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TEACHER—EMPLOYED IN SCHOOL DISTRICT—LESS THAN 800 PUPILS—TO FILL TEMPORARY POSITION CREATED BY EMERGENCY—SERVICE LESS THAN 120 DAYS IN SCHOOL YEAR—IF TEACHER RE-EMPLOYED IN SUCCEEDING YEAR SHE SHOULD BE GIVEN ONE YEAR CONTRACT AS BEGINNING TEACHER.

## SYLLABUS:

Where a teacher has been employed by a board of education in a school district of under 800 pupils to fill a temporary position created by an emergency and serves in that capacity for less than 120 days in the school year, such teacher, if re-employed in a succeeding year, should be given a one year contract as a beginning teacher.

Columbus, Ohio, November 13, 1950

Hon. Thomas F. Dewey, Prosecuting Attorney  
Sandusky County, Fremont, Ohio

Dear Sir :

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

“Three school districts in Sandusky County, Ohio, under 800 pupils each, hired a circuit music teacher for the balance of the school year from January 1, 1950.

“Question: Do they have to give this teacher a two-year contract if she is re-hired for the 1950-1951 school year or can they give her a one-year contract?

“Section 4242-8 (4842-8) says under paragraph c. that upon re-employment after the termination of the first contract, the new contract shall be for not less than two years, etc.

“Section 4842-7 says ‘Year’ as applied to term of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year.

“This teacher was hired for the balance of the year from January 1, 1950 which was less than one hundred and twenty days.

“Upon re-employment must the boards of education hire this teacher under a two-year contract?”

In response to my request for additional information you have advised me that the teacher in question had no previous teaching experience prior to this employment and that this temporary employment was not made as a substitute teacher in the ordinary sense of that term.

With respect to the terms of employment of beginning teachers, Section 4842-8, General Code, provides in part as follows:

“\* \* \* Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:

“a. Beginning teachers, who have not previously been employed as a teacher in any school, shall be hired for one year.”

It appears from your communication, however, that the teacher in question, although a beginning teacher, was not in fact hired for a minimum term of one year and since this teacher actually served for less than 120 days it cannot be said that he has been employed for one year within the definition found in Section 4842-7, General Code, which reads in part as follows:

“‘Year’ as applied to term of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service.”

From this it clearly appears that the authority for the employment of this teacher for a term of less than 120 days must be found elsewhere in the statute. In this connection, Section 4842-7a, General Code, reads as follows:

“Teachers may be employed as substitute teachers for terms not to exceed one year for assignment as services are needed to take the place of regular teachers absent on account of illness or on leaves of absence or to fill temporarily positions created by emergencies; such assignment to be subject to termination when such services no longer are needed.

“A teacher employed as a substitute with an assignment to one specific teaching position shall after sixty days of service be granted sick leave, visiting days and other local privileges granted to regular teachers including a salary not less than the minimum salary on the current adopted salary schedule.

“A teacher employed as a substitute for one hundred twenty days or more during a school year and re-employed for or assigned to a specific teaching position for the succeeding year shall receive a contract as a regular teacher if he meets the local educational requirements for the employment of regular teachers.

“Teachers employed as substitutes on a casual or day-to-day basis shall not be entitled to the notice of non-re-employment prescribed in section 4842-8 of the General Code, but boards of education may in their discretion grant such teachers sick leave and other local privileges and cumulate such service in determining seniority.”

It is to be noted that this section authorizes the employment of substitute teachers of two classes, namely, those employed as substitutes on a casual or day-to-day basis and those who are employed to fill temporary positions created by emergencies.

Since you have advised me that this teacher was not employed as a substitute in a usual sense but was regularly appointed to serve for the balance of the year from January 1, 1950, I must conclude that such appointment is one to fill temporarily a position created by an emergency.

It is to be noted that Section 4842-7a, General Code, provides that where a teacher has been employed as a substitute for 120 days or more during a school year and is subsequently re-employed or assigned to a specific teaching position for the succeeding year, he shall receive a contract as a regular teacher if he meets the local educational requirements for such. There is in this, of course, the clear implication that a substitute teacher who has served for less than 120 days during a school year and who has not had at least one year's experience as a teacher in another or other schools may not be given a contract other than as a beginning teacher and not for more than one year.

From this I must conclude that such teacher, if employed for the succeeding year, must be considered a “beginning teacher” and so subject to the provisions of Section 4842-8, subparagraph a, General Code, as hereinbefore quoted.

Accordingly, and in specific answer to your inquiry, it is my opinion that where a teacher has been employed by a board of education in a school district of under 800 pupils to fill a temporary position created by an emergency and serves in that capacity for less than 120 days in the school year, such teacher, if re-employed in a succeeding year, should be given a one year contract as a beginning teacher.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.