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1. CONTINUING CONTRACT—TEACHER IN PUBLIC SCHOOLS — TAUGHT FOR FIVE FULL YEARS IMMEDIATELY PRECEDING END OF SCHOOL YEAR 1939-1940 AND FOR TEN DAYS, SUBSTITUTE TEACHER 1940-1941 NOT IN POSITION TO DEMAND CONTINUING CONTRACT SEPTEMBER 1, 1941 — SECTION 7690-2 G.C., FIRST PROVISIO.
2. PROVISIONS, SECOND PROVISIO, SECTION 7690-2 G.C., 800 PUPILS, APPLY TO "NEW TEACHERS" AND "BEGINNING TEACHERS."
3. WHERE TEACHERS DO NOT QUALIFY FOR CONTINUING CONTRACTS AS MATTER OF RIGHT WHO ARE ELIGIBLE THROUGH YEARS OF SERVICE — MAY BE RECOMMENDED BY SUPERINTENDENT OF SCHOOLS FOR REEMPLOYMENT — REGULAR TEACHER — SUBSTITUTE TEACHER — TO REJECT RECOMMENDATION, THREE-FOURTHS VOTE FULL MEMBERSHIP OF BOARD REQUIRED — SECTION 7690-2 G.C.

SYLLABUS:

1. A teacher in the public schools who had taught in a particular district for five full years immediately preceding the end of the school year 1939-1940 and for ten days as a substitute teacher during the school year 1940-1941, was not in a position to demand the tender of a continuing contract on or soon after September 1, 1941 under and in pursuance of the first proviso of Section 7690-2 of the General Code of Ohio.

2. The provisions of the second proviso of Section 7690-2, General Code, with respect to school districts of under 800 pupils apply only to "new teachers" and "beginning teachers" as defined in said proviso.

3. Teachers in the public schools who do not qualify for continuing contracts as a matter of right under and in pursuance of the first proviso of Section 7690-2, General Code, but who are eligible for continuing service status by reason of years of service and certification may be recommended by the superintendent of schools for re-employment either as a regular teacher or as a substitute teacher and when such recommendation is made it becomes the duty of the board of education to which the recommendation is made to tender the teacher the kind of contract for which his reemployment is recommended unless the board rejects the superintendents' recommendation by a three-fourths vote of the full membership of the board.

Columbus, Ohio, May 26, 1942.

Hon. Manning D. Webster, Prosecuting Attorney,
Pomeroy, Ohio.

Dear Sir:

You have requested my opinion concerning the following matter:

“One of our local rural boards of education, which has an enrollment under eight hundred pupils, regularly employed a woman teacher, for five years ending in April, 1940. She was not employed as a regular teacher for the school year of 1940-41; however, she was employed by the rural board of education as a substitute teacher for said year. As such substitute teacher she taught a total of ten days during the year 1940-41.

On November 3, 1941, she was employed by the board as a substitute teacher and as such taught two days in November and four days in December, previous to December 29, 1941. On December 29, 1941, one of the regular teachers resigned and the substitute teacher was employed to fill out the unexpired term of the resigned teacher. She started on such employment on December 29, 1941, and has been so employed ever since. On January 3, 1942, the Board adopted the Resolution so employing her.

“Is it mandatory that the Board of Education give this teacher a continuing contract? If so, would this be a continuing contract as a regular teacher or as a substitute teacher?”

The Teachers' Continuing Contract Law enacted by the 94th General Assembly (House Bill No. 121) was codified as Sections 7690-1 to 7690-8, inclusive. In Section 7690-1, General Code, it is provided that each board of education shall enter into contracts for the employment of teachers and fix their salaries. Such contracts shall be of two types — limited contracts and continuing contracts. Limited contracts are those which are for a fixed term; continuing contracts are those which are to remain in full force until the teacher resigns, retires or is retired pursuant to law or until the contract is terminated or suspended as provided by law and such contracts may be granted only to teachers holding professional, permanent or life certificates. The term “teacher” as used in the act is defined in said Section 7690-1, General Code, as:

“The term ‘teacher’ as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.”

The term "year" is defined as:

"'Year' as applied to terms of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year, provided however that any board of education may grant a leave of absence for professional advancement with full credit for service."

"Continuing service status" is defined therein as follows:

"'Continuing service status' for a teacher means employment under a continuing contract."

Section 7690-2, General Code, reads as follows:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification who 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 superintendent's recommendation, 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 of schools that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between a board of education and such teacher unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation. However, 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 but upon subsequent re-employment only a continuing contract may be entered into.

Provided, however, that on or before September 1, 1941, a continuing contract shall be entered into by each board of education with each teacher holding a professional, permanent, or life certificate who, at the time of the passage of this act, is completing five or more consecutive years of employment by said board.

A limited contract may be entered into by each board of education with each teacher who has not been in the employ of the board for at least three years and shall be entered into, regardless of length of previous employment, with each teacher employed by the board who holds a provisional or temporary certificate.

