

7003

1. BOARD OF EDUCATION — REGULAR MEETING — ADJOURNED TO MEET IN SPECIAL SESSION—ADJOURNED MEETING — ALL MEMBERS PRESENT — VOTED UNANIMOUSLY — LEGAL MEETING — ACTIONS LAWFULLY TAKEN.
2. SECTION 3319.07, R. C.—TEACHER—ELECTED BY BOARD OF EDUCATION OF LOCAL DISTRICT—PRIOR NOMINATION OF TEACHER BY SUPERINTENDENT OF COUNTY DISTRICT REQUIRED.

## SYLLABUS:

1. Where a board of education at a regular meeting at which one member was absent, adopted a motion "to adjourn to meet in special session, on a named date, for the purpose of opening bids" for a project, and on the day named for such special session all members of the board were present and all voted unanimously on each of several items of business, such adjourned meeting was in all respects a legal meeting, and actions taken at the same, including notices to teachers of the intention of the board not to re-employ them, were lawfully taken at such meeting.

2. Under the provisions of Section 3319.07, Revised Code, the board of education of a local school district has no authority to elect a teacher unless such teacher has been nominated by the superintendent of the county district of which the local district is a part; and an attempt by the board to employ a teacher subject to the approval of the superintendent would not be in compliance with the law.

Columbus, Ohio, August 14, 1956

Hon. Warren F. Sheets, Prosecuting Attorney  
Gallia County, Gallipolis, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"On the 2nd day of April, 1956, the local board of education of the Southwestern Local School District in Gallia County, Ohio, met in regular session and transacted the official business of the school district. Immediately before adjournment, there was a motion made by a member of the board to have a 'special session on April 17, 1956, for the purpose of opening bids', the same was approved by the Board. There was one member absent at this regular meeting.

“Without further notice, the board met in special session on April 17, 1956, all members of the board present, stating this special session, as a copy of the enclosed minutes will show, was for the ‘specific purpose of opening bids for the drilling of a well on the new building site.’ This was done according to the minutes. Before adjournment of this special meeting, there was a motion made by a member of the board to notify Teacher W. that she would not be reemployed for the school year 1956-57, said notice being given in accordance with Section 3319.11 of the Revised Code of the State of Ohio.

“The Southwestern Local School District has an enrollment of less than 800 pupils, and this was Teacher W.’s first year to teach, never having taught any place before, and thereby had a one year contract.

“Further, as the minutes indicate, Teacher B. was employed by the board for the school year 1956-57 ‘provided that she is approved by the County Superintendent of Schools’.

“My questions are: (1) Did the board of education, meeting in special session, have a specific purpose, to-wit: ‘To open bids for the drilling of a well on the new building site’, have authority to notify Teacher W. that she would not be reemployed for the school year 1956-57? (2) Can the board of education hire a teacher subject to the approval of the County Superintendent, when Section 3319.07 of the Revised Code of the State of Ohio says that no teacher or principal shall be employed unless nominated by the Superintendent of Schools, when said teacher has not been nominated in the first instance?

“I am enclosing a certified copy of the board’s minutes of April 2, 17 and May 7, for your inspection.”

1. Your first question relates to the legality of the action of the board above referred to, at a “special session”. As a matter of fact, it appears to me that the meeting referred to was not a special session, but was rather an adjourned session for a stated, specific purpose, to-wit, the opening of bids for the drilling of a well. The wording of the motion as shown by the minutes, was “to adjourn to meet in special session April 17, for the purpose of opening bids”.

Section 3313.16 Revised Code, 4751 General Code, provides for special meetings of a board of education to be called either by the president or clerk of the board, or by any two members, by serving upon each member of the board a written notice of the time and place of such meeting, at least two days prior to the date of the meeting.

In the case you present, one member of the board was absent when the resolution was adopted providing for the adjourned meeting. If, therefore,

the second meeting had not been attended by that absent member, and he had not been given notice of it there might be some question as to the validity of the actions taken at such meeting. However, that member was present at the adjourned meeting and took part in all the actions that were taken. Accordingly, any question as to the legality of the actions taken at that adjourned meeting may be considered as dissipated by the fact that all members were present and participated. That conclusion is strengthened by the facts appearing from the minutes of the board that at the next following meeting all members being present the minutes of the adjourned meeting were unanimously approved.

Even if the meeting were to be considered as a special meeting such as is contemplated by the statute, it would appear that it would be a legal meeting if all members were present.

