

527

TEACHERS' TENURE ACT—TEACHER GRANTED CONTINUING CONTRACT—TEACHER DESIGNATED SUPERINTENDENT FOR SPECIFIED TERM—NO REQUIREMENT FOR CONTINUANCE BEYOND TERM—IF NOT CONTINUED, BOARD OF EDUCATION HAS MANDATORY DUTY TO CONTINUE EMPLOYMENT—POSITION WITHIN SCOPE OF CONTINUING CONTRACT—PROVISO, UNLESS TEACHER RESIGNS, ELECTS TO RETIRE, IS RETIRED OR CONTRACT IS TERMINATED OR SUSPENDED AS PROVIDED BY LAW—SECTION 4842 ET SEQ., 7896-34 G. C.

SYLLABUS:

When a teacher has been granted a continuing contract under the Teachers' Tenure Act (Section 4842 et seq., General Code,) and such teacher has been designated as superintendent for a specified term, there is no requirement to continue such teacher as superintendent beyond such term, but, in the event he not be continued as superintendent, the board of education has the mandatory duty to continue his employment in some other position within the scope of such continuing contract, unless such teacher resigns, elects to retire, is retired pursuant to Section 7896-34, General Code, or unless such continuing contract be terminated or suspended as provided by law.

Columbus, Ohio, July 13, 1951

Hon. Marvin E. Young, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"I wish to request your opinion regarding the rights of the Superintendent of the Lebanon Exempted Village School District under the Teachers Tenure Act of the Laws of Ohio.

"I am attaching hereto a transcript of the exact wording taken from the minutes of the Lebanon Exempted Village School District of all Board proceedings affecting the Superintendent.

"The Board of Education of the Lebanon Exempted Village School District on March 14, 1951, passed a resolution that the Superintendent not be hired as Superintendent and that notice of said intention to not reemploy him as such superintendent be served upon him by the President of the Board in writing, and he was served with such notice. Immediately following this resolution, the Superintendent submitted a letter to the Board requesting that upon the completion of his contract on July 31, 1951, that he be transferred to another position in the Lebanon Exempted Village School in accordance with Section 4842-9 of the Ohio School Code.

"The Board has requested my opinion and have requested me to seek your opinion as to whether or not it is mandatory upon them to employ the superintendent in any other capacity such as teaching as he has requested. * * *"

It appears from your transcript that the superintendent was first employed by the Board of Education of the Lebanon Exempted Village School District, in such position, on March 12, 1932, for a period of one year, commencing on or about April 1, 1932. Since that time he has served the school district in the same capacity, as superintendent, under five subsequent contracts, or designations, the last of which will expire on July 31, 1951. On March 30, 1942 the superintendent was given a continuing contract.

I assume that such continuing contract was given to the superintendent in compliance with the statutory requirements of Section 4842-8, General Code, providing for a continuing contract for an eligible "teacher."

A "teacher" is defined by Section 4842-7, General Code, as including all persons certified to teach and "who are employed in the public schools of this state as instructors, principals, supervisors, superintendents or in any other educational position for which the employing board requires certification." This same section of the General Code limits the granting of continuing contracts to *teachers* holding professional, permanent or life certificates. There being no provision for the granting of a continuing contract *as superintendent*, it must be assumed that the continuing contract herein was as a *teacher*.

The power of the board of education to transfer a teacher employed as a superintendent to another position is provided by Section 4842-9, General Code, which reads in part as follows :

"* * * A teacher employed as superintendent may be transferred to another position by a majority vote of the board of education. In no event shall the salary of any teacher so transferred be fixed at a rate lower than the highest paid in the district for the type of position to other teachers with similar training and experience."

