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EXEMPTED VILLAGE SCHOOL DISTRICT—SUPERINTENDENT'S RESIGNATION ENDS ALL OBLIGATIONS OF BOARD, BOARD NEED NOT HIRE HIM AS TEACHER—SECTIONS 3319.01 and 3319.11.

SYLLABUS:

1. Where a person has been employed, pursuant to the provisions of Section 3319.01, Revised Code, as superintendent of an exempted village school district, for a term of five years, but has not at any time acquired a continuing contract status, as defined by Sections 3319.09 and 3319.11, Revised Code, he is not, on termination of such contract as superintendent, entitled to further employment by the board of education of such district, in any capacity.

2. Where a teacher who has not acquired continuing service status as defined by Section 3319.09, Revised Code, but is serving as superintendent of an exempted village school district, resigns from such position before the expiration of the term of his appointment, he is not entitled to be continued as a teacher in such district.

Columbus, Ohio, May 19, 1959

Hon. Gale B. Weller, Prosecuting Attorney,
Morrow County, Mt. Gilead, Ohio

Dear Sir:

I have before me your communication requesting my opinion as to the rights of a superintendent of an exempted village district, and the obligation of the board of education with respect thereto. Your statement of the situation is too long to be set out here, but as I read it, I gather that the following may be taken as a condensed statement of the situation.

Prior to 1953 the district in question had less than 800 school children; from and after that time it has had more than 800. The significance of those facts will appear later.

From 1941 to 1953 A was employed in said district as a teacher, and part of the time as principal. He was employed as superintendent from 1953 to 1955, at which time he was reappointed as superintendent of the district, the appointment being for a period of five years which would end July 31, 1960.

In April 1959, A orally resigned his position as principal and announced his resignation by a statement which he furnished to the press.

In March 1959, A orally was advised by the school board of the district that the district no longer wished to continue his employment as superintendent or in any other capacity, which was certainly an acceptance of his resignation in advance.

A claimed in the statement released to the newspapers that his resignation was as superintendent only, and that he was to return to the status of a full time teacher thereafter. The questions you present are as to A's rights with respect to employment as a teacher after his resignation, and as to the school board's obligation to him. It may be observed that neither he nor the school board appear to have acted wisely in relying on oral statements in a matter of such great importance. Also, it seems that when a person resigns an important public position, he has yielded all his right to it, and cannot modify or limit his action by a statement to the press.

The statutes relative to the employment of teachers and the appointment of a superintendent are found in Section 3319.01, et seq., of the Revised Code.

I note first Section 3319.09, Revised Code, which contains the following definitions:

“(A) Teacher means 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.

“ * * *

“(C) ‘Continuing service status’ for a teacher means employment *under a continuing contract.*” (Emphasis added)

You will note particularly that the definition of “teacher” includes not only instructors, but also principals, supervisors and superintendents. Section 3319.08, Revised Code, sets forth two types of contracts for the employment of teachers. Insofar as pertinent, that section reads as follows:

“ * * *

“Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited

contract for a *superintendent* is a contract for *such term as authorized by section 3319.01* of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates." (Emphasis added)

Section 3319.11, Revised Code, (4842-8, G. C.) sets out the circumstances which make a teacher eligible for a continuing service status and reads in part as follows :

"Teachers *eligible* for continuing service status in any school district shall be those teachers, qualified as to the 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 recommendation of the superintendent of schools, may at the time of employment, or at any time within such two-year period, declare any of the latter teachers *eligible*." (Emphasis added)

I direct your particular attention again to the definition quoted from Section 3319.09, Revised Code. Here "continuing service status" is defined as meaning actual employment under a continuing contract and there is, therefore, a marked distinction between *eligibility* for a continuing service contract, and *continuing service status*. It is manifest that the teacher in question was *eligible* for a continuing service contract long before the time when he tendered his resignation. It should be noted, however, in this connection that in Section 3319.11, *supra*, special provisions are made for the employment of teachers in districts of under 800 pupils.

There is nothing in the law regarding teachers in such district which entitles them to a continuing contract, but, in connection with re-employment after several years, it is stated that the board "may grant a continuing contract." Accordingly, while his years of service prior to 1955, when A received the appointment as superintendent, unquestionably made him *eligible*, they did not give him a continuing service status. Nor so far as your letter indicates has there been any time granted to him a continuing service contract.

While under the definition above referred to, a superintendent falls within the definition of "teacher", yet we find in the statute a special provision for the employment of a superintendent in Section 3319.01,

Revised Code, (4842 G. C.) which reads, in so far as pertinent, as follows:

“The board of education in each county, city, and exempted village school district shall, at a regular meeting held not later than the first day of July of the calendar year in which the term of the superintendent expires, appoint a person possessed of the qualifications provided in this section, to act as superintendent of the public schools of the district, for a term not longer than five years beginning the first day of August and ending on the thirty-first day of July. If the superintendent is employed on a continuing contract, the board may, by resolution, designate that he is to continue for a term not to exceed five years, and he may not be transferred to any other position during such term. * * *”

There is added in the same section a provision as to the required qualification for appointment to the office of superintendent, which reads as follows:

