

3006.

EMPLOYMENT OF TEACHER—RURAL SCHOOL DISTRICT—WHEN CONTRACT MAY BE ENTERED INTO FOR SERVICES IN SUCCEEDING YEAR—TRAINED NURSE—BOARD OF EDUCATION NOT AUTHORIZED TO EMPLOY UNLESS PHYSICIAN OR DENTIST IS EMPLOYED.

SYLLABUS:

1. *A teacher, to be designated as a principal of a grade school or a high school in a rural school district, may lawfully be employed on March 1st of any calendar year for services during the succeeding school year.*

2. *A board of education is not authorized by Section 7692, General Code, to employ a trained nurse to aid in the physical examination and diagnosis of children, teachers and janitors in the schools of the district, unless the board employs a physician or dentist to make those examinations and diagnoses.*

COLUMBUS, OHIO, February 27, 1931.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

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

“A rural school district entered into a contract on May 15, 1929, with a certain person, employing him as principal of a grade and high school. His employment was to become effective July 1, 1929, and to continue for a period of two years, to wit, July 1, 1931. The school board wishes to know if it can enter into a new contract with this person on the first day of March, 1931, for another term of employment, or will the board have to wait until at least four months before the beginning of the fall term of school of 1931. For your information, I wish to state that this principal was hired and paid a salary for the entire twelve months of the year.

I also wish to be advised if a district board of education can, under the authority of General Code, No. 7692, employ a trained nurse for the benefit of the children of the school district who are in need of the same and whose parents do not have the finances. I wish to know if the board can so appoint and employ said nurse even though there is no physician or dentist so employed by the board. Does the board, if it has the right to employ a nurse, although no physician is employed, have the right to employ said nurse for whatever period of time they deem it necessary, or must such employment be for the period of one year?”

Taking up the questions submitted, in their order, it is pertinent to note first the provisions of Section 7705, General Code, which are as follows:

“The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of the appointment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school.”

From the foregoing, it clearly appears that the principal of a school in a rural school district where the employment of a person designated as principal is made, is a teacher, within the meaning of the statute, and therefore his employment is governed by the rules relating to the employment of teachers, and his status under the school laws is that of a teacher. See Opinions of the Attorney General for 1917, page 1190. Again, in 1920, the then Attorney General, in an opinion published in the Opinions of the Attorney General for 1920, at page 974, held:

"In the light of section 7705, G. C., the principal of a high school, or a grade school, if not employed as a superintendent, is still a teacher within the meaning of section 7600 G. C. and distribution of the funds mentioned in such section should be made on the basis that high school principals and grade school principals are teachers within the meaning of such section."

It will also be observed from the terms of the foregoing statute, that teachers are employed for a school year or school years, that is, their term of service is measured by the school year, and would therefore commence with the beginning of the school year or years for which they are employed. A school year is defined by section 7689, General Code, as a period beginning on the first day of July of each calendar year and ending on the 30th day of June of the succeeding calendar year.

In an opinion found in Opinions of the Attorney General for 1915, at page 2089, it was held:

"A principal or teacher in a public school is employed within the meaning of the provision of section 7718 G. C., from the date of his acceptance of his appointment by the board of education of the school district and for the full term for which such appointment is made."

Inasmuch as the first day of March, 1931, is within four months of July, 1931, it clearly follows that a school board may lawfully employ a teacher to be designated as principal, on March 1, 1931, for a term of service to start at the beginning of the following school year.

Coming now to your second question, Section 7692, General Code, as amended in 1929 (113 O. L., 51) reads as follows:

"Each and every board of education in this state may appoint at least one school physician and at least one school dentist; provided two or more school districts may unite and employ one such physician and at least one such dentist whose duties shall be such as are prescribed in this act. Said school physician shall hold a license to practice medicine in Ohio, and each such school dentist shall be duly licensed to practice in this state. School physicians and dentists may be discharged at any time by the appointing power whether the same be a board of education or board of health or health commissioner, as herein provided. School physicians and dentists shall serve one year and until their successors are appointed, and shall receive such compensation as the appointing board may determine. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. The school dentists shall make such examinations and diagnoses and render

such remedial or corrective treatment for the school children as may be prescribed by the board of education; provided that all such remedial or corrective treatment shall be limited to the children whose parents cannot otherwise provide for same, and then only with the written consent of the parents or guardians of such children. School dentists may also conduct such oral hygiene educational work as may be authorized by the board of education.

Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the preventing of epidemics."

Section 7692-1, General Code, sets forth in a general way the duties of school physicians appointed by authority of Section 7692, General Code, with respect to examinations and diagnoses of children, teachers and janitors, and the keeping of card index records of these examinations and diagnoses.

From the terms of Section 7692, General Code, it will be observed that the purpose for which nurses may be employed is:

"To aid in such inspection."

It logically follows that if the inspection spoken of is not to be made, a nurse would have nothing to do, and to employ one would be an idle ceremony and a clear waste of public funds. Clearly, if a nurse would have no duties to perform the statute would not extend authority to appoint one. As it is somewhat difficult to understand just what is meant by the word "inspection," as used in the statute, inasmuch as the term is not again used in Section 7692, or cognate sections of the Code, it will be found helpful to look to the history of the legislation on this subject.

Provision for the employment of school physicians and nurses was first enacted in 1909 (100 O. L., 12) by an act entitled:

"An Act to supplement Section 4018 of the Revised Statutes of Ohio relating to general duties of teachers by a section to be numbered 4018a providing for the health of pupils of public schools."

