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1. TEACHERS IN PUBLIC SCHOOLS — EMPLOYED DURING EACH OF FIVE SCHOOL YEARS PRECEDING PASSAGE OF HOUSE BILL 121, 94 GENERAL ASSEMBLY — DID NOT GIVE ACTUAL SERVICE FOR BOARD OF EDUCATION, AT LEAST 120 DAYS, INCLUDING LEAVE OF ABSENCE, NOT QUALIFIED FOR “CONTINUING” SERVICE STATUS — “CONTINUING CONTRACTS,” SECTION 7690-2 GENERAL CODE.
2. STATUS TEACHER UNDER CONTRACT WITH TWO BOARDS OF EDUCATION — HALF DAYS’ SERVICE — FULL TIME BASIS — 1935-1941.

SYLLABUS:

1. *Teachers in the public schools who were employed by a board of education during each of the five school years immediately preceding the time of the passage of House Bill No. 121 of the 94th General Assembly, but who did not render actual service for said board during one or more of such years of at least 120 days including time covered by an authorized leave of absence for professional advancement, do not qualify for continuing service status so as to require the said board to grant them continuing contracts as provided in Section 7690-2, General Code, for teachers who are qualified as to certification and who had completed five or more years of consecutive employment by said board at or near the end of the school year 1940-1941.*

2. *Where a teacher served two boards of education under contract with each board that provided for a half day's service only during the school years 1935-1936 and 1936-1937 and was employed on a full time basis by one of those boards during the school year of 1937-1938, 1938-1939, 1939-1940 and 1940-1941, he may not be credited with having served one board for five consecutive years immediately preceding the passage of House Bill No. 121 of the 94th General Assembly, so as to qualify him for continuing service status on September 1, 1941.*

Columbus, Ohio, November 8, 1941.

Hon. J. Dale McNamar, Prosecuting Attorney,
Newark, Ohio.

Dear Sir:

This is to acknowledge receipt of the recent communication from your office, requesting my opinion concerning certain matters submitted to you by the County Superintendent of Schools of the Licking County School District. The Superintendent's letter to you, submitting this matter, reads as follows:

"Section 7690-1 states that for purposes of this act a 'year' means actual service of not less than 120 days within a school year. We have several music supervisors in the county who have taught one or two days per week in certain school districts in the county. Since their services have been for only 36 days, or more, and less than 120 days, per year, are we to assume that even though they have been employed by a particular board of education for 5 years yet they have not served that board for five consecutive years?"

We have a case, also, where a vocational agriculture teacher in 1935 and 1936 served two boards of education on a half-day basis with each board. Since that year, this teacher has been employed as a full time teacher by one of these boards. Shall we assume that this teacher has served one board of education for five consecutive years although he has given that board only four and one-half years of service during the five years?"

House Bill No. 121 of the 94th General Assembly, effective September 1, 1941, was enacted for the purpose, as recited in its title, of providing for the use of limited and continuing contracts in the employment of teachers in the public schools. To that end Section 7690-1, General Code, was amended therein and supplemental sections 7690-2 to 7690-8, General Code, inclusive, were enacted. Section 7690-1, General Code, as so amended, contains definitions of certain terms used throughout the Act, as follows:

"The term 'teacher' as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.

'Year' as applied to terms 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.

‘Continuing service status’ for a teacher means employment under a continuing contract.” (Emphasis, the writer’s.)

In the first two paragraphs of Section 7690-2, General Code, provision is made generally as to the circumstances and conditions under which a teacher is entitled to be granted a continuing contract. The third paragraph of said section is a proviso which reads as follows:

“Provided, however, that on or before September 1, 1941, a continuing contract shall be entered into by each board of education with each teacher holding a professional, permanent, or life certificate who, at the time of the passage of this act, is completing five or more consecutive years of employment by said board.”

In view of this proviso, I held in Opinion No. 4025, rendered under date of August 1, 1941 and addressed to the Prosecuting Attorney of Williams County, as follows:

“On September 1, 1941, a mandatory duty will arise for all boards of education in the State to tender continuing contracts, as the term is defined in House Bill No. 121, of the Ninety-fourth General Assembly, to teachers in their respective districts who hold professional, permanent or life certificates, and who completed five consecutive years of employment in their said districts at or near the expiration of the school year 1940-1941.”

