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CONTRACT—TEACHER HOLDING CONTINUING CONTRACT
NOT YET EXPIRED—MAY BE TRANSFERRED TO
TEACHING POSITION IN ANY OTHER SCHOOL WITHIN
DISTRICT AT ANY TIME—SALARY THERETOFORE
FIXED SHALL NOT BE REDUCED.

SYLLABUS:

A teacher holding a continuing service status and serving under a contract which has not expired, may at any time be transferred to a teaching position in any other school within the district, provided that the salary thereoffore fixed shall not be reduced.

Columbus, Ohio, November 10, 1949

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have your request for my opinion in which you submit the following facts:

“Mr. R. holds a life certificate with a certification in mathematics, physical science, social science, and physical education thereby coming under the continuing contract law. He was employed by this school board in 1948 and 1949 as principal at a salary of \$3,400.00. Under General Code 4842-9, he was given his annual notice as to Teacher’s Salary April 19, 1949. This was signed by the president and clerk of the board of education and Mr. R. It is stipulated a salary of 3,625.00 as a teacher in that school district provided Mr. R. attend summer school. This was accepted by Mr. R. on May 10, 1949. On May 23, 1949, school closed and Mr. R. enrolled in summer school. A short time later, perhaps about a week, Mr. R. was informed he was to have a teaching position. He was later informed that three members had decided the Board did not want Mr. R. as principal, that there had been no complaints against Mr. R. from parents but that another teacher had made complaints against Mr. R. as principal. Later, on June 14, 1949, Mr. R. appeared before the Board and discussed this situation. Mr. R. left this meeting thinking he was still going to be principal for the following year. Later, June 20, 1949, the Board held a special meeting and passed the following motion: ‘that Mr. R. the principal of X High School be transferred to a teaching position in either M or N High Schools (Section 4842-9). Mr. R. is to be notified immediately by a registered letter, and if he accepts a teaching position in either M or N High Schools he is to notify the Clerk of the Board of Education in writing not later than 12:00 M. Noon, Thursday, June 23, 1949. Mr. R. is to retain his present contract status and his salary for 1949 and 1950 school year shall be at the rate of \$3,100.00.’ A registered letter was sent to Mr. R.’s home which was refused by his family as Mr. R. was in summer school. Later a regular letter came to his home, June 30, 1949, informing him of the above motion. Mr. R. informed the superintendent’s office that he was not resigning. Later, July 8, 1949 a regular letter was sent to him at his home informing him that the Board of Education had passed the following motion: ‘that Mr. R. be assigned to his original teaching position at the M High School at an annual salary of \$2,975.00. Acceptance or rejection must be made to the school board by July 10, 1949.’ August 1, 1949, Mr. R. informed the Board of Education that he was expecting to be employed by the Board of Education for the coming school year and that he would expect his salary to be on the basis as contracted. At the opening of school, Mr. R. was assigned as a teacher in the M High School and has been employed as such thus far for this school year. When the first check for his services was presented to him, it was made payable on the basis of the salary of \$2,975.00. He has returned this check and made demand for payment on the basis of his contracted salary. His contentions are that he should be paid

on the basis of \$3,625.00 a year as agreed upon in the Annual Notice of Salary accepted May 10, 1949. The Board's contentions are that he should receive payment of \$2,975.00 on the basis of what other teachers are paid in that classification, and that since the Board has the right to transfer Mr. R. in the performance of his services, they likewise may decrease his salary.

"Query: What are Mr. R's rights?"

"Query: What are the Board's obligations?"

At the outset it must be clearly understood that this opinion is rendered upon the facts submitted and the laws applicable to those facts. Even though there is some reference made to a contract of a principal, for the instant question the contract involved is that of a teacher.

Section 4842-9 of the General Code provides that:

"Each board of education shall cause notice to be given annually not later than July 1 to each teacher who holds a contract valid for the succeeding school year, as to the salary to be paid such teacher during such year. Such salary shall not be lower than the salary paid during the preceding school year unless such reduction be a part of a uniform plan affecting the entire district. But nothing herein shall prevent increase of salary after the board's annual notice has been given.

"A teacher employed as assistant superintendent, principal, supervisor or other administrative head may be transferred to a lesser administrative position or to a teaching position upon recommendation of the superintendent of schools and approval of the board of education. A teacher employed as superintendent may be transferred to another position by a majority vote of the board of education. In no event shall the salary of any teacher so transferred be fixed at a rate lower than the highest paid in the district for the type of position to other teachers with similar training and experience."

The above section was under consideration in an opinion of my predecessor No. 1099, Opinions of Attorney General for 1946, p. 517. In the situation there under consideration two school districts had been consolidated and a teacher holding a continuing service status in one of such districts and serving under a five year contract which had not expired, was transferred from a position of supervising principal to a teaching position, and it was held that it was within the authority of the board to so transfer him, but that his salary as fixed prior to the making of his contract could not be reduced below the amount so fixed.

Since it has been observed that the contract in question has to do with a teacher and not the employment of a teacher as a principal, it is my opinion that paragraph 2 of Section 4842-9 is not applicable. The opinion hereinabove referred to I believe furnishes a direct answer to your question.

In O. Jur., Vol. 9, p. 236, it is said:

“When an offer has been made by one and accepted by another, resulting in a promise which the law invests with the character of an obligation, a contract results.”

In view of the foregoing, it is therefore my opinion that a teacher holding a continuing service status and serving under a contract which has not expired, may at any time be transferred to a teaching position in any other school within the district, provided that the salary theretofore fixed shall not be reduced.

Respectfully,

HERBERT S. DUFFY,
Attorney General.