In Opinion No. 2400, Opinions of the Attorney General for 1930, page 1534, it was held :

“A special meeting of a board of education is a legal meeting and the business transacted at said meeting is valid if the meeting is attended and participated in by all the members of the board, even though such members had not previously thereto been notified of the time and place of holding such meeting strictly in accordance with Section 4751, of the General Code.”

Substantially the same conclusion was announced in Opinion No. 314, Opinions of the Attorney General for 1933, page 349, the first syllabus of which reads as follows :

“1. A meeting of a board of education at which all the members are present and in which they all participate, is a valid and legal meeting even though it is not held as a regular meeting and no notice was given of the meeting, as is provided by Section 4751, General Code.”

The same principle is recognized in *Corpus Juris Secundum*, Volume 78, Section 123, at page 913, and also in *McQuillin on Municipal Corporations*, Section 13.37.

In the paragraph of *Corpus Juris Secundum*, above referred to, attention was called to the fact that a notice of a meeting of the board of education or similar boards, required by the statute, is for the benefit of members of the board rather than the public.

The fact that the adjourned meeting in question, was called for the

purpose of considering bids for drilling a well, does not, in my opinion prevent the board with all members present, from disposing of any other matters that may be presented. Even as to "special meetings", there is nothing in the statute that requires the notice thereof to specify the purpose or limit action to such purpose.

Accordingly, since all the members of the board were present, and participated in this so-called "special meeting" or "adjourned meeting", it appears to me that the board was entitled to take any action it saw fit on any subject besides the one for which the meeting was arranged.

Accordingly, action taken notifying a teacher that she would not be employed for the succeeding year, was within the power of the board. Section 3319.11 Revised Code, provides that any teacher employed under a limited contract, will be considered as re-employed for the succeeding year "unless the employing board gives such teacher written notice of its intention not to re-employ him on or before the thirtieth day of April, or thirty days prior to the termination of such teacher's school year, whichever date occurs the earlier." Assuming that April 17th was at least thirty days prior to the closing of the school year, it would appear that the resolution was timely adopted. I am assuming that notice was given to the teacher of this action. Since the statute does not require such action to be taken at any particular meeting or with any particular formality, I see no reason why such action should not be regarded as valid.

2. Your second question relates to the procedure provided in the law relative to hiring a teacher. It appears from the transcript of the minutes furnished me that the following action was taken:

"Motion by B. to employ Miss B. S. as teacher in the Perry school for the year 1956-1957, provided she is approved by the county superintendent of schools."

This motion was duly seconded and adopted by unanimous vote of the board.

The statute governing the employment of teachers, Section 3319.07, Revised Code, reads as follows:

"\* \* \* In local school districts, *no teacher or principal shall be employed unless* nominated by the superintendent of schools of the county school district of which such local school district is a part; by a majority vote of the full membership of such board, the board of education of any local school district may, after consider-

ing two nominations for any position made by the county superintendent, re-employ a person not so nominated for such position.”  
(Emphasis added.)

If this provision had read, “the board may employ a teacher approved by the superintendent,” there might be some plausibility in the argument that all that the law required was an agreement by the board and the superintendent on the same teacher, and that it would make no difference whether the board or the superintendent spoke first. However, the legislature chose to use language which amounts to a prohibition against any action by the board in the employment of a teacher except when the superintendent has made a nomination. Manifestly, if the board may employ a teacher, as was attempted in this case subject to the approval of the superintendent such action would have the effect of putting pressure on the superintendent and embarrassing him in exercising his freedom of choice and in effect forcing him to submit to or veto the action of the board.

I cannot give the language of the statute any other than its natural meaning. “No teacher shall be employed unless nominated,” appears to me to have but one possible meaning, and that is a literal meaning which will forbid action by the board unless based on a previous nomination by the superintendent.

Accordingly, in answer to your questions it is my opinion that :

1. Where a board of education, at a regular meeting at which one member was absent, adopted a motion “to adjourn, to meet in special session, on a named date, for the purpose of opening bids” for a project, and on the day named for such special session all members of the board were present and all voted unanimously on each of several items of business, such adjourned meeting was in all respects a legal meeting and action taken at the same, including notices to teachers of the intention of the board not to re-employ them were lawfully taken at such meeting.

2. Under the provisions of Section 3319.07, Revised Code, the board of education of a local school district has no authority to elect a teacher unless such teacher has been nominated by the superintendent of the county district of which the local district is a part; and an attempt by the board to employ a teacher subject to the approval of the superintendent would not be in compliance with the law.

Respectfully,

C. WILLIAM O'NEILL

Attorney General