

OPINION NO. 68-120

Syllabus:

All teachers including substitute teachers must be employed pursuant to the provisions of Section 3319.08, Revised Code.

To: Ray L. Lillywhite, Executive Director, The State Teachers Retirement System, Columbus, Ohio

By: William B. Saxbe, Attorney General, August 8, 1968

Your recent request for my opinion reads as follows:

"Eligibility for membership in and contributions to the State Teachers Retirement System of Ohio are determined in part by the definition of 'teacher' in Section 3307.01 of the Ohio Revised Code. The pertinent portion reads as follows:

"(B) 'Teacher' means any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which he is required to have a certificate issued pursuant

to sections 3319.22 to 3319.31, inclusive, of the Revised Code;...'

"Will you please advise us on the following question relative to the interpretation of Section 3319.08 of the Revised Code and its application to employment of substitute teachers, except those excluded by Section 3307.381 (A) of the Revised Code:

"Do the statutes require that all teachers including substitute teachers in the school districts of Ohio be employed under a contract described in Section 3319.08 of the Revised Code?"

Your question, upon review, becomes twofold: whether all teachers including substitute teachers are and must be employed pursuant to the provisions of Section 3319.08, Revised Code; what actions constitute compliance with the provisions of Section 3319.08, Revised Code.

Section 3319.08, Revised Code, reads in pertinent part as follows:

"The board of education of each city, exempted village, and local school district shall enter into written contracts for the employment and reemployment of all teachers and shall fix their salaries which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code.

"If a board of education adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract."

The answer to the first part of your question is found in the statement in the first paragraph above-quoted that this statutory section pertains to "the employment and reemployment of all teachers* * *." Section 3307.381 (A), Revised Code, to which you referred, provides for the part-time employment of retired teachers and is the only exception which I find to the above statement. Thus, except for those excluded by Section 3307.381 (A), supra, all teachers including substitute teachers must be hired pursuant to the provisions of Section 3319.08, supra.

Written contracts for the employment of all teachers are prescribed in the first paragraph of Section 3319.08, supra, but, as the second paragraph of that statute makes clear, the failure of the parties to execute a written contract will not avoid an employment agreement between the board of education and the teacher. After the board of education adopts a motion or resolution to employ a teacher and the teacher accepts that employment, an employment contract between the parties is in effect, the requirements of Section 3319.08, supra, have been met, and the failure to execute a written contract shall not avoid the employment contract.

Therefore, it is my opinion and you are hereby advised that all teachers including substitute teachers must be employed pursuant to the provisions of Section 3319.08, Revised Code.