

3223.

REVOCATION OF TEACHERS' CERTIFICATES—SUPERINTENDENT OF PUBLIC INSTRUCTION WITHOUT AUTHORITY TO CONSIDER SUCH CASES—BOARD OF COUNTY SCHOOL EXAMINERS HAS SUCH AUTHORITY—IN CITY SCHOOL DISTRICT BOARD OF CITY SCHOOL EXAMINERS.

1. *Under existing law the superintendent of public instruction is without authority to consider cases involving the revocation of teachers' certificates, the sole reference to the same occurring in section 7827 G. C., wherein the board of county school examiners is authorized to conduct a hearing upon the question of revocation of the certificate of a person who is "the recipient of a certificate".*

2. *Under the provisions of section 7847 G. C. the authority given to a board of county school examiners for the revocation of teachers' certificates, as set forth in section 7827 G. C., is vested in a city school district in the board of city school examiners.*

COLUMBUS, OHIO, June 16, 1922.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following:

"Under section 7821-1 General Code, as it has been in effect ever since 1914, it is provided that 'five-year and eight-year certificates shall be renewed by the superintendent of public instruction upon proof of the successful teaching of the holders thereof'. The wording is slightly different in the code as in effect up to August, 1921.

In section 7827, which pertains to county certificates, and apparently by section 7847 to city certificates, it is provided that the local board of school examiners, county or city, may revoke for the causes named in section 7827 upon proper hearing a certificate issued by themselves.

But when a certificate originally issued by a county or city board of examiners has been renewed under the provision of section 7821-1, shall the superintendent of public instruction proceed to consider the case and if the holder is found guilty revoke certificate, or shall the revocation be considered as coming under the jurisdiction of the board of examiners which originally issued the certificate, or the board of examiners in the district in which the teacher is serving?

If the duty of considering revocation is that of the superintendent of public instruction is it possible to cite me to anything which would define the proper plan of procedure in such a case?"

Section 7821-1, as it appeared in 104 O. L., p. 100, read as follows:

"All five-year and eight-year certificates now granted shall continue in force until the end of their terms and shall be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully until the time of each renewal. * * * "

As amended in 109 O. L., p. 188, section 7821-1 now reads in part:

"Five-year and eight-year certificates shall be renewed by the superintendent of public instruction upon proof of the successful teaching of the holders thereof. * * *

Five-year and eight-year certificates that were permitted to expire without application for renewal at the time of such expiration may be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully for five years."

Other sections of the law pertinent to your inquiry are as follows:

"*Sec. 7827.* No certificate shall be issued to any person who is less than eighteen years of age. If at any time the recipient of a certificate be found intemperate, immoral, incompetent or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered. Before any hearing is had by a board of examiners on the question of the revocation of a teacher's certificate, the charges against the teacher must be reduced to writing and placed upon the records of the board. He shall be notified in writing as to the nature of the charges and the time set for the hearing, such notice to be served personally or at his residence; and be entitled to produce witnesses and defend himself. The examining board may send for witnesses and examine them on oath or affirmation which may be administered by any member of the board touching the matter under investigation."

"*Sec. 7828.* The fees and the per diem of examiners for conducting such investigation at three dollars a day each and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board and be paid out of the county treasury upon the order of the auditor."

"*Sec. 7845.* All five-year and eight-year certificates now granted shall continue in force until the end of their terms and shall be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully until the time of each renewal. Each application for renewal shall be accompanied by a fee of fifty cents and shall be filed in the office of the superintendent of public instruction."

"*Sec. 7847.* 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."

