

2207

EDUCATION—CONTRACTS OF EMPLOYMENT: TEACHERS—  
SCHOOL DISTRICT WITH FEWER THAN 800 PUPILS—STAT-  
UTE, §3319.11 R.C., CONTROLS OVER CONTRACT CONFLICT-  
ING WITH TERMS OF STATUTE.

**SYLLABUS:**

When the board of education of a school district with fewer than eight hundred pupils enters into a second contract to re-employ a teacher for one year in contra-vention of the statutory provisions that such contract shall be for a minimum period of two years, the statute controls to the exclusion of the contract. Re-employment at the termination of such second contract must be for five-year periods unless the board grants a continuing contract.

Columbus, Ohio, June 10, 1958

Hon. Garver Oxley, Prosecuting Attorney  
Hancock County, Findlay, Ohio

Dear Sir:

Your request for my opinion reads:

"I have been requested to seek your opinion on the following question:

"Teacher 'X' after teaching two or three years previously was hired by the local school board in 1945 and received a two year contract. In 1947 he was re-hired but at a one year contract. Subsequently, in 1948, and again in 1953 he received five year contracts. The local school board does not wish to retain his services further. However, he contends that the 1947 contract should have been for two years, and therefore he is entitled to one more year based on the 1947 contract. May they refuse to hire him now or must they continue him in their employ for another year?"

You have also advised me that the school district in question has less than eight hundred pupils.

The controlling statute, Section 3319.11, Revised Code, reads in pertinent part:

"\* \* \*

"In school districts of under eight hundred pupils, the following contract system shall control:

"\* \* \*

"(B) New teachers, who have had at least one year's experience as teachers in other schools, shall be employed for a period of time commensurate with their past experience at the discretion of the hiring board, provided that no such contract shall be for more than five years.

"(C) Upon re-employment after the termination of the first contract, the new contract shall be for not less than two years nor more than five years provided that the teacher's educational qualifications have been fulfilled and the teacher's work has been satisfactory.

"(D) Upon re-employment after the termination of the second contract, the teacher's contract shall be for five years and subsequent renewal thereof shall be for five-year periods, or the board may at any time grant a continuing contract."

This statute, insofar as it is applicable to the problem you have presented, has been in its present form since 1943. 120 Ohio Laws, 475 at p. 541.

When the school board rehired teacher "X" in 1947 the contract of re-employment could only have been for a period of not less than two nor more than five years. It is also apparent that, upon the termination of the 1947 contract, a subsequent contract and renewals thereof would, by operation of law, be for five year periods unless a continuing contract were executed.

The syllabus of Opinion No. 978, Opinions of the Attorney General for 1946, p. 380, is directly in point and reads :

"Where pursuant to the provisions of Section 4842-8 of the General Code relative to the re-employment of a 'new teacher' in a school district of under eight hundred pupils, the board of education has reemployed such new teacher, his contract is by operation of the law for a period of at least two years notwithstanding the action of the board in attempting to limit it to a period of one year."

To the same effect and for a further discussion of the Teachers Tenure Act see Opinion No. 2575, Opinions of the Attorney General for 1953, p. 172.

I am in agreement with the opinions of the former Attorneys General cited above in which it has been held that in the event of a conflict between the terms of a teacher's contract of hire and the provisions of Section 3319.11, Revised Code, the statute prevails. Therefore, at the termination of the contract of hire of teacher "X" in 1947 the minimum term of the re-employment contract was two years and the attempt to limit such term to one year was a nullity. Similarly at the termination of the second, or 1947, contract a subsequent contract and renewals thereof could provide for only five-year terms in the absence of the granting of a continuing contract.

Therefore, in specific answer to your query, you are advised that when the board of education of a school district with fewer than eight hundred pupils enters into a second contract to re-employ a teacher for one year in contravention of the statutory provision that such contract shall be for a minimum period of two years, the statute controls to the exclusion of the contract. Re-employment at the termination of such second

contract must be for five-year periods unless the board grants a continuing contract. It therefore follows that teacher "X" is employed for the school year 1958-59 by reason of the five-year contract executed in 1953 which, by law, could not have been effective until 1954.

Respectfully,

WILLIAM SAXBE

Attorney General