

section 2314 G. C., nevertheless that section does not apply to the case stated in your letter by reason of section 26 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1673.

BOARD OF STATE SCHOOL EXAMINERS—REQUIREMENTS FOR APPLICANTS FOR LIFE CERTIFICATES—HOW CREDIT FOR TWO-YEAR NORMAL COURSE OBTAINED—BOARD MUST DETERMINE WHAT IS SUCCESSFUL TEACHING EXPERIENCE—A RULE THAT THREE MONTHS OF TEACHING IS EQUIVALENT OF ONE MONTH'S SUCCESS IN TEACHING, CONTRARY TO LAW.

1. *Under sections 7807-1 and 7807-2 G. C. the board of state school examiners may or may not require of applicants for life certificates additional requirements or tests or they may require one and omit the other, as they may desire.*

2. *To secure credit for a two-year normal course such course must have been taken in an institution approved by the superintendent of public instruction in any case not specifically otherwise provided by law.*

3. *The state board of school examiners must determine whether or not the experience in teaching had by an applicant for a certificate is successful teaching, experience, the evidence of which must be produced by the applicant. If it be successful teaching experience in the judgment of the board, from the evidence produced, full credit must be given. Such experience may be had in the schools of any state and must be considered by the board.*

4. *A rule that three months of teaching is the equivalent of one month's success in teaching is contrary to the intent and purpose of the law.*

COLUMBUS, OHIO, December 3, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Receipt of the following letter is hereby acknowledged:

"According to section 7807-1 an applicant for an elementary or special life certificate, unless applying under section 7807-6 or 7807-8, must have completed, in addition to certain experience and training 'such additional requirements and tests as are prescribed by the state board of school examiners.'

The wording of section 7807-2 is similar respecting applicants for high school life certificates, section 7807-7 being an excepted section in this case instead of 7807-8.

Section 7807-7 provides that the holder of a degree from a school approved by the superintendent of public instruction, shall upon proof of successful teaching experience, be granted without examination, a state life high school certificate.

Section 7807-6 provides for the granting of life certificates to holders of provisional certificates.

Section 7807 gives some general authority to the state board of school examiners to issue life certificates.

The following questions which arise in connection with the authority and practices of the state board of school examiners, we beg leave to submit to you:

1. In the exercise of power to prescribe additional requirements and tests as bestowed in sections 7807-1 and 7807-2, may the state board of school examiners—

- (a) require nothing additional,
- (b) may the board require something additional but no tests,
- (c) may the board require some tests but nothing else additional other than the tests?

2. May the state board of school examiners award state life high school certificates without examination to persons who do not have degrees from approved institutions, provided those persons have had fifty months of successful teaching experience, a four-year high school course or the equivalent, and college or normal credits aggregating the substantial equivalent of the requirements for a degree, such credits including one-half year of professional training.

3. In estimating teaching experience, which under sections 7807-1, 7807-2 and 7807-7 must amount to fifty months, under section 7807-8 to one hundred months, and under section 7807-6 to twenty-four months after receiving a state provisional certificate, shall the state board of school examiners count only experience in public schools, or shall they count experience in private schools and parochial schools?

3a. Is a rule of the state board of school examiners that experience in non-public schools shall be counted at one-third of its period (for instance, three months in a parochial school or a private school to count, under these laws, the same as one month in a public school) a rule within their discretion to prescribe?

Commenting on Nos. 2, 3 and 3a immediately preceding, permit me to give my personal opinion which is as follows:

The statute does not confine teaching experience to work done as a teacher in the public schools. We inspect private and parochial secondary schools, and, if they are up to standard, we give them recognition and rank as the equivalent of a first grade high school for a certain length of time, and also take into consideration the character of the work done in the private and parochial elementary schools as a basis for secondary work. Since giving them this recognition I think that the experience gained by teachers in these schools is equivalent to that gained in the public schools and that they should be given credit for the full time of their experience. If the state board of school examiners has the right to classify experience gained in private and parochial schools as inferior and to require three times as much of the same as is required of those who have had experience in teaching in the public schools, our recognition of private and parochial secondary schools is wrongfully given. However, I do not think that our recognition is wrongfully given. I think the phraseology of the statute as it relates to any amount of experience, as fifty months, twenty-four months, and one hundred months, applies to experience gained in private and parochial schools as well as in public schools and that the same is not susceptible of other interpretation.

