Finding said contract in proper legal form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3200.

TEACHERS—BOARD OF EDUCATION MAY ADOPT RULE PROHIBITING MARRIAGE OF WOMEN TEACHERS DURING TERM OF CONTRACT.

SYLLABUS:

1. *When a board of education adopts a reasonable rule for the government of teachers in its employ, and thereafter enters into contracts of employment with teachers who have or should have knowledge of such rule, such rule is a part of the teacher's contract the same as though expressly rewritten therein.*

2. *When a board of education has adopted a rule that any single female teacher who marries during the life of her contract will automatically forfeit her rights under such contract, such rule is not contrary to public policy and is within the legal powers of the board of education.*

COLUMBUS, OHIO, September 13, 1934.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion on the following question:

> "The Board of Education of the D. City School District, D., Ohio, has adopted a rule to the effect that when a woman teacher marries this automatically cancels her contract. A member of the board has raised the question as to whether or not this is legal. Will you kindly advise us whether or not an Attorney General's opinion or court decision has been made relative to this matter?"

I am also in receipt of a similar request from the Prosecuting Attorney of Sandusky County, which reads:

> "The Board of Education of one of the rural school districts of Sandusky County, Ohio, adopted a resolution April 6, 1931, by unanimous vote that 'any single teacher who gets married during the life of her contract will automatically forfeit her contract.'
>
> Under date of July 14, 1934, this Board of Education entered into a contract with an unmarried lady teacher. Said contract containing the following language: 'and also (the teacher) agrees to abide with the rules and regulations of the schools of said school district, and the Sandusky County School District.' At the time this contract was entered into the teacher was informed of the resolution above referred to. About four weeks later she married.

The question involved is whether or not the Board of Education may in accordance with said resolution declare the contract forfeited and void, i. e., whether or not such resolution is legal and proper under Section 4750 of the General Code."

Inasmuch as the same questions of law are presented by each of such requests, I am taking the liberty of combining both of such requests into a single opinion.

The statutes of Ohio specifically provide that:

"A board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools." (§ 4750, General Code).

There is no express provision of the statute laying down the rules which govern the conduct of the employes of a board of education. Such matter has been delegated to the discretion of the boards of education. As stated in 24 R. C. L., page 612:

"Teachers and other administrative officers of the public school system are normally subject to selection, dismissal and control at the hands of the district school directors, who may make and enforce any reasonable rules in this connection, and in the absence of statutes to the contrary, may designate certain prerequisite qualifications of teachers, as for instance, that only men shall be eligible for certain positions."

The question of law presented by your inquiry, is, whether or not the rule that a woman teacher in the public schools shall not marry during the school term is a reasonable rule. There have been numerous cases in which this matter has been before the courts in the various states. However, in many of these cases the grounds of dismissal of a teacher were specifically set forth in the statute. In many of the states there was a definite teachers' tenure law which gave the teacher a general right to continue in the employment except when certain statutory contingencies happened. Where the statute has set forth and enumerated the grounds of dismissal the courts have held that the grounds of dismissal contained in the statute were exclusive. *People ex rel. Murphy* vs. *Maxwell,* 177 N. Y., 494; *People ex rel. Peixoto* vs. *Board of Education,* 114 N. Y. S., 87, reported in the higher courts in 145 N. Y. S., 835, 212 N. Y., 463.

In the case of *Guilford School Township* vs. *Roberts,* 28 Ind. App., 355, the facts and issues might be summarized as follows: The teacher, in her application stated that she was unmarried and did not intend to be married during the current year. One of the trustees informed her that the board would not employ a married woman as a teacher. A contract was entered into with her for the ensuing year. It subsequently developed that she had been married for four days prior to the execution of the contract, which she executed in her unmarried name. One of the members of the board of education discovered such fact and the board paid her for the time during which she had taught and rescinded the contract. She brought action founded on breach of contract, alleging that the rule of the board against marrying during the school year was invalid, as being contrary to public policy. The court, however, held that such rule was a part of the contract, and that the violation of such rule was sufficient grounds for the cancellation of the contract, and denied recovery.

In the case of *Ansorg* vs. *City of Green Bay,* 198 Wis., 320, the board of education had a rule similar to that referred to in your request, that is, that it would not employ or permit married women to be teachers in the schools when single teachers were available. At the time of the execution of plaintiff's contract it was understood that the plaintiff contemplated marriage. The contract contained a stipulation that if plaintiff was to be married during the Christmas Holidays she would give the board thirty days' notice of such fact, and contained a further stipulation that if she was not married at that time she would not marry until after the close of the school year. On January 20th she was married; on January 29th the board notified her that her services were no longer needed. She then instituted suit for breach of contract. The court held that the dismissal for violation of the rule against marriage was sufficient ground for cancellation of the contract and dismissed her petition.