It will be noted that the same authority for the superintendent of public instruction to renew certificates exists in 7845 G. C., as well as 7821-1 G. C., to which you invite attention. However, while this authority of renewal of certificates is specifically given to the superintendent of public instruction, as stated, nowhere in the General Code is there any authority found or the procedure prescribed for the revocation of a certificate by the state superintendent of public instruction. Apparently we are confronted by the unusual proposition that the

county board of school examiners can grant certain certificates but cannot renew that particular kind of certificate, the authority for renewing being given to the superintendent of public instruction; the county board of school examiners has been given specific authority to revoke certificates as set forth in 7827 G. C., but nowhere in the code does authority appear for any revocation proceedings by the state superintendent of public instruction, even though he issued the renewal of the local certificate in question and is also interested in more or less degree in the certificates issued by the state board of school examiners. What has happened is that the General Assembly has given this authority of renewal of county teachers' certificates to the superintendent of public instruction and then omitted any reference whatever as far as that official is concerned to the revocation of such certificates which were renewed.

The revocation of a certificate to teach school is a very serious matter in that it removes a person holding the certificate from the occupation which he might desire to pursue.

It would appear that this right of the individual was what the law-making body had in mind when it enacted 7827 G. C. and provided therein for a hearing or trial in the matter. Section 7827 provides that the certificate may be revoked at any time if "*the recipient of a certificate*" is found intemperate, immoral, incompetent or negligent, by the board of county school examiners or *any two of them*. Here is a direct statement that the action of two members of the board is necessary in the affirmative before the revocation could take place, and the deciding of the same was not left in the hands of any one individual. The section then provides further that the charges against the teacher (which must lie to the grounds appearing in the section) must be reduced to writing, placed upon the records and the "recipient of a certificate" notified in writing as to the nature of the charges and the time set for hearing. It is further provided that he is entitled to produce witnesses and defend himself and the examining board may send for witnesses, and all witnesses may be examined on oath or affirmation. Thus section 7827, providing that the revocation must have the votes of two of the persons constituting the tribunal, gives this entire proceeding the nature of a trial; in fact we find in the next section 7828, *supra*, that reference is made to the "expenses of such trial". It would seem that if the law-making body, in so carefully safe-guarding the rights of the "recipient of a certificate", desired that the superintendent of public instruction should also conduct a hearing or trial of this kind, that provision would have been made in the law for his doing so and proper administrative procedure prescribed. However, nothing of the kind appears, as stated heretofore.

Your question is "shall the superintendent of public instruction proceed to consider the case" of revocation and "if the holder is found guilty revoke the certificate, or shall the revocation of the certificate be considered as coming under the jurisdiction of the board of county school examiners which originally issued the certificate, or under the board of examiners in the district which the teacher is serving". Answering this it may be said that the law has not provided for the revocation of renewed certificates except as may appear in section 7827, *supra*. This section provides that there may be a revocation of the certificate of *anyone who is "the recipient of a certificate"*. The renewed certificate issued by the superintendent of public instruction upon the original certificate issued by the local board of school examiners simply takes the place of the old certificate issued by the local board. That is to say, in one year the "recipient of a certificate" was authorized to teach under the certificate granted by the local board of school examiners; prior to the beginning of the next school year there might be a renewal of the old certificate by the state superintendent of public instruction and in the

next year the teacher performed his services under the renewed certificate which *took the place of the old certificate*. It cannot be conceived that because of a mere omission in the law the renewed certificate could not also be revoked (as could be the certificate it replaced) if the "recipient of a certificate" were found to be "intemperate, immoral, incompetent or negligent".

The General Assembly has set forth clearly the procedure for revocation in 7827, giving this authority to the local board of school examiners, the result being that the recipient of a certificate would be tried in his own community and by a tribunal of three persons who would have better knowledge of local conditions and the facts in the case than if the hearing was held by the state superintendent of public instruction at his office. It is not possible to point out to you "any proper plan of procedure in such a case", for the law has not provided any other than that mentioned in 7827 G. C.

