

the breeding, raising and habitation of muskrats, is, when used by the owner, lessee or proprietor thereof for no other purpose than the raising and breeding of muskrats or as a hunting ground for other game and re-stocked with new muskrats when necessary, a muskrat farm.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

3074.

TEACHER—TEMPORARY CERTIFICATE VALID WHEN—FIXING TIME  
 FOR HOLDING EXAMINATION FOR TEACHERS' CERTIFICATES—  
 UNLAWFUL TO ANTEDATE CERTIFICATE OF TEACHER.

*SYLLABUS:*

1. *The fixing of the time for holding regular examinations for the certification of school teachers in city school districts is a matter which is within the discretion of the City Board of School Examiners, limited only by the provision that two examinations must be held in each school year.*

2. *A temporary teacher's certificate granted by a City Board of School Examiners between regular examinations, is valid from the date of issue until the next regular examination.*

3. *By virtue of the provisions of Section 7847 General Code, the provisions of Section 7817, General Code, with respect to the holding of special examinations, with the consent of the Director of Education, applies to city boards of school examiners.*

4. *A temporary teacher's certificate, valid until the next regular examination, cannot lawfully be granted under any circumstances by a County or City Board of Examiners by authority of Section 7826 or 7849 General Code, with or without the consent of the Director of Education, to an applicant who had formerly held such a certificate, granted by the same Board of Examiners.*

5. *Temporary teachers' certificates may be issued to an applicant by a city or county board of school examiners by authority of Section 7826 or Section 7849 General Code as the case may be, whether or not the applicant is eligible under the law to take a regular examination for a teacher's certificate, and the granting of such a temporary certificate has nothing whatever to do with the eligibility of the person to whom it was granted, to take a regular examination. The granting of a temporary certificate does not in and of itself make the person to whom it was granted eligible to take a regular examination.*

6. *County and City Boards of School Examiners are not authorized under the law to antedate any teacher's certificate.*

COLUMBUS, OHIO, August 22, 1934.

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

DEAR SIR:—This will acknowledge the receipt of your request for my opinion which reads as follows:

"By your Opinion No. 2557, dated April 23, 1934, several matters of administrative practice of long standing in this department seem necessary

of more definite determination, and hence I am asking your opinion in the following instances:

1. Under Sec. 7843 city boards of examiners are required to hold at least two examinations per year, the dates of such examinations not being prescribed in the law but left to the discretion of the several boards. Usually city boards hold one examination in August and the second in June of the next calendar year. If, after the August examination, a temporary certificate is issued, would it be valid until the June examination, thus covering the entire school year?

2. Does Section 7817 apply to city boards of examiners, in view of the provisions of Section 7843?

3. Under Section 7826, may a county board of examiners, by permission of the Director of Education, issue a temporary certificate during the school year 1934-'35 to one to whom a temporary certificate was issued in the school year of 1933-'34 or any previous school year?

4. Presuming that one to whom a temporary certificate has been granted under Section 7826 takes and fails to pass the next regular examination, would it be an abuse of discretion for the Director of Education to authorize a county board of examiners to grant another temporary certificate to the same person, if there remained only a few weeks of school and it seemed not to the best interest of the school to change teachers for the short time remaining?

5. Must one to whom a temporary certificate is issued be, at the time of such issuance, eligible to enter the next regular examination, or does Section 7826 expressly provide that, because of the fact that he has been granted a temporary certificate he may take the next examination, regardless of training, to extend it for the full school year?

6. Does the provision of Section 7817 that no certificate may be antedated by a county board app'y also to the exception in the same section under which the Director of Education may authorize special examinations after September 1 for persons who were employed late or whose work was modified or who otherwise could not be certificated at the regular examination?

7. If Section 7817 confers no express authority upon the Director of Education to antedate certificates resulting from special examinations, is not this authority implied in Section 7826 in that the beginning date of a temporary certificate is not specified, whereas the ending date of such certificate is definitely specified? Is not this view justified by the fact that in case of a temporary certificate issued as the result of examination under the same section both beginning and ending dates are specified?

It has always been the administrative practice of the Department of Education to make a temporary certificate cover the time taught by the person to whom it has been granted. Any other interpretation would lead to endless confusion and make the law unworkable as a relief measure, for which purpose it has always been assumed to have been provided."

