

1070.

BOARD OF EDUCATION—WHERE CITY SCHOOL DISTRICT HAS TEACHERS' PENSION SYSTEM—BOARD FAILS TO RE-EMPLOY TEACHER WHO HAS TAUGHT TWENTY YEARS—WHEN PENSION BEGINS.

Where a city school district has a teachers' pension system under the provisions of sections 7875 to 7891 G. C., the failure of the board of education of such city school district to re-employ a teacher who has taught as a teacher for a period aggregating twenty years, must be deemed to be the retirement of that teacher as of the day when such re-employment would begin on September 1st and pension to such teacher from the date of such failure to enter on re-employment.

COLUMBUS, OHIO, March 12, 1920.

HON. FRANK B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion upon the following statement of facts:

"The city of Youngstown has a teachers' pension system under the provisions of sections 7875 to 7896.

L. U. H., a member of the system, became ill in December, 1917, was not able to return to work during the remainder of that school year, and, solely because of his physical disability, was not engaged to teach for the school year 1918-19.

On July 21, 1919, the board of education of Youngstown attempted to act under section 7800, and retired Mr. H. as of January 1, 1918, and recommended that the teachers' pension fund trustees place him on the teachers' pension roll because of physical disability as of that date (January 1, 1918).

Are the teachers' pension fund trustees bound by that action to place Mr. H. on the pension roll on the ground of disability as of that earlier date? Are they at liberty to do so if they see fit to do it?"

From information received from Youngstown it is found that the teacher in question has all the necessary experience required under the teachers' pension system in force in individual cities in this state, such system being covered by section 7875 to section 7896, G. C., inclusive; and further that such board of trustees of the teachers' pension fund in the Youngstown city school district has no rules and regulations. Pertinent parts of the law are as follows:

"Sec. 7875. When the board of education of a school district by resolution adopted by a majority of the members thereof, declares that it is advisable to create a school teachers' pension fund for that school district, such fund shall be under the management and control of a board to be known as 'the board of trustees of the school teachers' pension fund' for such district. * * *"

"Sec. 7880. Such board of education of such school district * * * may * * * by a majority vote of all the members composing the board on account of physical or mental disability, retire any teacher under such board who has taught for a period aggregating twenty years * * *"

"Sec. 7883. Each teacher so retired or retiring shall be entitled during the remainder of his or her natural life to receive as pension, annually, twelve dollars and fifty cents for each year of service as teacher, except that in no event shall the pension paid to a teacher exceed four hundred and fifty dollars in any one year. Such pensions shall be paid monthly during the school year."

"Sec. 7891.* * * If at any time a teacher who is willing to continue in the service of the board of education is not re-employed, or is discharged before his term of service aggregates twenty years, then to such teacher shall be paid back at once all the money he or she may have contributed under this law. But if any teacher who has taught for a period aggregating twenty years is not re-employed by the board of education, such failure to re-employ shall be deemed his retiring, and such teacher shall be entitled to a pension according to the provisions of this act."

In the question at hand you indicate that this teacher became ill in December, 1917, and was not able to return to work during the remainder of that school year, and solely because of his disability *he was not re-employed* by the board of education to teach for the school year 1918-1919. On July 21, 1919, the board of education of the city in question retired the teacher as of January 1, 1918; that is, the board acted eighteen months after the teacher in question was forced to give up teaching on account of ill health. The board of education did not act at that time in retiring the teacher for the possible reason that it was not known, and could not be ascertained, that the illness of the teacher was of such a nature that he could not take up his activities as a teacher in the public schools. It is apparent that one might have an illness of a number of months and while attempting to recover from such illness or disability he does not feel, and no one can say at that time, that his disability is to be a permanent one. The teacher in question might have felt, while these months were going by, that he would again enter the school as a teacher, and the question of retirement at that time was not under consideration.

The whole purpose of a teachers' pension law is that when salary no longer is received by the teacher for teaching, the pension is later to take the place, in a degree, of the salary that has been given up. You indicate that the board of education attempted to retire this teacher under section 7880, because of ill health, and if such action was valid on July 21, 1919, then the retirement would not date prior to such action of the board. But this teacher was automatically retired before July 21, 1919, because the teacher was not re-employed by the board of education for the year beginning September 1, 1918. Attention is therefore invited to this language which occurs in section 7891 G. C.:

"But if any teacher who has taught as a teacher aggregating twenty years is not re-employed by the board of education, such failure to re-employ shall be deemed his retiring and such teacher shall be entitled to a pension according to the provisions of this act."

This section says that the failure to re-employ shall be deemed a retiring, and therefore, even though the board of education did not take formal action in retiring the teacher at that time under section 7891, having taught the necessary twenty years, the failure to re-employ the teacher in question by the board of education had the effect of creating the retirement of the teacher at the beginning of the school year for which he was not re-employed. It is the duty of the board of trustees of the school teachers' pension fund in a school district which has a pension system of its own, to ascertain the date when such teacher did not enter on re-employment by the board of education and should make up their records accordingly in compliance with the provisions of section 7891 G. C.

In the question at hand there was a failure on the part of the board of education to re-employ for the school year of September 1, 1918-August 31, 1919, a teacher who had taught a period aggregating twenty years, and under the provisions of section 7891 the failure of the board of education to re-employ a teacher having such qualifications must be deemed to be the retirement of that teacher as of the day when

such re-employment was to begin, that is, September 1, 1918, and pension to such teacher would accrue from that date.

Such being the case, neither the board of education nor the trustees of the teachers' pension fund in such city has any authority to set another date as the date of the retirement of the teacher in question, since section 7891 plainly provides that the failure of the board of education to re-employ must be deemed to be a retirement, as of the time when re-employment would have begun.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1071.

SCHOOLS—PERSON EMPLOYED AS TEACHER UNDER ONE CONTRACT
 AND UNDER ANOTHER CONTRACT EMPLOYED AS SCHOOL
 DRIVER—CONTRACTUAL RIGHTS UNDER EACH CONTRACT DIS-
 CUSSED—HOW BOARD OF EDUCATION CAN DISMISS TEACHER

1. *Where a person has been employed as a teacher in a public school under one contract and under another contract at a subsequent date has been employed as a school driver or conveyor of pupils, the released by the board of education from the obligations of the second contract, by motion spread upon its minutes, closes the contract relation as a school driver.*

2. *Where an employe of a board of education submits his resignation or requests a release from his contract, such resignation or release from such employment can not become effective except by the consent of the board of education, and if such employe thereafter fails to perform any of the duties mention in such contract, from which he has not been released by the board of education, such contracting employe is liable to the employing board of education for any damages sustained.*

3. *Where a board of education desires to dismiss any teacher, it is necessary that charges be reduced to writing and filed with the board of education and an opportunity be given the teacher for defense before the board, or a committee thereof, and a majority of the full membership of the board of education upon roll call in favor of such dismissal is required in order to be effective. As to what constitutes inefficiency, neglect of duty, immorality or improper conduct, is for the board of education in its discretion to decide. Teachers dismissed for any frivolous or insufficient reason may bring suit against such district as provided by section 7708 G. C.*

COLUMBUS, OHIO, March 12, 1920.

HON. LEWIS STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion upon the following statement of facts:

"The board of education of _____ township, this county, employed one C. D. P. as a teacher in district No. 5, and at the same time employed said P. to haul certain of the pupils to and from the school.

P. entered upon his duties and taught the school and hauled the pupils until January 10th, this year, when he notified the board that he would no longer haul the pupils to and from school, but that he still intended to teach in district number five.

The board of education insists that P. shall comply with both the con-