3b. In estimating such experience, shall experience in teaching in colleges and normals, which are beyond the rank of common schools, be counted?

4. Shall the state board of school examiners be confined in the awarding of certificates to teachers who are teaching in Ohio? May the examiners, at their discretion, refuse to grant certificates to applicants on the ground that they are not Ohio teachers?

4a. Is a rule that an applicant for a life certificate not applying under

section 7807-6, must be teaching or under contract to teach in Ohio, or must at some time have had the prescribed number of months of experience in teaching in Ohio, a rule within the discretion of the state board of school examiners to enforce?

5. May the state board of school examiners, in judging the successfulness of experience, rule out any class of experience (non-resident, non-public, etc.) on the ground that on the whole they cannot secure sufficiently satisfactory evidence of the successfulness of such experience, or are they obliged rather to act upon their actual ability to get definite information in specific cases as they arise?"

Section 7807 G. C. provides that the state board of school examiners shall issue life certificates "to such persons as are found to possess the requisite scholarship, and who exhibit satisfactory evidence of good moral character and of professional experience and ability."

Sections 7807-1 and 7807-2 G. C., as amended in 108 O. L., Part I, page 683, read:

"Sec. 7807-1. Applicants for elementary life certificates and special life certificates, not provided for in sections 7807-6 or 7807-8 shall have completed fifty months of successful teaching experience, a four-year high school course or the equivalent, and college or normal credit aggregating one year, including one half year of professional training, and shall complete such additional requirements and tests as are prescribed by the state board of school examiners."

"Sec. 7807-2. Applicants for high school life certificates shall have completed fifty months of successful teaching experience, a four-year high school course or the equivalent, and college or normal credit aggregating two years, including one half year of professional training, and unless applying under section 7807-6 or 7807-7 shall complete such additional requirements and tests as are prescribed by the state board of school examiners."

Each of these sections gives explicit directions, mandatory in form, as to what the applicant shall do in order to receive a certificate. The state board of school examiners is required to inform itself of the scholarly attainments, evidence of good moral character, and professional ability and experience of the applicants for certificates who present themselves for examination. The statutes repose in them the right, if they deem it their duty to do so, to prescribe additional requirements and tests to evidence to the board the scholarly attainments, experience and ability as professional teachers of all applicants, and so, should the board desire it, they may require these additional things or they may omit them or they may require both of them.

The terms "additional requirements" and "additional tests" imply some other abilities or accomplishments beyond those specifically required in the law, and each has a meaning which distinguishes it from the other term, since a vain repetition of terms in a statute is not presumed in any enactment of the legislature.

Therefore, your first question and the parts thereof are held to be matters within the discretion of the board of state school examiners.

It may be well to observe at this point that while the law leaves the requirement of these additional things within the discretion of the examiners, some definite policy, some uniformity of method or procedure should be outlined and followed by the board touching all applicants, nothing capricious in practice or discriminating in policy should actuate it in arriving at a determination of the applicant's fitness to re-

ceive a certificate. The task of satisfying the board is by law placed upon the applicant, who should be required by it to produce to the board what the board determines it shall need to reach a judgment in the matter.

Section 7807-8 G. C. reads in part as follows:

"The state board of school examiners shall issue, without examination, a state life elementary certificate to one who has completed a four-year high school course or its equivalent, and has completed a two-year normal course in an institution approved by the superintendent of public instruction and, in addition thereto, has had at least fifty months of experience in teaching satisfactory to the state board of examiners; * * *."

