembly (120 O. L., H. B. 217), the sections above mentioned were repealed and in place thereof Sections 4857-1 to 4857-10 General Code were enacted, containing largely the same provisions. Section 4857-1 is identical in its language with Section 7805-1 above quoted except that it adds two classes to whom teachers' certificates may be issued, viz.:

"(10) Assistant superintendent, valid for supervising in elementary and high schools or for administrative duties in the school system.

(11) Pupil-personnel workers, valid for the conduct of all home-school-community relations incident to the adjustment of pupils to the facilities available for their education."

It appears from your communication that the Department of Education prior to the enactment of the new provision just quoted had established regulations for the certification of school psychologists, visit-

ing teachers and guidance counselors. From the information which you have supplied I understand that these positions were regarded as falling within the classification of "special teachers" referred to in paragraph 4 of section 7805-1, and that the qualifications for such special teachers had been set forth under rules and regulations adopted by you pursuant to power given to the Director of Education (now the Superintendent of Public Instruction) by Section 7805-2, General Code, now succeeded by Section 4857-2 General Code.

Your letter states that prior to the enactment of the new provision contained in paragraph 11 of Section 4857-1, as to pupil-personnel workers, some of these school employees engaged in the work of "school psychologists, visiting teachers and guidance counselors" were employed by boards of education not as special teachers but by drawing on classified lists under civil service regulations. Presumably this was because of a doubt entertained by those boards as to the propriety of regarding such employees as special teachers. I do not feel called upon in this connection to determine whether or not prior to the amendment in question employees of this character were properly classed as teachers and certificated as special teachers. Suffice it to say, that if there was any doubt on that subject it has been effectually allayed by the enactment of Section 4857-1 in its present form, as it includes a specific provision for the certification of teachers who are to be engaged as pupil-personnel workers and whose duties as indicated by the wording of the statute include "all home-school-community relations incident to the adjustment of pupils to the facilities available for their education." By the very terms of the statute, these pupil-personnel workers are classed as teachers and are to be certificated in accordance with the standard rules and regulations laid down by the Superintendent of Public Instruction just as are all other classes of teachers named in the statute.

The question, then, is as to whether those boards of education who have heretofore employed persons drawn from the classified civil service to do this work instead of employing certificated teachers, may now transfer such classified employes to the status of *teacher-employees*. It appears to me that a reading of the statute makes the answer to that question quite obvious. If these classified civil service employees can qualify so as to obtain the teachers' certificate prescribed by Section 4857-1, I

see no reason why they should not be given the same duties as such teachers as they have heretofore performed as non-teachers.

Coming to your second question, whether or not such transferred employees come under the provisions of the continuing contract law, I note the statutory provisions relating to that subject now found in Section 4842-7 et seq. of the General Code. Section 4842-7 provides for the employment of teachers by contracts of two types: limited contracts and continuing contracts. A continuing contract is defined as being one 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 by law, and it may be granted only to teachers holding professional, permanent or life certificates.

Section 4842-8, General Code, 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 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 \* \* \*”.

It appears to me that teachers who are now duly certificated as such,

and are employed for pupil-personnel work such as is contemplated by paragraph 11 of Section 4857-1 General Code, may become entitled to a continuing contract whenever they have, *as teachers*, met the conditions of the statute which entitle them to such continuing contract. The services which they may have previously rendered not as teachers but as classified civil service employees, would not count on their qualification to obtain such contracts. Section 486-8 of the General Code relating to civil service provides in part as follows:

“The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act: \* \* \*

7. All presidents, business manager(s), administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers and such employes as are engaged in educational or research duties connected with the public school system, colleges and universities; and the library staff of any library in the state supported wholly or in part at public expense \* \* \*”.

The above quoted provision makes it clear that teachers are not in the classified service and that any appointee to a position in the schools who is drawn from the classified service is not filling that position *as a teacher*.

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

1. Persons who have been drawn from the classified service under civil service regulations and employed by a board of education for pupil-personnel work, and are thereafter granted teachers' certificates as pupil-personnel workers pursuant to the provisions of Section 4857-1 General Code, may be changed from their status as employees under the classified service and appointed to the same duties under their status as teachers.

2. Such employees, when so appointed as teachers, come under the provisions of the continuing contract law, provided they have the

qualification of service as teachers as prescribed in Section 4842-8 of the General Code, but service as classified civil service employees will not be counted to their credit in reaching such qualification.

Respectfully,

THOMAS J. HERBERT

Attorney General