

**OPINION NO. 74-004****Syllabus:**

Teachers employed on an annual basis, who work two to three hours per day are part-time teachers. Such two to three hour days are not "days" as that term is used in R.C. 3319.09 to define the term "year" for purposes of determining eligibility for continuing service status under R.C. 3319.11.

To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio  
By: William J. Brown, Attorney General, January 21, 1974

I have before me your request for my opinion which states the facts and poses the question as follows:

"I write for your opinion on a problem which exists in several of the local school districts in Stark County.

"Teachers are hired by a Board of Education for what is believed to be a part-time basis. These teachers work two to three hours per day anywhere from three to five days per week. They are hired at the beginning of the school year for the full year and paid a salary for the full year.

"The question presented by this situation is whether or not said teachers, assuming they have the proper certification, qualify for consideration for continuing contract status pursuant to Section 3319.08 of the Ohio Revised Code. I know that your predecessor ruled in OAG 51-717 that a part-time teacher does not accrue service which would lead to continuing contract status. However, we are concerned that the above-described service may not, in fact, be considered part-time service in that all of the teachers are employed on an annual basis and some of said teachers work more than 120 days (although not full days) during the school year."

Eligibility standards for continuing service contracts (tenure) for public school teachers were established by the legislature in R.C. 3319.11 which stipulates:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification, who within the last five years have taught for at least three years in the district, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district, but the board of education, upon the recommendation of the superintendent of schools, may at the time of employment or at any time within such two-year period declare any of the latter teachers eligible."

Whether a teacher has completed the requisite number of years of service within the district to attain continuing service status "is a question of fact to be determined in the light of what constitutes a year for the purpose of making the determination." Opinion No. 4401, Opinions of the Attorney General for 1941. "Year" is defined under R.C. 3319.09(B) which reads as follows:

"'Year' as applied to term of service means actual service of not less than one hundred twenty days within a school year; provided that any board of education may grant a leave of absence for professional advancement with full credit for service."

It is clear, therefore, that service of less than 120 days does not constitute a year which could be applied to establish one's

eligibility for a continuing service contract under the terms of the statute. See also Opinion No. 717, Opinions of the Attorney General for 1951, at page 453. That Opinion concerned a part-time teacher who was employed by the school board three days per week. My predecessor's conclusion that she was not eligible for continuing contract status was based on the fact that the teacher had not rendered actual service of 120 days during any one year of her employment by the board of education.

Given the above set of facts, you inquire whether teachers employed on an annual basis, who work in excess of 120 days during the school year but only for two or three hours each day, are eligible for continuing service contracts. At issue is the question of whether teaching for two or three hours constitutes a working day within the meaning of the statute.

"The word 'day' does not have any one fixed definition, but its meaning must always be determined by the subject matter." 52 O. Jur. 2d 199, Time, Section 10. The general custom of the profession as to the length of a normal working day thus is determinative. In Cole v. Bachelder-Worcester, 160 A. 101 (1932), the court discussed the importance of custom in determining what constitutes a normal working day at 102 as follows:

"All of these terms (part-time, over-time, full-time) assume that a certain number of hours customarily constitutes a day's work and that work for a certain number of days constitutes a week's work within a given industry or factory. One who works less than the usual number of hours per day is said to have a part-time job. \* \* \* Full-time ordinarily signifies the normal or customary period of labor per day or per week in the establishment where the workman is employed for the kind of work which he is hired to perform."

See also, Beaver Dam Coal Co. v. Hacker, 202 Ky. 398 (1924); and see Opinion No. 1605, Opinions of the Attorney General for 1950, in which one of my predecessors discussed these cases and relied on "custom" in ascertaining the meaning of the term "full-time" as it relates to a "day" and a "year". Although there exist no statewide requirements of minimum hours in a teacher's school day, there is a statutory requirement which stipulates the minimum number of hours of instruction that students must have in any school day. R.C. 3313.48 provides that:

"\* \* \* Except as otherwise provided in this section, each day for grades seven through twelve shall consist of not less than five clock hours with pupils in attendance, \* \* \* each day for grades one through six shall consist of not less than five clock hours with pupils in attendance which may include fifteen minute morning and afternoon recess periods, \* \* \*."