The corollary of the above proposition is, that unless the teacher does qualify as to years of service and certification, he is not entitled to a continuing contract by virtue of the proviso above mentioned. That is to say, he is not entitled under such circumstances, to be tendered a continuing contract on September 1, 1941.

Whether or not a teacher completed “five or more consecutive years of employment” by a board of education at or near the expiration of the school year 1940-1941, is a question of fact to be determined in the light of what constitutes a year for the purposes of making the determination. The language of the statute defining the word “year” as applied to terms of service for the purposes of the Act, is clear and definite and cannot be

misunderstood. It definitely states that a "year" for the purposes of the Act means "actual service of not less than 120 days within a school year." A school year is defined in Section 7689, General Code, as extending from July first of one calendar year, to June 30th of the succeeding calendar year. Unless a teacher renders actual service under a contract of employment with a board of education for at least 120 days within a school year, he is not entitled to credit for a year of service, in determining whether or not he has been in the employ of the board for five or more consecutive years at any particular time.

The same conclusion was expressed with respect to so-called substitute teachers, in my Opinion 4204 rendered under date of September 17, 1941, and addressed to the Director of Education. In that opinion there was under consideration the question of whether substitute teachers who do not render full time service, are entitled to continuing contracts on the same basis as are those teachers who are commonly referred to as regular teachers. It was held, as stated in the first paragraph of the syllabus of the said opinion that:

"So-called 'substitute teachers' in the public schools who qualify as to certification and years of service for continuing service status as provided by Section 7690-2 of the General Code of Ohio, are entitled to the tender of continuing contracts by their employing boards of education the same as teachers who are known as 'regular teachers'."

In the body of the opinion where the question is discussed, I stated:

"It should be noted, however, that credit for a year's service for the purpose of attaining continuing contract status will not be allowed unless the teacher render actual service for at least one hundred and twenty days within a school year."

It is a well settled principle of law that fractions of a day are not considered in the legal computation of time. Ohio Jurisprudence, Volume 39, page 196. In accord with this principle it seems clear that a so-called regular teacher as distinguished from an expressly designated substitute teacher who is employed for a year or several years and no mention is made in his contract of employment as to service for portions of days only, should be credited upon fulfillment of the contract with a full year's service for each of such years even though he may have been assigned to teach only an hour or a few hours of each day while fulfilling the

contract. When, however, his contract expressly or by necessary implication, provides for service for a half day only or any other expressly or impliedly mentioned part of the day, he is not bound to render service for a larger portion of each day than the contract calls for and his employer has no claim on his time beyond that fixed by the contract. Under such circumstances, the teacher may not be credited with a full year's service under the Teacher's Continuing Contract Law unless the total fraction of days as fixed in the contract total 120 days in each such year.

It is a matter of common knowledge that many boards of education have for years employed music supervisors, vocational agriculture teachers, and perhaps others, for part time service, in many cases considerably less than 120 days during a school year. The members of the legislature must have been cognizant of that fact when House Bill No. 121 was enacted, or at least are chargeable with such knowledge, and the fact that the legislature in enacting said bill provided that eligibility for continuing contract status was dependent on years of service, and at the same time provided that a year of service should not be counted unless actual service was rendered for not less than 120 days within each school year, unless a leave of absence was granted for professional advancement, in which case full credit should be given for the full time of the leave of absence, no other conclusion is tenable than that the legislature did not intend such teachers to acquire eligibility for continuing service status by the mere rendering of such part time service.

I am therefore of the opinion that teachers in the public schools who were employed by a board of education during each of the five school years immediately preceding the time of the passage of House Bill No. 121 of the 94th General Assembly, but who did not render actual service for said board during one or more of such years of at least 120 days including time covered by an authorized leave of absence for professional advancement, do not qualify for continuing service status so as to require the said board to grant them continuing contracts as provided in Section 7690-2, General Code, for teachers who are qualified as to certification and who had completed five or more years of consecutive employment by said board at or near the end of the school year 1940-1941.

Where a teacher served two boards of education under contract with each board that provided for a half day's service only during the school

years of 1935-1936 and 1936-1937 and was employed on a full time basis by one of those boards during the school years of 1937-1938, 1938-1939, 1939-1940 and 1940-1941, he may not be credited with having served one board for five consecutive years immediately preceding the passage of House Bill No. 121 of the 94th General Assembly, so as to qualify him for continuing service status on September 1, 1941.

Respectfully,

THOMAS J. HERBERT,
Attorney General.