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CONTRACT—SCHOOL PRINCIPAL WHO HOLDS CONTINUING CONTRACT STATUS—GRANTED LEAVE OF ABSENCE JANUARY 14, 1942—TO RESUME CONTRACT STATUS—MUST CLAIM RIGHT, AT EXPIRATION OF ORIGINAL LEAVE, APPLY FOR AND RECEIVE RENEWAL WITHIN TWO YEARS FROM TIME OF GRANT—SECTION 4842-10 G. C.

SYLLABUS:

A school principal holding a continuing contract status and having on January 14, 1942, been granted a leave of absence, must within two years from the time of such grant, apply for and receive a renewal thereof, in order that he may after the expiration of such original leave claim the right to resume his contract status as provided by Section 4842-10 General Code.

Columbus, Ohio, February 23, 1946

Hon. Ralph J. Bartlett, Prosecuting Attorney
Columbus, Ohio

Dear Sir:

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

“In a local school district in this county, we have the following situation:

On January 9, 1942, the principal in said school district, holding a continuing contract, requested a leave of absence because he was entering the Armed Forces of the United States. On January 14, 1942, the Board of Education of said school district adopted a resolution granting said principal a leave of absence for the duration of the war. There has been no request for a leave of absence or a leave of absence given since said dates.

We would like to be advised whether this principal is entitled to resume his contract status when he is honorably discharged from the Armed Forces of the United States.”

In your letter you refer to Opinion No. 467, released September 26, 1945. In that opinion I had under consideration Section 4842-10 General Code, which is directly pertinent to your inquiry. It reads as follows:

“Upon the written request of a teacher, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational or professional or other purposes, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board of education may grant similar leave of absence and renewals thereof to any teacher because of physical or mental disability, but such teacher shall have the right to a hearing on such unrequested leave of absence or its renewals in accordance with the provisions for hearing and appeal in section 4842-12 of the General Code. Upon the return to service of a teacher at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave. Any teacher who leaves a teaching position to serve in the armed services or the auxiliaries thereof organized to prosecute world war II, upon returning honorably discharged from such service, shall resume the contract status held prior to entering military service, subject to

passing satisfactorily a physical examination. Such contract status shall be resumed at the first of the school semester or the beginning of the school year following return from the armed services. The term 'armed services' shall be construed according to the definition thereof as provided in section 486-16a of the General Code."

That section is a part of the new school code, which became effective September 16, 1943. It succeeded former Section 7690-4 General Code, which contained the identical language as the present section, so far as concerns leave of absence which may be granted by the board, but the portion relating to the right of a teacher who goes into the armed services and then returns to claim his contract status was new in the adoption of the school code. Inasmuch as the language of this new provision is clearly prospective and only relates to a teacher who "leaves" his teaching position, I was compelled reluctantly to hold that it could not be invoked to restore to such teacher his contract status if he had left his teaching position to enter the military services before that provision became effective. Realizing the unfairness of that provision to the many patriotic teachers who had thus given up their teaching positions to serve their country, and especially in view of the much more favorable provisions made by the General Assembly with respect to civil service employes (Section 486-16a General Code), I called the attention of the Governor to the situation in order that the matter might be presented to the General Assembly for correction. It was not however, included by the Governor in the agenda of the special session called shortly thereafter, and I am therefore compelled to apply the law as it stands, and to adhere to my former opinion. In the course of that opinion I said:

"If the teacher referred to in your communication had been granted a leave of absence by the board of education, and pursuant thereto, entered the military service, he would of course be entitled under the provisions of Sections 4842-10, General Code, to resume his contract status at the end of such leave of absence or a renewal thereof."

As above noted, that portion of Section 4842-10 General Code, relating to leave of absence which a board of education is authorized to grant was in effect prior to the adoption of the school code, having been enacted May 15, 1941, and effective September 1, 1941. It provides that the board of education may upon application of a teacher grant a leave

of absence "for educational or professional *or other* purposes." This leave, by the express terms of the statute, may be granted "for not more than two consecutive years." There follows the further provision that "upon subsequent requests such leave may be renewed by the board." Then there is the provision that: "Upon the return to service of a teacher at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave."

Your letter states that the principal in question requested a leave of absence on January 9, 1942, because he was entering the armed forces, and that such leave was granted by the board on January 14, 1942 "for the duration of the war." I do not find in the law any authority whatever for such board to grant a leave of absence for the duration of the war. The most that can be claimed for this grant is that it was for the period allowed by the law, to wit for two years. At the end of that two year period the teacher would have had a right to request, and the board would have had a right to grant an extension for a further period of two years, and presumably might have granted subsequent renewals for like periods. Your letter however expressly negatives the possibility that any further request was made or any further leave was given subsequent to the original request and action of the board.

In view of this situation I can see no theory upon which it could be held that the principal in question now returning from service in the armed forces could claim the right to resume his contract status.

This provision of the law was manifestly intended to give a teacher leaving the services temporarily for any legitimate purpose, the right to retain a hold on his contract status, which he would not otherwise have, but the privilege was granted only upon certain terms and conditions which were specified, and a failure to comply with these conditions would leave him without any right to such preferred position.

In the absence of any provision of law authorizing the board to grant an indefinite leave, the board was without authority to do so. A board of education being a creature of statute and having only such powers as are conferred upon it by law is limited to the power expressly conferred by the General Assembly. That proposition has been established by frequent adjudications. In the case of *State, ex rel, v. Cook*, 103 O. S. 465, it was held:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (State, ex rel. Locher, Pros. Atty., v. Menning, 95 Ohio St., 97, approved and followed.)”

Specifically answering your question, it is my opinion that a principal holding a continuing contract status and having on January 14, 1942, been granted a leave of absence, must within two years from the time of such grant apply for and receive a renewal thereof in order that he may after the expiration of such original leave claim the right to resume his contract status, as provided by Section 4842-10 General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.