The first and second questions submitted by you may be considered together. Pertinent thereto is Section 7843 General Code which reads as follows:

"Each board of city school examiners shall hold not less than two meetings each year, notice of which must be published in some newspaper of general circulation in the district. All examinations of applicants shall

be conducted at the meetings of the boards thus called. The examination of every applicant must be in the presence of at least two members of the board."

The above statute was enacted in its present form in 1904 (97 O. L. 375). In as much as no time is fixed by the statute for the holding of examinations by city boards of school examiners, it seems apparent that it was the intent of the law to permit city boards of examiners to fix the time for holding examinations. At the same time this statute was passed, and as a part of the same Act of the legislature, Revised Statute 4071, later codified as Section 7817 General Code, was enacted.

Said Section 4071 Revised Statute, as then enacted, provided that County Boards of Examiners should hold meetings for the examination of applicants for county teachers' certificates on the first Saturday of every month of the year.

Said Section 7817 General Code was later amended, in 1919, (108 O. L., Part 1, Page 66) to provide that examinations of applicants for county teachers' certificates should be held on the first Saturdays of September, May and July and on the first Friday of August of each year. At the same session of the legislature, in 1919, at which time Section 7817 General Code was amended, as noted above, Section 7847 General Code was enacted to read as follows: (108 O. L. Part 1, Page 686) :

"All provisions of preceding and following sections pertaining to county school examiners and applicants for county teachers' certificates shall apply also to city examiners and applicants for city teachers' certificates unless there are specific provisions of law applying to the latter."

The provisions of Section 7847 General Code, *supra*, have not since been changed. It seems apparent that it was not the intent of Section 7847, General Code, to make the provisions of Section 7817 General Code, with respect to the time of holding examinations by County Boards of Examiners, apply to City Boards of Examiners, in as much as city boards are not directed by the terms of Section 7843, General Code, to hold more than two examinations each year, whereas, county boards are required to hold four examinations each year, and the dates for such examinations are definitely fixed by the statute. This is further made manifest by the provisions of Section 7847-1, General Code, enacted at the same time Section 7847, General Code, was enacted, wherein it is provided that City Boards of Examiners shall provide the questions used in the city examinations, but may arrange to use questions prepared by the Superintendent of Public Instruction, "for such dates as may be arranged."

Section 7843, General Code, should be regarded as a "specific provision of law" applying to the time of holding examinations by City Boards of Examiners.

In as much as Section 7843, General Code, contains no provision with respect to holding special examinations as to particular individuals, with the consent of the Director of Education, it may safely be said, in my opinion, in view of the provisions of Section 7847, General Code, that that part of Section 7817, General Code, providing for special examinations, applies to City Boards of Examiners as well as to County Boards.

With respect to the granting of temporary certificates by City Boards of Examiners, Section 7849, General Code, provides:

"Between regular examinations, city boards of school examiners, at

their discretion, may issue temporary certificates, which shall be valid only until the next regular examination held by the board after the issue thereof."

From the language of the above statute, it is clear that a temporary certificate, issued by a City Board of School Examiners, is valid until the next regular examination, whenever that may be, and until then only.

I come now to a consideration of your third and fourth questions, which will be considered together. Section 7826, General Code, reads as follows:

"Between regular examinations boards of examiners under such conditions as may from time to time be prescribed by the superintendent of public instruction may issue temporary certificates which shall be valid only until the next regular examination held by such boards after the issue of such certificate, and at any regular examination such board, upon proper application being made, subject to the same rules and laws as apply to the granting of regular certificates, may issue temporary certificates valid from the date of issue to the first day of September following."

Although the above statute does not in terms expressly prohibit the granting of a temporary teacher's certificate, time after time and year after year, to the same person, that inhibition is implied from the very fact that it expressly provides that any such temporary certificate shall be valid only until the next regular examination. The only reported case that I have found which deals with temporary certificates, is the case of *Lee vs. School District*, 71 Michigan 361, 38 Northwestern 867, referred to in my former Opinion No. 2557.