I have been unable to find any reported decisions of the Ohio courts upon the exact question presented in the inquiries forming the subject matter of this opinion. As stated in 24 R. C. L., page 612:

> "Rules and regulations adopted by a board prior to the making of a contract of employment with a teacher, which are known or ought to be known to a teacher when he enters into the contract, and the teacher's employment is subject thereto."

A former Attorney General, in an opinion which will be found in the reported Opinions of the Attorney General for 1931, at page 443, held:

> "When teachers contract with a board of education for service in the schools of the district the contracts so made are subject to rules and regulations of the board lawfully made and adopted, whether or not teachers so contracting are actually cognizant of such rules and regulations."

Whether or not a rule adopted by an administrative board is a reasonable rule depends to a great extent upon the circumstances incident to the occupation for which the rule was adopted. If the purpose of the rule is to prevent some act which bears no relation whatsoever to the conduct of the school system the courts would probably hold that such rule was unreasonable and arbitrary, and therefore void. If, however, the conduct at which the rule was aimed might bear some relation to, or affect the administration of the schools or duties of the teacher it would appear that the legislature has placed it within the discretion of the board of education as to whether such rule should or should not be adopted and enforced.

Some courts have held that a rule disqualifying married teachers in the public schools is unreasonable. The weight of authority clearly supports the position, however, that it is a matter within the discretion of the board of education employing the teacher especially where the question of dismissal under a teacher's tenure law which sets forth the ground of dismissal, is not involved, and the refraining from marriage during the term of a contract is made a condition subsequent to the continuance of the contract either by express provision of the particular contract or by rule of the board of education which is read into the contract. A number of authorities touching upon this question are collated in an annotation which will be found in 81 A. L. R., 1033. See also *Grimison* vs. *Board of Education of Clay County,* 136 Kans., 511, 16 Pac., 2nd, 492.

It has been urged in some cases that a contract such as is here under consideration is in restraint of marriage and is therefore unenforcible. There is a

well established rule of law that a contract or provision in a contract in general restraint of marriage is contrary to public policy, and therefore void. In re. Appleby, 100 Minn., 409; *Meck* vs. *Fox,* 118 Va., 774. In the case of *Richards* vs. *District School Board,* 78 Oreg., 621, the court comments upon a rule similar to that suggested in your inquiry and granted the teacher relief against a dismissal on such grounds. However, from an examination of such case it would appear that such language of the court is merely dicta. The court's decision in that case was on the ground that the statutes of Oregon expressly provided the grounds upon which a teacher's contract could be cancelled and the teacher discharged. The court in that case merely held that when the statute provided the grounds upon which a teacher could be discharged, the provisions of the statute were exclusive, that is, the teacher could not be discharged on any other grounds than those stated in the statute. I have been unable to find any decisions holding that a rule of the nature suggested in your inquiry is contrary to public policy.

I am of the opinion that where a contract is made with an unmarried person to perform services over a specified period, conditioned upon that person remaining single during the period covered by the contract, and providing that the contract shall be terminated in the event of the marriage of the employee and not containing a promise on the part of the employee to not marry during the period of the contract, the termination of the contract according to its terms by the marriage of the employee does not constitute a discharge or dismissal of the employee in violation of a statute setting forth exclusive grounds of dismissal which do not include marriage nor does it constitute a contract in restraint of marriage inasmuch as the employee does not in such a contract, promise or agree not to marry but simply agrees to perform services during the term of the contract or until he does marry. There is a well recognized distinction between a condition in a contract and a covenant or promise contained in a contract. This distinction is described in Page on Contracts, Second Edition, page 2576, as follows:

> "A condition, as we have seen, is an uncertain fact, which, as a result of the agreement of the parties, is to affect the legal effect of the contract. The condition, accordingly, in its more limited and accurate sense, does not contain any promise, either express or implied, on the part of either party, to bring about the happening of such uncertain fact. Accordingly, if the fact is a true condition, the happening or not happening of the event, as the case may be, may terminate the legal rights of the parties, and by the terms of the contract it may result in the substitution of other specified legal liabilities for those which were to exist if the specified condition had not happened; but the happening of the condition alone is not a breach of a covenant and no right of action arises by reason thereof. If, however, the condition is broken, the party in whose favor such condition is exacted may treat the rights of the adversary party as terminated or suspended in accordance with the terms of the contract, and he is not remitted to a right of action for damages.
>
> A covenant, on the other hand, is an agreement of one of the parties to the contract to act or to forbear to act in a certain specified way. If the party who has thus agreed to act or to forbear to act breaks his covenant, and the covenant is a part of an enforceable contract, a legal liability of some sort arises upon such breach, unless the happening of other and further events since the contract was made, have operated as a discharge thereof. The covenant, in its simplest form, is therefore merely a promise by one party to act or to refrain from acting in a certain way, and the

consequences of his breaking such promise are fixed by the law and not by the express agreement of the parties."

