

2856

EDUCATION—TEACHER ; CONTINUING CONTRACT— §3319.11
R.C.—EMPLOYMENT ENTITLING CONTINUING SERVICE
STATUS.

SYLLABUS:

A teacher, eligible, under the provisions of Section 3319.11, Revised Code, for continuing contract status by virtue of actually having been employed under a continuing contract elsewhere and having served two years in the district where he now claims continuing service status, who fails to disclose the nature of his previous employment until after he has been reemployed for the third year, is entitled to continuing contract status when the school board employs such teacher for a fourth year with full knowledge of his eligibility for continuing contract status.

Columbus, Ohio, October 8, 1958

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“One of our local Board of Education is faced with a legal problem they have asked me to present to you for your interpretation and opinion.

“The facts are as follows: The local School Board hired a teacher for the 1955-56 school year on a one-year contract. In the spring of 1956, the teacher was rehired on another one-year contract for 1957-1958, all of this in accordance with Revised Code Section 3319.11 of the School Code. After this third one-year contract was issued, the teacher informed the School Board that he had held a continuing contract elsewhere, and, therefore, his re-employment must be called continuing. Since the School Board had not had evidence nor any suspicion even that such was the case, continuing contract status was not considered in his re-employment for the third year. The School Board advises us that if they had been aware of his earlier continuing contract at the close of their second contractual year, they could well have dismissed him rather than issue a continuing contract. Actual evidence of the former continuing contract was not produced at that time. The third one-year contract was signed by the teacher and performance under it was made. The teaching services at the end of the second year and end of the third year were judged

to be of questionable quality and the Board of Education was unwilling to grant a continuing contract at the conclusion of the third one-year contract. The Board elected to wait another year for the review of the continuing contract issuance, with the hopes that the difficulties in teaching procedures would be ironed out. The teacher was offered a fourth one-year contract for 1958-1959 with the reasons stated why a continuing contract was not being offered, and the teacher signed the contract. The teacher now assumes the position that further waiting is not in accord with R.C. Section 3319.11, and that his re-employment for the third year was in effect a granting of continuing contract status.

“The local School Board believes that it is the teacher’s responsibility to make known to such Board any qualifications he may have which may bring better salary or higher level of contract status, and that if he fails to do so, he becomes subject to the standard pattern of contract issuance which would hold without those special qualifications. Such School Board feels that it would be possible for a person to be frozen into a continuing contract status without the knowledge of or approval of, and even against the wishes of the Board of Education.

“In interpreting this Section, our opinion to the School Board was that under the facts as given, this teacher would be entitled to continuing contract status. The local School Board, however, has requested us to secure either a confirming or reversing of this opinion from your office at your earliest convenience.”

Section 3319.08, Revised Code, provides in part :

“Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract is a contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates.”

Section 3319.09, Revised Code, defines “continuing service status as “employment under a continuing contract.”

Section 3319.11, Revised Code, provides in part :

“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 con-

tract 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.

“Upon the recommendation of the superintendent that a teacher eligible for continuing service status be reemployed, a continuing contract shall be entered into between the board and such teacher unless the board by a three-fourths vote of its full membership rejects the recommendation of the superintendent. The superintendent may recommend re-employment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years, provided that written notice of the intention to make such recommendation has been given to the teacher with reasons therefor on or before the thirtieth day of April, but upon subsequent reemployment only a continuing contract may be entered into.”

The problem of your inquiry is whether, at the present time, the teacher in question is entitled to continuing contract status.

It is clear from the facts, as presented by your inquiry, that the teacher in question was eligible, under the provisions of Section 3319.11, *supra*, for continuing contract status, in fact, at the beginning of the 1957-1958 school year by virtue of actually having been employed under a continuing contract elsewhere and having served two years in the district where he now claims continuing service status.

In Opinion No. 1832, Opinions of the Attorney General for 1952, p. 673, the writer, after quoting the first two paragraphs of Section 4842-8, General Code, which are substantially identical to the portion of Section 3319.11, quoted above, and after concluding that the teacher there in question was eligible for continuing contract status, said, at page 676:

“Eligibility for continuing service status does not mean that the teacher has an immediate right to a continuing contract. In Opinion No. 1384, under date of April 29, 1952, I held:

“‘A teacher who has taught in a district under limited contracts for four or five years and who is eligible for continuing service status, does not by reason of those facts alone, acquire a right upon re-employment, to a continuing contract.’

“That ruling was based on the language of Section 4842-8, General Code, which I have already quoted, which states that teachers who within the last five years have taught for at least three years in the district, are *eligible* for such status.