The purpose of granting temporary certificates to school teachers, as stated by the Supreme Court of Michigan in the case referred to above, is to bridge over a temporary situation in which it is impossible to secure proper teachers who have certificates and it is impossible for the persons who may be employed, to procure a certificate in the regular way. It must be borne in mind that the very purpose of requiring teachers to be properly certificated is so that competent teachers only will be employed to teach in the public schools. Obviously, the intent of the law is that the competency of teachers is generally to be determined by examination or by certain previous preparation and experience, else the various and diverse provisions of law for holding examinations for determining the fitness of teachers would be unnecessary. It is only for the bridging over of emergency situations that the provisions for temporary and emergency certification of teachers is made.

If temporary certificates may be issued time after time to the same person, merely upon the wish or desire or at the instance of a Board of Examiners, or anyone else, without examination, the statutes providing for the examinations and fixing the qualifications for certificates and for entrance to the examinations would serve no purpose whatever.

The case of *Lee vs. School District*, *supra*, is cited with approval by the text-writers and in *Corpus Juris*, Vol. 56, Page 376 it is stated, "In the case of a special certificate issued without examination, to continue in force until the next regular examination, a renewal will not be granted to an applicant who fails to pass the regular examination."

In my opinion, a temporary certificate, valid only until the next regular examination, cannot lawfully be granted, under any circumstances by a County or City Board of Examiners by authority of Section 7826 or 7849, General Code,

with or without the consent of the Director of Education, to an applicant who had previously held such certificate granted by the same Board of Examiners.

With respect to your fifth question, it may be stated that the law makes no provisions as to the qualifications of a person to whom a temporary certificate, granted by authority of Section 7826 or 7849 General Code, may be granted.

Section 7849 General Code provides that temporary certificates may be granted at the discretion of the City Board of Examiners.

Section 7826 General Code provides that County Boards of Examiners may grant temporary certificates "under such conditions as may from time to time be prescribed by the Superintendent of Public Instruction." It is not necessary that an applicant for a temporary certificate be eligible to take a regular examination, unless the Director of Education so prescribes, and clearly, there is nothing in the statute from which it might be inferred that one to whom a temporary certificate is issued, becomes by reason thereof eligible to take the necessary regular examination. It is hardly likely, however, that a Board of Examiners would want to grant a temporary certificate to an applicant who was not eligible to take a regular examination, if the Board knew it.

Your sixth question involves a proper interpretation to be given to Section 7817 of the General Code of Ohio. This section reads as follows:

"Each board shall hold public meetings for the examination of applicants for county teachers' certificates on the first Saturday of April, May and June and on the last Friday of August of each year unless any such day falls on a legal holiday, in which case it shall be held on the corresponding day of the succeeding week, at such place within the county as, in the opinion of the board, best will accommodate the greatest number of applicants. In no case shall the board hold any private examinations or antedate any certificate, except that with the consent of the director of education as to the particular individuals, special examinations may be held after September 1 for persons who were employed late or whose work was modified or who otherwise could not be certified at the regular examinations. Such applicants shall be counted in the April examination following in reporting and computing fees."

The exception in the above statute following the provision that "In no case shall the board hold any private examination or antedate any certificate" goes no further than to authorize the holding of special examinations under certain circumstances "with the consent of the Director of Education." It does not authorize the Director of Education to consent to the antedating of a certificate, nor does it authorize the antedating of a certificate under any circumstances. The language of the exception can be extended no further than its plain language imports. It is a settled rule of law that the exceptions in a statute are to be strictly construed. Lewis' Sutherland on Statutory Construction, Second Edition, Section 351. There is no justification for reading something into this exception which is not there.

I come now to the consideration of your seventh question wherein you advance the argument that in as much as Section 7826, General Code, expressly provides that temporary certificates granted at regular examinations shall be valid from the date of issue to the first of the following September, whereas those granted between regular examinations are not expressly limited as to the beginning date of their validity, it may be implied that the beginning date of such certificates is within the discretion of the granting authority and such certi-

ificates, therefore, lawfully may be antedated. Said Section 7826 General Code reads as follows:

“Between regular examinations boards of examiners under such conditions as may from time to time be prescribed by the superintendent of public instruction may issue temporary certificates which shall be valid only until the next regular examination held by such boards after the issue of such certificate, and at any regular examination such board, upon proper application being made, subject to the same rules and laws as apply to the granting of regular certificates, may issue temporary certificates valid from the date of issue to the first day of September following.”