Section 4018, Revised Statutes, then in force, provided it to be the duty of teachers in the public schools, among other things, "to strive to guard the health and physical welfare of the pupils in their schools." Section 4018a, Revised Statutes, as enacted at that time to supplement Section 4018, Revised Statutes, provided:

"Any board of education in a city school district may provide for the medical inspection of pupils attending the public schools and for that purpose may employ competent physicians and nurses and provide for and pay all expenses incident thereto from the public school funds or may by agreement with the board of health or other board or officer performing the functions of a board of health for such city, provide for medical and sanitary supervision and inspection of the schools which are under the control of such board of education and of the pupils attending such schools, by a competent physician selected by the parent or guardian of the child, but in case of failure upon the part of the parent or guardian,

then by the district physician and other employes to be appointed by such board of health, and any board of education in a city school district making such agreement shall have power to provide and pay compensation to the employes of the board of health in addition to that provided by the city."

Said section 4018a, Revised Statutes, was codified as Section 7692, General Code, and was amended in 1913 (103 O. L., 897) at which time Section 7692-1, setting forth somewhat in detail the duties of school physicians appointed by authority of Section 7692, General Code, was enacted. The amendment of 1913 was incorporated in an act which amended many sections of the General Code, relating to the Board of State Charities, Juvenile Courts, the Institution for Feeble-Minded Youth, Boys' Industrial School, Girls' Industrial School, Children's Homes, Asylums, Houses of Refuge and public schools. Generally the act related to children and organizations which included within their objects matters relating to children and obviously was designed to more effectually safeguard the health of children in the several institutions named. By the enactment of Section 7692-1, referred to above, the duties of the school physicians are not spoken of as inspections as it had been in former Section 7692, General Code, before amendment. These duties are referred to as the making of a diagnosis. However, in amending these sections, the language with reference to the duties of nurses, to wit: "To aid in such inspection" was not changed, and this language was again carried into the amendment of 1929.

Upon consideration of the history of these statutes it clearly appears that the inspection in which school nurses were to aid was originally the inspection authorized by Revised Statute 4018a as enacted in 1909, and it now refers to the examination and diagnosis of children as authorized by Section 7692-1, General Code.

It will be observed that the terms of Section 7692, are not mandatory in so far as they authorize the appointment of a school physician. The school board may or may not appoint a school physician. The work which a school physician or school dentist would perform for the district if either or both were appointed may be delegated to the board of health, and inasmuch as the statute provides that "the duties and powers herein provided for" may be delegated to the board of health, I am of the opinion that when the duties and powers which a school physician or dentist performs are delegated to the board of health the duties of a nurse to aid in the examination and diagnosis of children, and other employes are likewise delegated to the board of health, for the reason that it is only for the purpose of aiding the physician or dentist that a nurse is to be appointed. If a physician or dentist is not appointed, there is no authority to appoint a nurse.

In rare cases there is perhaps authority conferred upon a board of education by Section 7777, General Code, for the employment of a nurse, but it is only in those cases strictly coming within the statute where a child within school age is unable to attend school by reason of having to stay at home to take care of some sick person in the family. See Opinions of the Attorney General for 1923, page 729; Opinions of the Attorney General for 1927, page 1157; Opinions of the Attorney General for 1928, page 57, and Opinions of the Attorney General for 1929, pages 288 and 1535.

I am therefore of the opinion, in specific answer to your questions:

First, a teacher, to be designated as a principal of a grade school or a high school in a rural school district may lawfully be employed on March 1st of any calendar year for services during the succeeding school year.

Second, a board of education is not authorized by Section 7692, General Code, to employ a trained nurse to aid in the physical examination and diagnosis of children, teachers and janitors in the schools of the district, unless the board employs a physician or dentist to make those examinations and diagnoses.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3007.

APPROVAL, BONDS OF SHARON TOWNSHIP RURAL SCHOOL DISTRICT, NOBLE COUNTY, OHIO—\$5,500.00.

COLUMBUS, OHIO, February 28, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3008.

DISAPPROVAL, ARTICLES OF INCORPORATION OF RABBIT OWNERS MUTUAL PROTECTIVE ASSOCIATION.

COLUMBUS, OHIO, February 28, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your recent communication, together with proposed "Articles of Incorporation of Rabbit Owners Mutual Protective Association." It is apparent that the proposed association is being formed under the authority of Title IX, Division III, Subdivision II, Chapter 2 of the General Code, containing Sections 9593 to 9607, inclusive. I am unable to find any specific statutory authority requiring my approval of a certificate of incorporation of such an association. See my opinion No. 2859, rendered to you January 24, 1931. However, I interpret your communication as a request for my opinion as to the legality of said proposed certificate of incorporation.

Excluding the signatures and acknowledgment, said proposed certificate of incorporation reads as follows:

"The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation not for profit under the General Corporation Act of Ohio, do hereby certify:

FIRST. The name of said corporation shall be: RABBIT OWNERS MUTUAL PROTECTIVE ASSOCIATION.

SECOND. The place in Ohio where its principal office is to be located is Toledo, Lucas County, Ohio.

THIRD. The purpose or purposes for which it is formed are: for soliciting applications for and issuing policies or certificates of membership granting protection against loss by fire, theft, tornado, lightning, hail, gas explosion, transportation and death of rabbits belonging to members of the Association for an indefinite period for all above mentioned risks except death, which shall cover for a period on each animal in-