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EDUCATION—EMPLOYEES, COUNTY BOARD OF EDUCATION—CONTRACT IN ACCORDANCE WITH §3319.081 R.C.

SYLLABUS:

1. A clerical employee of a county board of education should be employed under the provisions of Section 3319.081, Revised Code, on a contract basis.
2. Employees of a county board of education are not subject to the classified civil service tenure provisions of Chapter 143., Revised Code.
3. A non-teaching employee of a county board of education who has served continuously for two years since the date of enactment of Section 3319.081, Revised Code, should be employed thereafter as provided in division (B) of that section.

Columbs, Ohio, March 18, 1959

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have received your request for my opinion reading as follows:

“The County Board of Education employs certain persons in nonteaching capacities.

"An opinion is respectfully requested as to:

"(A) Whether or not a clerical employee of a County Board of Education shall be employed under the provisions of Section 3319.081 of the Revised Code and subject to the provisions of this section of law on a contract basis.

"(b) Whether or not the employees of a County Board of Education engaged in clerical duties are in the unclassified service, pursuant to Section 143.08, Sub-section A, Item 7 under said subsection or whether such employees are in the classified service of the State.

"Under Section B of Section 143.08 of the Revised Code, Subsection 1, the language says:

"The competitive class shall include all positions and employments in the State *and the counties*, cities and *city school districts* thereof for which it is practicable to determine the merit and fitness of applicants by competitive examinations.' (Emphasis added)

"(c) Whether or not such positions can be declared as exempt positions from the provisions of Section 143.08, subsection 8 of the Revised Code.

"Would an employee of a school district not subject to the Civil Service provisions in a non-teaching capacity who has served two or more years after the effective date of Section 3319.081, which effective date was September 1, 1955, and has not had a contract of employment, as is provided for by Section 3319.081 of the Revised Code, be entitled to the provisions of Section A or Section B of this code section?"

The section of the Revised Code to which you refer is as follows:

Section 3319.081:

"In all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code do not apply the following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:

"(A) Employees, with at least one year of service in the school district, provided their employment is continued, shall be employed for a period of not less than one year nor more than five years.

"(B) After the termination of the contract provided in division (A), and thereafter provided their employment is continued, the contract shall be for not less than two years nor more than five years.

"(C) The contracts as provided for in this section may be terminated by a majority vote of the board of education. Such

contracts may be terminated only for violation of regulations as set forth by the board of education. Any nonteaching school employee may terminate his contract of employment thirty days subsequent to the filing of a written notice of such termination with the clerk of the board."

The first criterion of applicability of this statute is that employment be by a school district wherein "the provisions of Sections 143.01 to 143.48, inclusive, of the Revised Code, do not apply." Chapter 143., Revised Code, is the Civil Service Act of Ohio. In Section 143.01, Revised Code, civil service is defined as including "all offices and positions of trust or employment in the service of the state and the counties, cities, and city school districts thereof." It will be noted that county boards of education are omitted from the coverage of these civil service statutes. Inasmuch as a county board of education is an entity distinct from the county itself, the provisions of Sections 143.01 to 143.48, Revised Code, do not apply to clerical or other employees of county boards of education, and as to such employees Section 3319.081, Revised Code, is applicable.

The answer to your first question makes it unnecessary to answer questions (b) and (c) for the reason that the civil service statutes in question do not apply to employees of county boards of education.

In answer to your final question of whether division (A) or division (B) of Section 3319.081, Revised Code, applies to a non-civil service employee of a school district, it is my opinion that after the effective date of Section 3319.081, Revised Code, an employee covered by said section who has had one year of service, and whose employment is continued, shall be employed by the school district employer for a period of not less than one year nor more than five years, pursuant to division (A) of this section. See Opinion No. 1309, Opinions of the Attorney General for 1957, p. 672. Only thereafter, and upon the termination of the contract provided for in division (A), would the employee be entitled to the benefits of division (B) of Section 3319.081, Revised Code.

In specific answer to your inquiry, it is my opinion, and you are accordingly advised, that:

1. A clerical employee of a county board of education should be employed under the provisions of Section 3319.081, Revised Code, on a contract basis.

2. Employees of a county board of education are not subject to the classified civil service tenure provisions of Chapter 143., Revised Code.

3. A non-teaching employee of a county board of education who has served continuously for two years since the date of enactment of Section 3319.081, Revised Code, should be employed thereafter as provided in division (B) of that section.

Respectfully,

MARK McELROY

Attorney General