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TEACHER HOLDING LIMITED CONTRACT—AUTOMATICALLY REEMPLOYED UNLESS EMPLOYING BOARD SHALL GIVE TEACHER WRITTEN NOTICE ON OR BEFORE MARCH 31 ITS INTENTION NOT TO REEMPLOY TEACHER—WHEN SUCH WRITTEN NOTICE NOT ACTUALLY RECEIVED UNTIL APRIL 2, IT DOES NOT PREVENT AUTOMATIC REEMPLOYMENT OF SUCH TEACHER— SECTION 4842-8 G. C.

SYLLABUS:

Under the terms of Section 4842-8, General Code, a teacher holding a limited contract is automatically reemployed unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him; and when such written notice is not actually received until April second, it does not prevent the automatic re-employment of such teacher.

Columbus, Ohio, August 17, 1951

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

Dear Sir:

I have before me your request for my opinion which reads as follows:

"The Board of Education of Gibsonburg, Ohio employed a teacher under a limited contract and by the provisions of Section 4842-8 of the General Code was required to give notice of its intention not to reemploy him on or before the 31st day of March, 1951.

"On March 28, 1951 a board meeting was held and the board took action and voted not to re-employ the teacher. On the evening of March 29th a letter was placed in the Postoffce at Gibsonburg, Ohio directed to the teacher who lives at Helena, Ohio about six miles from Gibsonburg, Ohio. This letter was marked 'registered, special delivery and return receipt requested'. The receipt for the article of mail was marked March 30th by the Gibsonburg postoffice. In the normal course of mail the mail is delivered from Gibsonburg to Helena by Star Route in the morning. The letter arrived in Helena, Ohio either on the 30th of March or the 31st of March, but was not delivered to the teacher as the teacher was in Columbus at a basketball tournament. The special delivery letter containing the notice of the board's intention not to rehire was actually delivered to the teacher on April 2, 1951, according to the records of the Helena postoffice.

"QUESTION: Was the teacher given notice of intention not to re-employ him, on or before March 31st as required by statute. If not, is he re-employed by virtue of the failure to give notice?"

The facts presented in your request must be governed by Section 4842-8, General Code, the pertinent portion of which reads as follows:

"Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June, and a contract for the succeeding school year shall be executed accordingly."

The section above quoted is part of the "Ohio Teachers' Tenure Act" enacted in 119 Ohio Laws, 451. See State, ex rel., Thurston, v. Board of Education, 140 Ohio St., 512 at p. 514, where Judge Zimmerman stated the principle of statutory construction applicable to that act:

> "Recently, in the case of State, ex rel. Bishop v. Board of Education of Mt. Orab Village School Dist., 139 Ohio St., 427, 40 N. E. (2d), 913, we had occasion to consider and apply certain parts of the 'Ohio Teachers' Tenure Act' (Sections 7690-1 to 7690-8, General Code, 119 Ohio Laws, 451), and upheld them as a valid exercise of legislative power. We further indicated that the act should be liberally construed in favor of those it was designed to benefit."

The portion of the act to be construed herein was considered by the Supreme Court in the case of State ex rel. Rutherford v. Barberton Board of Education, 148 Ohio St., 242.

In that case a teacher had resigned on February 26, 1946, but had withdrawn the resignation two days before its effective date. On March 19, 1946, the superintendent, in the presence of some but not all of the members of the respondent board, verbally stated that he did not intend to retain the relator for the succeeding school year. The following day, the superintendent wrote a letter to relator to the same effect.

The remaining pertinent facts as set forth in the statement of the case at page 244 are as follows:

> "No other written or verbal communication was given by the superintendent or the respondent board to the relator, prior to March 31, 1946, to the effect that his contract would not be renewed for the school year 1946-47.
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> "On April 9, 1946, the respondent board held a regular meeting at which, by resolution, the resignation of the relator was accepted, effective as of June 7, 1946, and his withdrawal of resignation rejected. On April 10, 1946, the clerk-treasurer of respondent board notified relator by letter that his resignation had been accepted and his withdrawal of resignation had been rejected on the previous day by action of the respondent board."

