

3490.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN JEFFERSON
AND GALLIA COUNTIES.

COLUMBUS, OHIO, August 7, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3491.

SCHOOL DISTRICT—RURAL—LEGALITY OF TEACHER'S EMPLOY-
MENT FOR TERM NOT COINCIDING WITH SCHOOL YEAR.

SYLLABUS:

A teacher may lawfully be employed in a rural school district for a term which does not strictly coincide with the term of a "school year" or "school years."

COLUMBUS, OHIO, August 8, 1931.

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

DEAR SIR:—This will acknowledge the receipt of the following request for my opinion, submitted over the signature of your predecessor:

"Your opinion on the following question is respectfully requested:

A teacher was elected at a regular meeting of a board of education in February, 1931, for a term of three years beginning June 1, 1931, and ending May 30, 1934.

As the statute provides that a teacher may be elected for from one to three school years and these dates do not coincide with the dates at which school years in any sense begin and end, is the election of the teacher for the above period legal?"

I am advised that the question you have submitted arose in a rural school district. The employment of teachers in a rural school district is controlled by Section 7705 of the General Code of Ohio, which reads in part as follows:

"The Board of Education of each village and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment."

The source of the power, and the limitations thereon, of a board of education, is purely statutory. While, generally speaking, a board of education is charged with the duty of maintaining the public schools of the district in which it functions, that broad general power is limited in certain respects by statutes pertaining to many of the particular duties devolving upon the board. The general authority of a board of education to employ teachers is contained in Section 7691, General Code, which reads in part as follows:

"No person shall be appointed as a teacher for a term longer than four years, nor for less than one year, except to fill an unexpired term, the term to begin within four months of the date of the appointment."

Section 7705, *supra*, it will be observed is a limitation on the power granted in Section 7691, General Code. Section 7705 applies to the employment of teachers in village and rural districts, while Section 7691 is general in terms and because of the limitations imposed on a board of education by Section 7705, applies to city and exempted village districts only.

At first glance, it would appear that, inasmuch as Section 7691 of the General Code authorizes the employment of teachers for "not longer than four years" and Section 7705, General Code authorizes their employment for a period "not longer than three school years" something different was meant by the Legislature in the use of the words "years" and "school years" in the two statutes.

By adverting to the history of these two sections of the Code, however, it will be found that, prior to the codification of the statutes in 1910, the particular provisions here under consideration were incorporated in Sections 4017 and 4017a, respectively, of the Revised Statutes of Ohio, both of which sections were a part of the so-called School Code of 1904 (97 O. L. 334, pages 361 and 363).

The general provision authorizing the employment of teachers for four years or less, formerly incorporated in Section 4017 Revised Statutes, was codified as Section 7691, General Code. As this provision appeared in said Section 4017 Revised Statutes it read:

"No person shall be appointed as a teacher for a term longer than four school years, etc."

In codifying the statute, Section 7691, General Code, inadvertently perhaps, was made to read "four years" instead of "four school years." From this fact it is clear that, so far as the intention of the Legislature is concerned, no significance whatever should be attached to the difference in the wording of Sections 7691 and 7705, General Code. That is to say, that merely because Section 7691, General Code, speaks of "four years" and Section 7705, General Code, authorizes the employing of teachers for not more than "three school years" we are not justified in saying that there is any difference in legislative intent shown, so far as the use of the terms "years" and "school years" is concerned.

At the time of the enactment of these statutes in the first place, and for a great many years before that, a school year began on the first day of September of each year and closed on the thirty-first day of August of the succeeding year. Section 4016 Revised Statutes, codified as Section 7689, General Code. Said Section 7689, General Code, was amended in 1925 (111 O. L. 371), by force of which amendment, a school year now begins on July 1 of each calendar year and ends June 30 of the succeeding calendar year. No provision was made at the time of the changing of the school year, or since, with reference to the employing of teachers. If, prior to the time of the amendment of Section 7689, General Code, changing the time of the school year, boards of education had been employing teachers for terms corresponding strictly to the school year, as it then existed, it would have been impossible to have made them conform to the new school year without employing the first lot, after the change of the school year, for a term of less than one year, which is prohibited by the statute.

It is a matter of common knowledge that school boards for a great many years have, occasionally at least, employed teachers for terms that do not strictly correspond to the school year. This administrative practice, however, is not con-

clusive. There still remains the legal question, as to what is the proper construction of the words "school years" as used in said statute, Section 7705, General Code.

The same expression is used in Section 7702, General Code, which authorizes the employment of a superintendent in city school districts for a period not longer than "five school years".

This statute came to the attention of the Court of Appeals for Fairfield County, in the case of *Layton v. Clements, et al.*, 27 O. C. A., page 369. It appeared therein that a superintendent of schools had been employed in the city of Lancaster for a period of three years, commencing July 1, 1915. At that time the school year began September 1 of each calendar year, and it was contended that the superintendent had been improperly employed because his term did not conform to the school year and was not made to end on the thirty-first day of August as provided by Section 7702, General Code.

The contract was upheld by the court and it was held, "the provision of Section 7702, General Code, that the term of a superintendent of schools must end on August 31, is directory and not mandatory, time not being of the essence of the contract." In the course of the opinion the court said:

"This provision, as we view it, is directory and not mandatory. A board of education may employ a superintendent for a term not to exceed five years, but it may employ one for less than that period, which was done in the present case. The essence of the contract under consideration is not time, and therefore we do not think the claim of the defendants in this regard is well taken."

Inasmuch as the court in the above case upheld the contract of the superintendent even though the term of the contract did not correspond with school years, and the wording of the statute, Section 7702, General Code, is precisely the same in this respect, as is Section 7705, General Code, I am of the opinion, that the holding of the court in the case above cited is controlling in the construction of the language used in Section 7705, General Code, wherein it authorizes the employment of teachers for not longer than three school years.

I am therefore of the opinion in specific answer to your question that, so far as the term for which the teacher in question was employed is concerned, the employment is legal.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3492.

SALARIES—COUNTY TREASURER AND PROBATE JUDGE APPOINTED TO FILL VACANCIES PRIOR TO AUGUST 22, 1930, AND AFTER SAID DATE ELECTED FOR UNEXPIRED TERMS—BASED ON 1930 CENSUS FROM TIME OF QUALIFICATION AFTER ELECTION.

SYLLABUS:

Where a county treasurer and probate judge were appointed to fill vacancies in such offices sometime previous to August 22nd, 1930, and were elected to fill the remainder of the unexpired terms at the general election in November,