Certain mandatory directions are here specifically set out for the conduct of the state board of school examiners, and one of them is that the two-year normal course prescribed shall be taken in an institution approved by the superintendent of public instruction. All other express requirements of the law must be complied with. A two-year normal course in an institution approved by the state superintendent of public instruction may not be disregarded, except where the applicant seeks a certificate after having completed the reading and study prescribed by the superintendent of public instruction. And further the applicant's professional study and reading must have been that prescribed by the superintendent of public instruction to permit the board of state school examiners to issue him a certificate. It is in this manner that the law directs attention to the normal schools in the state, maintained at public expense, for the purpose of training its teachers, and it is thus that notice is served on all applicants for life certificates that none shall be qualified whose two-year normal course is not up to or better than the standard maintained in its own schools of the same character.

So your second query is decided negatively, holding that the approval of the superintendent of public instruction is a necessary requirement under the law.

In answering your third question you are asked to refer to Opinions of the Attorney-General, 1916, Vol. II, page 1364, wherein is found the following:

"Under sections 7807-6 and 7807-7 G. C., the board is required to issue certain classes of certificates under other conditions therein set forth, upon satisfactory evidence that the applicant has completed at least twenty-four months of successful teaching, after receiving a provisional certificate and upon satisfactory evidence that the applicant has completed at least fifty months of successful teaching, respectively.

These sections clearly impose upon the applicant the burden of producing before the board, in the first instance, satisfactory evidence of the requisite facts as to the prescribed periods of successful teaching in like manner as it is incumbent upon the applicant to produce satisfactory evidence of good moral character and of professional experience and ability, under the provisions of section 7807 G. C., supra.

It is, of course, within the authority of the board to determine, in the exercise of its discretion, what constitutes satisfactory evidence of these essential matters of fact and in doing so the board would not only be authorized, but it would seem to be their duty, to establish and to follow, in so far as practicable, some uniform rule or regulation as to the character and amount of evidence upon these matters, which it would deem to be satisfactory, and require to be exhibited and submitted by the applicant."

Of course, teaching experience may be had in conducting, for a definite period, any kind of school where the teacher is the one responsible for the discipline of the

school and for the progress of the taught and not merely a supply or substitute teacher for a day or two at a time. But again, this is a discretionary and administrative matter for the board except, perhaps, where one applies for a life certificate after having secured a provisional life certificate. In granting such a life certificate it may justly be said that the twenty-four months' successful experience ought to be had in the schools supported in whole or in part by state funds, since certificates are only required of teachers who teach in the schools so supported by the state. Yet this observation is not intended to be made for the purpose of fixing the board's judgment in this matter. Any regulation that is not unreasonable or does not prefer one class of applicants over another would be presumed to be within the board's field of discretionary regulations.

It may further be said that successful teaching may be done in any kind of a school and that three months' time consumed in teaching school cannot be equal to a month of successful teaching by any plan or calculation because teaching is either successful, indifferent, or unsuccessful at any time when it is being done. The quality of successful effort, except in rare cases, may not be achieved no matter how long time the effort continues, and the board is concerned with the question of twenty-four, fifty, or one hundred months' successful teaching and not in apportioning so much of the period taught over to an equivalent in time spent as successful teaching; that is to say, the quality to be sought after by the board in an applicant is success in teaching, not length of time spent in teaching in an effort to be successful. Successful teaching experience is more or less an elusive quality, the factors of which are to be determined by the board in exercise of sound judgment and discretion, and to say that one must teach in certain kinds or classes of schools for three times as long as the length of time set out in the law, is the equivalent of so many months of successful experience required by the law, is, in effect, to change the time limit of the law by an administrative ruling that cannot possibly be defended on any assumption as reasonable or just or within the express words or the apparent purpose of the statute.