Any teacher employed under a limited contract and ineligible for a continuing contract shall at the expiration of such

limited contract be deemed re-employed under the provisions of this act for the succeeding school year at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of May, and a contract for the succeeding school year shall be executed accordingly. Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:

a. Beginning teachers, who have not previously been employed as a teacher in any school, shall be hired for one year.

b. New teachers, who have had at least one year's experience as teachers in other schools, shall be employed for a period of time commensurate with their past experience at the discretion of the hiring board of education, provided that no such contract shall be for more than five years.

c. Upon re-employment after the termination of the first contract, the new contract shall be for not less than three years nor more than five years provided that the teacher's educational qualifications have been fulfilled and the teacher's work has been satisfactory.

d. Upon re-employment after the termination of the second contract, the teacher's contract shall be for five years and subsequent renewal thereof shall be for five year periods, or the board of education may at any time grant a continuing contract."

In the case of *State, ex rel. Bishop, v. Board of Education*, 139 O.S., 427, decided by the Supreme Court of Ohio on March 29, 1942, wherein the provisions of the Teachers' Continuing Contract Law were considered and applied, the court held as stated in the first, second, third, fourth and fifth paragraphs of the syllabus, as follows:

"1. Under the first proviso of Section 7690-2, General Code (119 Ohio Laws, 451), a part of the Ohio Teachers' Tenure Act, a teacher in the public schools holding a professional, permanent or life certificate, who was completing five or more consecutive years of employment by any board of education at the time of the passage of the act, was entitled to the tender of a continuing contract of employment by such board on September 1, 1941, or within a reasonable time thereafter.

2. The words 'at the time of the passage of this act,' as used in the first proviso of Section 7690-2, General Code, mean the date upon which the act was approved and signed by the Governor, viz., June 2, 1941.

3. The first proviso of Section 7690-2, General Code, applies to a certificated teacher completing the prescribed years of continuous employment within a reasonable time before or after June 2, 1941, or within a reasonable time before or after the termination of the school year 1940-1941 in a particular school district.

4. The first proviso of Section 7690-2, General Code, is not violative of Section 28, Article II of the Constitution of Ohio, forbidding the passage of retroactive laws or laws impairing the obligation of contracts.

5. The second proviso of Section 7690-2, General Code, relating to a contract system in school districts of less than eight hundred pupils, has reference to beginning teachers, new teachers and to their re-employment, and is without application to a certificated teacher completing five or more consecutive years of employment in such a school district."

In the course of the opinion in the above case Judge Zimmerman speaking for the court, said:

"From an analysis of that part of the section relating to school districts of under 800 pupils and embracing subdivisions a, b, c and d, we are satisfied that it has reference only to beginning teachers, new teachers, and to their reemployment, * * *."

Inasmuch as the teacher mentioned in your inquiry taught only ten days during the school year 1940-1941, she was not completing five consecutive years of employment within a reasonable time before or after June 2, 1941, or within a reasonable time before or after the close of the school year 1940-1941, in the particular district and therefore she did not come within the terms of the first proviso of Section 7690-2, General Code, and was not in position to demand the tender of a continuing contract on September 1, 1941 or within a reasonable time thereafter.

It is also clear that she does not come within the definition of either a "new teacher" or a "beginning teacher" as the terms are defined in the second proviso of Section 7690-2, General Code, and therefore the terms of the said second proviso do not affect her with respect to any rights she may have under the law.

You do not state in your inquiry whether or not the teacher in question qualifies for continuing service status with respect to certification. If she holds a professional, permanent or life certificate she is at this time qualified for continuing service status as she had taught in the dis-

trict for five years prior to April 1, 1940. I assume of course that at least three of those years were full years, that is, in each of at least three years she rendered actual service for not less than 120 days in each school year. It makes no difference whether that service was as a substitute or a regular teacher, as the law makes no distinction between the two in its provisions as to years of service for qualifications for continuing service status or for any purpose. The first and second paragraphs of the syllabus of my opinion No. 4204, rendered under date of September 17, 1941, and addressed to the Director of Education, read as follows:

“1. So-called ‘substitute teachers’ in the public schools who qualify as to certification and years of service for continuing service status as provided by section 7690-2 of the General Code of Ohio, are entitled to the tender of continuing contracts by their employing boards of education the same as teachers who are known as ‘regular teachers.’”

2. The term ‘teacher,’ as used in the Act of the General Assembly relating to contracts with teachers in the public schools (House Bill No. 121 of the 94th General Assembly), includes so-called ‘substitute teachers’ as well as those who are commonly referred to as ‘regular teachers.’”

It is not mandatory that the board of education in the district referred to, grant or tender to the teacher in question a continuing contract as a regular or a substitute teacher at this time even though she is eligible for continuing service status in the district, unless she is recommended for reemployment by the county superintendent of schools and not even then if the board by a three-fourths vote of its full membership rejects the superintendent’s recommendation. The superintendent may recommend this teacher for reemployment either as a regular full time teacher or as a substitute teacher and it will then become the mandatory duty of the board to either tender her a contract of the kind recommended by the superintendent or reject his recommendation by a three-fourths vote of the full membership of the board.

Respectfully,

THOMAS J. HERBERT
Attorney General.