Upon consideration of the provisions of the above statute, standing alone, there is some force to the argument that the construction for which you contend is tenable. It is true that the statute does not expressly prohibit the antedating of certificates or expressly fix the time from which such certificates shall have validity. It cannot be assumed, however, to sanction the antedating of certificates simply because it does not expressly prohibit the practice or expressly provide for the beginning date of such certificates, especially in view of the express prohibition contained in Section 7817, General Code, to the effect that County Boards of Education shall not “antedate any certificate.”

Undoubtedly the statute was enacted as a relief measure, as you suggest, to bridge over situations arising between regular examinations when the necessities of the situation warrant the granting of temporary certificates, but the authority there granted should not be extended to cases other than those which it was intended to relieve. The statute must be construed as being in *pari materia* with Section 7817, General Code, and with Section 7830, General Code, which expressly provides that no teacher shall be employed unless he possesses a proper certificate to teach the subjects for which he is employed to teach. If the statute were to be construed as permitting the granting authority to antedate certificates issued between regular examinations, simply because it does not prohibit such antedating, it could be argued with equal force that the limits of such antedating were within the discretion of the granting authority, in as much as the statute does not place any limit thereon. This construction would place in the hands of the certifying authority the power to antedate a certificate so as to give validity to a contract which a Board of Education purported to make with a teacher who at the time had no certificate, in direct violation of Section 7830, General Code.

This very question was involved in the unreported case of *Anderson vs. Wolf, et al*, decided January 24, 1934, by the Court of Appeals of Green County, to which reference is made in my former Opinion No. 2557.

In view of the decision of the case of *Anderson vs. Wolf, supra*, and of the provisions of Section 7826, General Code, when read in the light of other statutes with which it is in *pari materia*, consideration being given to the manifest purpose of the enactment of the statute, I am of the opinion that it is not capable of a construction granting to the certifying authority the power to antedate temporary certificates issued between regular examinations.

In specific answer to your questions, I am of the opinion:

1. The fixing of the time for holding regular examinations for the certification of school teachers in city school districts is a matter which is within the discretion of the City Board of School Examiners, limited only by the provision that two examinations must be held in each school year.

2. A temporary teacher's certificate granted by a City Board of School Examiners between regular examinations, is valid from the date of issue until the next regular examination.

3. By virtue of the provisions of Section 7847, General Code, the provisions of Section 7817, General Code, with respect to the holding of special examinations, with the consent of the Director of Education, applies to city boards of school examiners.

4. A temporary teacher's certificate, valid until the next regular examination, cannot lawfully be granted under any circumstances by a County or City Board of Examiners by authority of Section 7826 or 7849, General Code, with or without the consent of the Director of Education, to an applicant who had formerly held such a certificate, granted by the same Board of Examiners.

5. Temporary teachers' certificates may be issued to an applicant by a city or county board of school examiners by authority of Section 7826 or Section 7849, General Code, as the case may be, whether or not the applicant is eligible under the law to take a regular examination for a teacher's certificate, and the granting of such a temporary certificate has nothing whatever to do with the eligibility of the person to whom it was granted, to take a regular examination. The granting of a temporary certificate does not in and of itself make the person to whom it was granted eligible to take a regular examination.

6. County and City Boards of School Examiners are not authorized under the law to antedate any teacher's certificate.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3075.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO THE SALE OF A PARCEL OF ABANDONED OHIO CANAL LAND, FAIRFIELD COUNTY—M. E. CEMETERY ASSOCIATION OF MILLERSPORT, OHIO.

COLUMBUS, OHIO, August 23, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a transcript of your proceedings relating to the sale to the M. E. Cemetery Association of Millersport, Ohio, of a small parcel of abandoned Ohio canal lands in Section 4, Town. 16, Range 18, Fairfield County, Ohio, and also a deed form of a deed to be executed by the Governor conveying said parcel of land to the grantee above named.

The parcel of land above referred to is a portion of the spoil embankment of said canal in the section, township and range above noted, and is more particularly described in said transcript and deed form as follows:

“Commencing at a point in the south line of original lots in the village of Millersport, Ohio, as laid out by Mathias Miller of Fairfield County, Ohio, on the 12th day of February, 1827, as shown by the recorded plat