Judge Hart stated the opinion of the Court as follows on page 245:

> "This court holds that the relator could withdraw his resignation at any time before it was acted upon by the board of education and, relator having done so before March 31, 1946,

it remained incumbent upon the respondent board to notify relator prior to March 31, 1946, that his contract would not be renewed for the ensuing year if the board desired to terminate the right of relator to a renewal contract.

"The remaining question is whether such notice was given. * * *

"Since, under the statute, a teacher holding a limited contract is automatically deemed re-employed unless the 'employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him,' it would seem to follow that the determination not to re-employ must be reached by the same formality and solemnity as was required to effect his original employment. In other words, it would require board action at a regular meeting, or a special meeting for that purpose, followed by written notice to the teacher of the action so taken to prevent the automatic renewal of his contract. See McCortle v. Bates, 29 Ohio St., 419, 422, 23 Am. Rep., 758. In the instant case the respondent board took such action on April 9, 1946, but failed to do so within the time required by statute."

The reasoning of the above quoted case would require that the teacher in the instant situation be automatically re-employed upon the first day of June, 1951, because of the failure of the board to give him written notice on or before the 31st of March, since it was incumbent upon the board of education to given written notice to the teacher of the action of the board to prevent the automatic renewal of his contract.

It may be observed that the Gibsonburg Board of Education sought to comply with the requirements of the statute by attempting to notify the teacher of its formal action. However, attempted compliance will not prevent the automatic renewal of a teacher's contract under Section 4842-8. See State, ex rel., Rutherford v. Barberton Board of Education, supra, at page 246:

"It is also claimed by the respondent that the superintendent of schools in this respect acted in accordance with the custom and practice prevailing throughout the state, and that his action constituted a due compliance with the statute. This court takes the view that the terms of the statute are not satisfied by such attempted compliance."

Where written notice of a special meeting to the members of a board of education is required by statute, it has been held by one of my predecessors that mailed notice is of no effect, when not received. See Opin-

ion No. 6175, Opinions of the Attorney General for 1943, page 359, in which the syllabus provides as follows:

> "The written notice of a special meeting of the board of education, as required by Section 4751, General Code, may be given by mailing such notice by ordinary mail, and such mailing will raise the presumption that the same was delivered in due course; but such presumption is rebuttable and if in fact a member of the board did not receive the same, such mailed notice would be of no effect."

It should be noted that the section construed in that opinion, Section 4751, General Code, did not provide for mailed notice. Subsequently Section 4751 was repealed and Section 4833-2 was enacted to govern notice of special meetings of boards of education. That section reads in part as follows:

> "For the purpose of this section service by mail shall be considered good service."

The statute under consideration in the present opinion specifies that the teacher be given written notice but it does not specify the mode of service. The general rule as to the validity of using mailed notice when such notice is not specifically authorized by the statute, is set forth in 39 American Jurisprudence 249 as follows:

> "Mailing of notice to a person at his known address within the state may be authorized as a mode of service, but in the absence of a statute authorizing the service of a notice by mail, a notice so served is ineffective unless it is received. However, where a notice was properly mailed, its receipt will be presumed, in the absence of evidence to the contrary, and deposit in a street letter box or delivery to a mail carrier on duty is considered a proper mailing. This presumption may be overcome by evidence that the notice never was in fact received."

On application of the above principles to the facts presented indicates that the notice in question would not be effective to prevent the automatic renewal of the contract. Examination of the facts presented in your request also reveals no attempt upon the part of the teacher to prevent the delivery of the notice, and therefore the doctrines applicable to evasion of service of process need not be considered here.

For the reasons hereinbefore stated, it is my opinion and you are

hereby advised that under the terms of Section 4842-8, General Code, a teacher holding a limited contract is automatically re-employed unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him; and when such written notice is not actually received until April second, it does not prevent the automatic re-employment of such teacher.

Respectfully,

C. WILLIAM O'NEILL
Attorney General