“* * * No person shall be appointed to the office of superintendent who is not possessed of a certificate of the superintendent type, as defined in section 3319.22 of the Revised Code, unless such person had been employed as a county, city, or exempted village superintendent prior to August 1, 1939. * * *”

If A had been employed as a *teacher* in the district on the recommendation of the superintendent, from 1953 to 1955, there might be a question as to the effect of his employment in 1955 as superintendent for a period of five years, as bearing on his right to consider that appointment as a continuing service contract. The provision of the law which gives rise to this suggestion is found in a paragraph of Section 3319.11, Revised Code, from which I have already quoted. It reads as follows:

“Upon the recommendation of the superintendent that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between the board and such teacher unless the board by a three-fourths vote of its full membership rejects the recommendation of the superintendent. * * *”

I do not, however, consider that this last quoted provision can apply to the situation of A, as set forth in your letter. He apparently was not holding a teaching position on the recommendation of a superintendent, but was rather holding the position of superintendent solely by virtue of the appointment by the board, when the five-year contract in question was entered into.

The crucial point, however, in A's situation, grows out of the fact that while he had a valid appointment as superintendent, which he was entitled to hold until July 31, 1960, he saw fit, more than a year before the end of the term of his contract, to resign that position. By his own statement he did not take the pains to put his resignation in writing, but resigned orally. The Board took him at his word and adopted a resolution accepting his resignation. Here, in my opinion, A's connection with the district was terminated.

The case of *State, ex rel. Saltsman v. Burton*, 154 Ohio St., 262, appears to me to be in strong support of the conclusion which I have announced. That was a suit in mandamus, wherein the relator claimed that he was the duly employed and acting county superintendent of schools of Mahoning County. He alleged that he had previously been employed county superintendent of schools for *Carroll* County, from August 1, 1938, until October 31, 1945 at which time he resigned from such position as said superintendent. He alleged that he had been employed by the Carroll County board, as superintendent, under a limited contract from August 1, 1938, to July 31, 1943, and under a continuing contract from August 1, 1943, until his resignation as aforesaid. He alleged that on October 8, 1945, the Board of Education of *Mahoning* County employed him as superintendent for a period of two years and nine months from November 1, 1945 until July 31, 1948; that thereafter on March 16, 1948, the Board re-hired him as county superintendent for a two-year period beginning August 1, 1948.

He alleged that on March 8, 1950, the Board adopted a resolution declaring that he would not be re-hired as superintendent of schools of Mahoning County, which resolution was approved by the four members of the Board present.

He claimed that he was entitled under Section 4842, et seq. of the General Code, (3319.01, R.C.) to a continuing contract as such superintendent. The Supreme Court, in a per curiam, held that the demurrer to his petition should have been sustained by the Court of Appeals, and after reviewing the statutes to which I have referred said:

“Although Section 4842-7, () 3319.08, Revised Code) in its definition of the term, ‘teacher,’ is somewhat confusing in view of the provisions of Sections 4842 and 4842-8, (3319.01 and 3319.11, Revised Code) it is obvious that the General Assembly intended

that one employed as a superintendent of schools is subject to be not re-employed as superintendent by the board of education.

“Statutes must be construed, if possible, to operate sensibly and not to accomplish foolish results. It would be foolish if a classroom teacher and a superintendent were so much the same that under Section 4842-8 the superintendent should have a continuing contract provided he recommended himself for the same, in the present case the recommendation of relator by himself was not effective because more than three-fourths of the membership of the board rejected it.”

The above decision was approved and followed in the case of *State, ex rel. Saltsman v. Burton*, 156 Ohio St., 537. This was a second case brought by the same relator against the same board of education. Relator claimed that when the board decided not to re-employ him as superintendent or in any other capacity, he was still entitled to a continuing contract in a lesser administrative position. He invoked the statutes giving continuing contracts to teachers. The court denied his claim and, referring to its decision in 154 Ohio St., 262, quoted a statement contained in that former decision:

“The statutes we have quoted hereinbefore recognize a difference between the class-room teacher and the superintendent.”

The decision of the Court of Appeals which was affirmed in the above case (156 Ohio St., 537) is found in 91 Ohio App., 271, and contains this statement, as appears in headnotes Nos. 1 and 5.

“1. The Teachers’ Tenure Act (Section 4842 et seq., General Code) is a civil service law enacted to protect the employment of those qualified in the teaching profession; its protection does not extend to executive or administrative officials in the school system.

“* * *

“5. Where a county superintendent of schools having a teacher’s life certificate is not rehired by the board of education and a vacancy exists in the position of elementary supervisor, the provisions of the Teachers’ Tenure Act do not require the board to appoint the former superintendent to such vacant position.”

It appears, therefore, that A, the superintendent referred to in your letter would not have been entitled to a continuing contract as a teacher even if he had permitted his full term of appointment as superintendent to run its course.

Accordingly, in specific answer to the questions submitted, it is my opinion, and you are advised:

1. Where a person has been employed, pursuant to the provisions of Section 3319.01, Revised Code, as superintendent of an exempted village school district, for a term of five years, but has not at any time acquired a continuing contract status, as defined by Sections 3319.09 and 3319.11, Revised Code, he is not, on termination of such contract as superintendent, entitled to further employment by the board of education of such district, in any capacity.

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Respectfully,
MARK McELROY
Attorney General