Difficulty oftentimes arises in distinguishing between covenants and conditions. As stated by Page, in his work on contracts, Section 2577:

> "Another reason for the confusion between conditions and covenants is the fact that they shade off from the clearest and most extreme type of the condition, which contains no element of a promise, through intermediate stages, into the clearest and most extreme type of a covenant, the breach of which may give rise to an action for damages, but which has no effect whatever upon the validity or performance of the contract. The express condition, as the term is frequently used, is one which is stated in so many words in the contract itself."

In my opinion, a contract such as is involved in both inquiries here under consideration, contains an express condition whereby the contracting parties both agree that the contract shall terminate upon the happening of a certain contingency or at least agree that the employer may terminate the contract upon his option, upon the occurrence of a certain event. If the contract should contain a covenant on the part of the teacher to not marry during the term of the contract a different question would be presented. The question of the reasonableness or advisability of making such contracts is not involved. It is stated in the third branch of the headnotes of the case of *Heller* vs. *Insurance Company*, 27 O. App., 405:

> "A court is not privileged to make contracts for others, nor change conditions of contracts lawfully made because of some personal notion of what good morals and fair dealing may require in a particular case."

The validity and effect of a contract with a teacher, which provides for its automatic termination upon the marriage of the teacher was considered in the case of *Grimison* vs. *Board of Education, supra,* decided in 1932. It appeared in this case that in the month of May of a certain year, a woman teacher contracted with a board of education to teach school for nine months commencing with the opening of the school term in the following September. The contract provided that the marriage of the teacher during the term of the contract would automatically terminate the contract. She married in June of the same year, and when school commenced in September, the board of education refused to permit her to teach. It was held that the contract was valid and was automatically terminated by the teacher's marriage. In the course of the court's opinion it was said:

> "Plaintiff contends the contract was void as against public policy because in restraint of marriage, and her counsel quoted Lord Mansfield as declaring matrimony 'one of the first commands given by God to mankind after the creation, repeated again after the deluge, and ever since echoed by the voice of nature to all mankind.'
>
> The contract contained no covenant on plaintiff's part that she would not marry, and in point of fact the contract did not restrain her. So far as the contract was concerned, she was free to marry or to remain single;

but if she exercised her free choice and married, the condition of the contract that it should thereupon terminate, became operative.

* * * * *

We do not have here a case of discharge of a teacher for some reason, good, bad or indifferent. The case is one in which a person presented herself as a teacher, who had no contract of employment with the board of education, and the board was not bound to recognize her as a teacher. Likewise we have no case of arbitrary or capricious exercise of power by the board of education. Plaintiff and the board of education agreed on the term of employment. Plaintiff exercised her privilege to marry, and thereby terminated her employment."

I am herein expressing no opinion concerning the policy of the adoption of such a rule as that suggested in your inquiry. Whether such rule is or is not for the best interests of the school system is not for me to decide. My opinion as herein expressed, is limited only to the legality of such rule when, as and if properly adopted by a board of education. It is therefore my opinion that:

1. When a board of education adopts a reasonable rule for the government of teachers in its employ and thereafter enters into contracts of employment with teachers who have or should have knowledge of such rule, such rule is a part of the teacher's contract the same as though expressly rewritten therein.

2. When a board of education has adopted a rule that any single female teacher who marries during the life of her contract will automatically forfeit her rights under such contract, such rule is not contrary to public policy, and is within the legal powers of the board of education.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3201.

BLIND RELIEF—MUST BE RESIDENT OF THIS STATE TO RECEIVE SAME—PERSON RECEIVING SAME AND CHANGING RESIDENCE TO ANOTHER STATE INELIGIBLE.

SYLLABUS:

Where a person who has been receiving blind relief in this state under the provisions of Sections 2965, et seq., General Code, changes his residence and domicile to another state, he is ineligible to further blind relief in this state while residing in such other state.

COLUMBUS, OHIO, September 13, 1934.

HON. PAUL V. WADDELL, *Prosecuting Attorney, St. Clairsville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, which reads as follows:

"I submit the following matter for your opinion: 'Is a person who has duly qualified for a blind pension under Sec. 2965 of the General