It is significant to note that almost the exact language occurring in 7827 G. C., providing for revocation (hearing and the examination of witnesses) for a long time appeared also in section 7850 G. C., for 7827 G. C. referred to the county board of school examiners and 7850 G. C. came under the head of city board of school examiners. *Thus there were two sections in the law providing for the revocation of teachers' certificates* by examining boards, but *there was no section providing for the revocation of any certificate by the state superintendent of public instruction*. One of these sections (7850 G. C.) was repealed outright in H. B. 129, effective August 1, 1921, and appeared at page 188, 109 Ohio Laws. It was found that section 7850 G. C. was no longer necessary in the code because 7847 G. C. was amended to read as quoted above and the provisions of sections pertaining to county school examiners and applicants of county teachers' certificates "shall apply also to city examiners and applicants for city teachers' certificates".

In section 7857 it is provided that an applicant for a certificate may appeal his case to the superintendent of public instruction for final review where the "applicant has cause to and does believe that he has been discriminated against and his manuscripts unfairly graded" but this does not go into the question of the revocation of a certificate. This section is then followed by section 7858 G. C., providing for the procedure on appeal to the superintendent of public instruction, section 7858 G. C. reading as follows:

"Every appeal from the board of examiners shall be in the form of an affidavit setting forth the facts as the applicant believes them and shall be accompanied by a fee of one dollar to cover the expenses incident to such appeal. Upon receipt of such affidavit and fee the superintendent of public instruction shall require the clerk of such board to procure and forward the manuscripts of such applicant, together with a full explanation of the reasons for the board's action. If upon examination of the manuscripts and record, the superintendent finds that the applicant was denied a certificate when one should have been granted him and has been discriminated against by the board, the superintendent shall order forthwith a certificate to be issued of the date of the examination attended by the applicant, and he shall indicate the length of time such certificate shall be valid. If, upon inspection of the manuscript and reviewing the facts submitted, the superintendent of public instruction concludes that no injustice has been done, he shall so notify the applicant and the clerk of the board of examiners."

It will be noted that nowhere in 7858 G. C., providing for action by the superintendent of public instruction in the case of appeal by a teacher, is any reference made to the revocation of a certificate.

You are therefore advised in answer to your inquiry that:

1. Under existing law the superintendent of public instruction is without authority to consider cases involving the revocation of teachers' certificates, the sole reference to the same occurring in section 7827 G. C., wherein the board of county school examiners is authorized to conduct a hearing upon the question of revocation of a certificate of a person who is "the recipient of a certificate".

2. Under the provisions of 7847 G. C. the authority given to a board of county school examiners for the revocation of teachers' certificates, as set forth in 7827 G. C., is vested in a city school district in the board of city school examiners.

Respectfully,

JOHN G. PRICE,

Attorney-General.

3226.

BOARD OF EDUCATION—MANDATORY DUTY TO PROVIDE TRANSPORTATION TO CRIPPLED CHILD IF UNABLE TO WALK TO SCHOOL—SCHOOL ASSIGNED—WITHIN OR WITHOUT DISTRICT.

It is the mandatory duty of the board of education of the district in which a crippled child resides to provide for his transportation to the school to which he has been or should be assigned, either within or without the district, if the child is so crippled that he is unable to walk to school.

COLUMBUS, OHIO, June 16, 1922.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request upon the following statement of facts:

"Your opinion is desired on the provisions of the school law for cripples set out in House Bill 200 found in Ohio Laws, Vol. CIX., page 257, so far as it applies to the following facts:

"G. G. is a *cripple*, being partially paralyzed and is *over eighteen years of age*. He is a resident of a rural school district not having a high school, and is a junior and is attending the nearest high school to where he lives in another and adjoining district, and which school is located more than four miles from his place of residence. The school district of his residence, being Jackson Township Rural, is paying the transportation of all high school pupils residing therein under 18 years of age, who live more than four miles from the high school.

"Having particular reference to sections 7755-2 and 7755-3 of the above mentioned act, we would like the following questions answered:

"1. Is it mandatory for the board of education of the district of G. G.'s residence to pay for his transportation to high school?

"2. If direction must first be given to the board of education of this district, who is to give this direction? That is to say, does this section 7755-2, where it names 'superintendent of public instruction' refer to the state commissioner of schools, or does it refer to the county superintendent of schools, or if to neither, to whom does it refer?