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## EDUCATION: EMPLOYEE, NON-PROFESSIONAL

CONTRACT OF EMPLOYMENT, TERM—§3319.081, RC—AFTER ONE YEAR OF SERVICE, DIVISIONS (A) OR (B), §3319.081 RC CONTROL—INVESTS PROPERTY RIGHTS IN EMPLOYEES—1954 OAG 3917, p. 294 NOT DECLARATIVE OF LAW SINCE ENACTMENT OF §3319.081 RC.

## SYLLABUS:

1. Pursuant to Section 3319.081, Revised Code, employees with at least one year of service in the school district, if rehired, must be rehired under a contract of employment as provided in divisions (A) or (B) which contract of employment invests in such employees property rights which cannot be divested except as provided in said section.

2. Since the enactment of Section 3319.081, Revised Code, that portion of the ruling in Opinion No. 3917, Opinions of the Attorney General for 1954, page 294, relating to employees hired as provided in divisions (A) and (B) of such section, is no longer declarative of the law.

Columbus, Ohio, August 22, 1957

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

Dear Sir:

Your request for my opinion reads as follows:

“A State Examiner of a school district has requested an interpretation of the effect of the provisions of Section 3319.081 R. C. in connection with the employees of a County Board of Education.

“In your opinion dated June 2, 1954, OAG No. 3917, page 294, you held that, employees appointed or employed by the County Board of Education did not hold their positions by contract and have no vested interest or private right of property in their positions.

“However, Section 3319.081 provides that in all school districts where the provisions of R. C. 143.01 to 143.08 inclusive do not apply, a contract system of employment as provided in that section is to be followed.

“A formal opinion is requested, as to whether or not the effect of the above cited opinion, 3917 has been superseded by the enactment of Section 3319.081 R. C.”

In the opinion to which you refer, the question presented was whether the Brown County board of education would be liable in an action for damages for breach of contract for abolishing the position of stenographer to the county superintendent of schools and the position of county elementary supervisor. Both positions were created pursuant to statutory authority and in each case the positions were abolished during the term for which the appointee was employed. The opinion there given was that officers and employees appointed by a county board of education pursuant to law do not hold their positions by contract, and have no vested interest or private right of property in their respective positions.

In the situation there presented no statutes existed whereby the employees were to be hired for definite periods of time and in none of the authorities cited by my predecessor was there a statute involved which required an employee to be hired for a stated term. Since Section 3319.081, Revised Code, specifies a minimum and maximum period for which certain employees are to be hired, the language of this statute must be examined to determine what rights, if any, have been created for such employees who come within the purview of the statute, and to determine whether this statute in effect supersedes Opinion No. 3917 above cited.

Section 3319.081, Revised Code, provides as follows:

“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 non-teaching 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.”

This statute specifically provides the minimum and maximum terms for which employees with at least one year of service in the school district, shall be re-employed if re-employed at all.

It imposes no duty upon the school board to re-employ such employees but if they are re-employed then the provisions of Section 3319.081, Revised Code, must be complied with. In this regard it should also be noted that with respect to employees who are in their initial year of employment in the school district no contractual safeguards are provided by this statute and as to these people the proposition of law enunciated in Opinion No. 3917, Opinions of the Attorney General for 1954, page 294, remains in full force and effect.

However, as to such employees who are re-hired in accordance with divisions (A) or (B) of this statute, it clearly appears that new rights are created and these people are given a property right in their contract of employment which cannot be divested except as provided in said statute. In this respect your attention is invited to division (C) of Section 3319.081, Revised Code, which designates the condition under which the board of education may terminate the contract of employment and the procedure which the employee must follow if he wishes to terminate the employment agreement. With regard to the former it is stated that such contract may be terminated by a majority vote of the board of education *but only* if there is a violation of regulations as set forth by the board of education. This is the only condition under which the board of education may terminate the contract.

Therefore, it is my opinion and you are advised that :

1. Pursuant to Section 3319.081, Revised Code, employees with at least one year of service in the school district, if rehired, must be rehired under a contract of employment as provided in divisions (A) or (B) which contract of employment invests in such employees property rights which cannot be divested except as provided in said section.

2. Since the enactment of Section 3319.081, Revised Code, that portion of the ruling in Opinion No. 3917, Opinions of the Attorney General for 1954, page 294, relating to employees hired as provided in divisions (A) and (B) of such section, is no longer declarative of the law.

Respectfully,  
WILLIAM SAXBE  
Attorney General