If employed under a continuing contract, however, such superintendent may not be transferred to another position during the term of such designation, which term shall not exceed five years. This is provided by Section 4842, General Code, which reads in part as follows :

"* * * If the superintendent is employed on a continuing contract, the board of education, may, by resolution, designate that he is to continue in the position of superintendent for a term not to exceed five years, and he may not be transferred to any other position during such term. * * *"

Under the decision of the Supreme Court of Ohio in *State, ex rel. Saltsman v. Burton*, 154 Ohio St., 262, there is no question, of course, as to the power of the board to terminate the services of the superintendent *in such position*, at the completion of such term, despite the existence of a continuing contract. In the *Burton* case it appeared that there was no other position covered by the Teachers Tenure Act to which it was within the power of the board to transfer or appoint the superintendent therein. This was true because the county board of education, in such case, employed only a superintendent. It employed no subordinate administrative officials. All teachers were employed by local boards of education.

The language of Section 4842-9, General Code, herein quoted, would

not, in and of itself, indicate any mandatory duty on the part of the board of education to employ a superintendent in another position upon the termination of his designated term as superintendent. At first blush, the provision that a teacher employed as a superintendent *may* be so transferred would seem to vest in the board full power, after refusing to continue a person as superintendent at the end of his designated term for such position, to refuse to transfer him to another position. However, a careful examination of Section 4842-9, General Code, particularly when construed in connection with the provisions of Section 4842-7, General Code, would indicate that such was not the intent of the General Assembly.

Section 4842-9, General Code, does not deal specifically with a situation where the term of a superintendent is not continued. Such statute contains the operative language *permitting* the board to transfer a superintendent to another position, thus making clear the intent of the Legislature that the existence of a continuing contract as a teacher would not prevent a board from terminating the services of a superintendent in such position upon the expiration of his term as superintendent.

Section 4842-7, General Code, defines a 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 by law and shall be granted only to teachers holding professional, permanent or life certificates.”

Section 4842-12, General Code, provides for termination of such contracts under certain conditions and all of the procedural steps required in such cases. Section 4842-13, General Code, provides for suspension of such contracts in cases where the number of teachers must be reduced, etc. The practice and procedure by a board of education conducting a hearing pursuant to the provisions of Section 4842-12, General Code, before the termination of a teacher's contract, are fully discussed in Opinion No. 299, Opinions of the Attorney General for 1945, page 309.

The Ohio Supreme Court, in the case of *State, ex rel. Saltsman v. Burton, et al.*, *supra*, at the bottom of page 266, said:

“The Teachers' Tenure Act is designed to safeguard the employment of faithful and efficient teachers and to prevent the termination of their employment resulting from changes in the personnel or political complexion of boards of education.”

In the above cited case, the court approved the language of Zimmerman, J. in the case of State, ex rel. Bishop v. Board of Education of Mt. Orab Village School District, 139 Ohio St., 427, at page 438, where he said :

“In recent years, legislation in the form of teachers’ tenure acts has been enacted by a number of states for the protection of those established and qualified in the teaching profession and to prevent their arbitrary dismissal. Such legislation bears a resemblance to the older civil service laws, and the general constitutionality of teachers’ tenure acts has been upheld by the courts as a valid exercise of legislative power.”

With the foregoing in mind, I believe that it is readily apparent that the General Assembly did not intend to permit a board of education to completely terminate all services of a teacher employed as a superintendent upon the expiration of his designated term as superintendent, where such teacher has been granted a continuing contract. By the provisions of Section 4842-7, General Code, such contract remains in full force and effect unless the teacher resigns, elects to retire or is retired pursuant to Section 7896-34, General Code, or unless such contract be terminated or suspended as provided by law.

Specifically answering your question, therefore, it is my opinion that when a teacher has been granted a continuing contract under the Teachers’ Tenure Act (Section 4842, et seq., General Code,) and such teacher has been designated as superintendent for a specified term, there is no requirement to continue such teacher as superintendent beyond such term, but, in the event he not be continued as superintendent, the board of education has the mandatory duty to continue his employment in some other position within the scope of such continuing contract, unless such teacher resigns, elects to retire, is retired pursuant to Section 7896-34, General Code, or unless such continuing contract be terminated or suspended as provided by law.

Respectfully,

C. WILLIAM O’NEILL
Attorney General