“Section 4842-8, supra, provides that upon the recommendation of the superintendent of schools that a teacher eligible for continuing service status be reemployed, *a continuing contract shall be entered into* with such teacher, unless the board by a three-fourths vote of its full membership rejects the superintendent’s recommendation. It should be observed that it is not necessary that the superintendent recommend the teacher *for a continuing contract*, but merely that he recommend the *reemployment* of the teacher, in which case the continuing contract follows as a matter of right, unless the board by a three-fourths vote rejects the superintendent’s recommendation for reemployment.” (Emphasis added)

Your inquiry does not state that the superintendent recommend this teacher for reemployment for the 1957-1958 school year, or for that matter, any other year, but I must assume that he did, because under the provisions of Section 3319.07, Revised Code, no teacher can be employed unless he is nominated by the superintendent.

When a board of education reemploys a teacher eligible for continuing contract status, his contract is by operation of law a continuing contract. The statute is read into the contract; the board of education must be held to have employed the teacher with a knowledge of the law which prescribes the period of the contract which it was authorized to make. Opinion No. 1767, Opinions of the Attorney General for 1947 p. 191; Opinion No. 978, Opinions of the Attorney General for 1946, p. 380.

Your inquiry states that the teacher in question signed the third one-year contract offered him by the school board and performed under it; further, that he has signed a fourth one-year contract for 1958-1959. A contention that these so-called contracts might constitute a waiver of the right which the law has given him to a continuing contract is clearly erroneous. *State, ex rel. Rose v. Board of Education*, 29 Ohio Opinions, 104; Opinion No. 1767, Opinions of the Attorney General for 1947, p. 191.

On the basis of the above, two conclusions are clear; first, in the absence of the fact of the teacher’s non-disclosure as to his previous employment under a continuing contract until after the issuance of the third one-year contract, he would have been entitled, at the beginning of the 1957-1958 school year, to continuing contract status, and, second, if the teacher has a contract at all, it must be a continuing service contract.

Assuming (1) that the teacher’s non-disclosure of his eligibility is sufficient to constitute fraud, and (2) that the school board has the right

to rescind on the ground of fraud, the failure to exercise this right for approximately one full year after the board was appraised of such eligibility, and the fact that the reason for the board's refusal to grant a continuing contract was not the possible fraud but the teacher's questionable ability, would justify the conclusion that the right has been waived.

Powell v. Young, 148 Ohio St., 342, the third paragraph of the syllabus is as follows:

"Section 4842-8 (former Section 7690-2), General Code, requires a board of education to tender a teacher a continuing contract if the teacher fulfils the conditions imposed by such section as to having a teacher's certificate and the necessary period of service, *but a continuing contract so made has no bearing on the question of the teacher's inefficiency or fitness to teach.* (Paragraph three of the syllabus in the case of *State, ex rel. Weekly v. Young et al., Bd. of Edn., supra*, approved and followed.)" (Emphasis added)

On the basis of the above, it is clear that the teacher in question, at the present time, is entitled to continuing contract status. This right became vested upon the execution of the contract for the year 1958-1959, the board having taken this action with knowledge of the teacher's eligibility for continuing status, even if the execution of the 1957-1958 contract did not effect this result.

The third paragraph of your inquiry states the position of the school board. The first suggestion "that it is the teacher's responsibility to make known to such board any qualifications he may have which may bring better salary or higher level of contract status," is a material proposition to the averment of fraud. As to the second suggestion, that if he fails to make known such qualifications, "he becomes subject to the standard patterns of contract issuance which would hold without those special qualifications," although I find no support in the authorities for this view, it should be noted that even if the board's position were conceded to be sound, the teacher, by virtue of his reemployment for the 1958-1959 school year, following disclosure of his status, is entitled thereby to continuing contract status.

Your inquiry also expresses the school board's concern over a person being "frozen into a continuing contract status without the knowledge of or approval of, and even against the wishes of the Board of Education." In the case at hand this question is academic only, since the board's action

to reemploy the teacher for the 1958-1959 school year, with knowledge of his eligibility for continuing contract status, amounted to a waiver of any remedies that it might have had prior thereto.

Accordingly, it is my opinion, and you are so advised, as follows:

A teacher, eligible, under the provisions of Section 3319.11, Revised Code, for continuing contract status by virtue of actually having been employed under a continuing contract elsewhere and having served two years in the district where he now claims continuing service status, who fails to disclose the nature of his previous employment until after he has been reemployed for the third year, is entitled to continuing contract status when the school board employs such teacher for a fourth year with full knowledge of his eligibility for continuing contract status.

Respectfully,

WILLIAM SAXBE

Attorney General