So, whether success is attained in teaching in college or normal schools or in non-public schools or in the public schools of this state or other states makes no difference. Whether it be successful teaching experience is for the board to decide on the evidence adduced, and when satisfied by such evidence as is required to be produced, credit for the time spent in such teaching must be given to the applicant so complying with the board's demand. Nor does the place where such teaching is done, or the intent of the applicant as to where he or she will seek employment or be or is employed, or whether or not such applicant intends to continue in teaching become an element upon which the board is to decide as to the applicant's fitness.

Your ideas as expressed in the comments made in your letter on questions 3, 3a and 3b concerning what experience in teaching shall be considered by the state board of school examiners and concerning the board's right to consider three months' teaching experience had in certain non-public schools as equal to one month's successful experience in teaching, are believed to be correct and in conformity to the intent and purpose of the law.

In answer to your questions numbered 3 and 3b it is held that the state board of school examiners should count successful teaching experience whether such experience is had in colleges and normal schools or in the public schools or in non-public schools, for they are concerned only with the question of the successful experience of the applicant who presents himself for a certificate.

In your question numbered 3a, the rule that three months' teaching in a non-public school of any kind is the equivalent of one month's successfulness in teaching is in effect an amendment to the law by an administrative ruling; because, on the one hand, it multiplies the length of the period of successful teaching by three or, on the other hand, if the teaching done for those three months is indifferent or un-

successful, as measured by the board's standard, and is counted as one month of successful teaching, it gives credit for what is unauthorized by the law. Manifestly such a rule may not be enforced under the law by the board, and if such a rule is adopted and used it must be held to be of no effect.

Section 7824 G. C. applies to your fourth question and has been discussed in an opinion of this department found in Opinions of the Attorney-General, 1919, Vol. I, page 849, from which the following is quoted:

"Sec. 7824. Boards of school examiners at their discretion may issue certificates without formal examinations to holders of certificates granted by other county and city boards of school examiners in Ohio, and, with the approval in each case of the superintendent of public instruction, to holders of certificates granted by certificating authorities in other states. Such certificates may be renewed under regulations provided by the superintendent of public instruction."

From the amended section 7824 G. C. it will be noted that all boards of school examiners, including city and county boards, may at their discretion grant certificates effective in their jurisdiction upon certificates issued by some other board of school examiners in Ohio, but if the holder of the certificate has a certificate from a board of examiners in another state, a certificate valid in Ohio can be granted by either a county or city board of examiners, but only upon approval of the state superintendent of public instruction, who also has the power of making regulations for the renewal of such certificates.

Relative to your second question as to whether an Ohio board of education may employ and pay a teacher who holds only a certificate which was issued by an out-of-state board of school examiners, it is advised that no teacher is permitted to teach in the public schools of Ohio unless such teacher has a proper certificate from a board which has jurisdiction over the school in which such teaching is done."

Boards of school examiners, which is the phrase of the law, includes the state board of school examiners. Reciprocity is, in the above section, favored between boards of examiners within the state and between intra state boards and out-of-state boards if the superintendent of public instruction approves such action. For the state board of school examiners to confine the awarding of certificates to only those teachers who are teaching in Ohio is in violation of the express intention of this law, and so they may not refuse to consider certificates issued by an out-of-state board where the superintendent of public instruction has given his recommendation to such board. This statement and what has before been said will also answer your question numbered 4a.

By what has been said before herein your fifth question is also answered. The duty of satisfying the board of examiners as to success in teaching is for the applicant. Full and comprehensive information as to his success should be produced by him, together with any information which the board may ask of him or require of him for an investigation of his alleged success in teaching. If the applicant would be successful he must satisfy the board of his fitness. If he cannot do so he should fail. The board cannot reasonably say that they will not hear any honest effort to meet the requirements of the law made by any teacher who seeks a life certificate.

Respectfully,

JOHN G. PRICE,

Attorney-General.