This statute does provide evidence as to the custom regarding the length of a school day as contemplated by the legislature. My predecessor in Opinion No. 65-198, Opinions of the Attorney General for 1965, referred to a part-time teacher as follows:

"A part time certificated employee would be one employed as a substitute teacher under the provisions of Section 3319.10, Revised Code, or one

regularly employed to work less than the full school day or school year. This practice is common in small school systems where a person is hired to teach one subject."

It appears, therefore, that a teacher employed for something less than a full school day is working but part-time and such a day cannot be counted as one of the 120 days established as the minimum amount constituting a year for purposes of accumulating service which enables a teacher to acquire a continuing service contract.

Several situations have arisen in the past in which my predecessors came to similar conclusions. In Opinion No. 1421, Opinions of the Attorney General for 1964, my predecessor considered the question of whether a local board of education was permitted to release a teacher from part of his normal full-time workday for purposes of activities and duties in a professional or employee's association at a reduced salary. The inquiry was answered in the negative; however, the Attorney General expressed the opinion that a teacher with such professional duties could be hired on a part-time basis, although such part-time service would not count as a year for purposes of achieving the prerequisites of a continuing service contract. He made the following observation as to legislative intent with regard to crediting part-time employment as a year for purposes of continuing service status under R.C. 3319.11:

"In providing the standards for continuing contract status or 'tenure' the General Assembly must have intended a year of service to mean a full year and not a partial year or a year of service on a part-time basis. This is the plain and obvious meaning of the word as used in Section 3319.11, supra. So if a teacher worked part-time for a year in order to devote the remainder of time to duties as president of a teachers' association, that year could not be counted as a full year for purposes of attaining continuing contract status. \* \* \*"

In Opinion No. 4401, Opinions of the Attorney General for 1941, at page 891, a similar question concerned a vocational agricultural teacher who was employed for one year on a half-day basis with two different boards and since that time had worked full time for one board. The question arose as to whether the year in which he was employed on a half-day basis was to be credited as one of the years of full time service which were required prior to the issuance of a continuing service contract. My predecessor's conclusion that the employment on a half-day basis did not constitute a year of service was based on the "well-settled principle of law that fractions of a day are not considered in the legal computation of time." He said further at 895:

"\* \* \*[W]hen, however, his [the teacher's] contract expressly or by necessary implication, provides for service for a half day only or by any other expressly or impliedly mentioned part of the day, he is not bound to render service for a larger portion of each day than the contract calls for and his employer has no claim on his time beyond that fixed by the contract. Under such circumstances, the teacher may not be credited with a full year's service under the Teacher's Continuing Contract Law unless the total fraction of days as fixed in the contract total 120 days in each such year." (Emphasis added.)

Based on the strict requirements established by the General Assembly for continuing service status, it does not appear that it intended to award tenure based on part-time employment. " \* \* \* [1]n order to acquire the status of a permanent teacher under a tenure law and with it the consequent security of permanent employment, a teacher must comply with the precise conditions articulated in the statute." 68 Am. Jur. 2d 484, Schools, Section 152. As my predecessor stated, with respect to the same situation which you pose, in Opinion No. 69-069, Opinions of the Attorney General for 1969:

"It is important at the outset to determine legislative intent in the matter. Did the General Assembly intend to extend full tenure credit for a half-time or part-time teacher? I think it did not."

In specific answer to your question it is my opinion, and you are so advised, that teachers employed on an annual basis, who work two to three hours per day are part-time teachers. Such two to three hour days are not "days" as that term is used in R.C. 3319.09 to define the term "year" for purposes of determining eligibility for a continuing service status under R.C. 3319.11.