

said assessment above stated, the sum of \$45.71 and \$11.35, interest and penalty thereon, are due in June, 1930.

(4) There is an assessment of \$162.74 on the above described property for a street lighting improvement, on which no installments have been paid. This assessment is likewise a lien upon the property. The first half of the first installment of said assessment, amounting to \$16.27, is due in June, 1930.

(5) In addition to the assessment above noted, there is a delinquent street cleaning assessment on this property in the sum of \$2.15 which is due and payable in December, 1930.

Before the purchase of this property is made by you, the warranty deed to be signed and otherwise executed by said Edward H. Jacobs and Mary Elizabeth Jacobs, his wife, conveying this property to the State of Ohio should be submitted to me for approval, together with encumbrance estimate covering the purchase price of this property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1965.

VILLAGE BOARD OF EDUCATION—TEACHER EMPLOYED BY CONTRACT FOR YEAR 1929-1930—ENTERING INTO NEW CONTRACT FOR THREE YEAR PERIOD BEGINNING AUGUST 1, 1929, ILLEGAL.

SYLLABUS:

A board of education under contract duly made to employ a teacher for the school year 1929-30, may not lawfully on December, 1929, abrogate said contract and enter into a new contract with said teacher for a term of three years beginning August 1, 1929.

COLUMBUS, OHIO, June 11, 1930.

HON. LESLIE S. WARD, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“On April 8, 1929, the Board of Education of the Village of Metamora, Ohio, made a motion to hire Mr. ----- for the year 1929 to 1930 at a salary of \$3,000.00 per year, as superintendent of the Metamora school.

On December 9, 1929, the Board of Education made a motion that the board enter into a new contract with Mr. ----- as superintendent for a period of three years, to commence on the first day of August, 1929, and to expire on the 30th day of July, 1932, at a salary of \$3,000.00 per year.

On the ninth day of December, 1929, at Metamora, the Board of Education entered into a contract of employment with Mr. -----, the superintendent, for a period of three years, to commence on the first day of August, 1929, and to end on the 30th day of July, 1932, in accordance with motion.

It seems that the old Board of Education, before they went out of office in January, 1930, knew that if the old board did not employ the superintendent before their term expired, that he would not be employed. The new board does not wish to employ the present superintendent and they are having a meeting within the next two weeks. I wish you would give me an opinion as

to whether or not, under the above circumstances, the superintendent is legally employed for the term of three years or whether his term expires in July, 1930, and whether the board is at liberty to employ a different superintendent.

I am enclosing copies of Resolutions and Contract as sent to me by the Board of Education of Metamora, Ohio."

Accompanying your letter is a copy of the minutes of the proceedings of the Board of Education of Metamora Village School District where Mr. _____ was first employed for the school year, 1929-1930 and where it was sought to supersede the original contract of employment and enter into a new contract.

It appears from the copy of the minutes of the meeting of the school board held April 8, 1929, as follows:

"Motion made by Nachtrieb, supported by Wright, to hire Mr. _____ for the year 1929-1930, at a salary of \$3,000.00."

These minutes show that the vote on the above motion was three yea's and two nays.

In the copy of the minutes of the meeting held December 9, 1929, the following appears:

"Motion made by Wright to enter into a new contract with Mr. _____ as Supt. for three years—August 1, 1929, to July 30, 1932, at a salary of \$3,000.00 per year. The motion was supported by Nachtrieb."

The vote on this motion shows three yea's and two nays.

Inasmuch as the Board of Education of Metamora Village School District, in attempting to increase the term of service of Mr. _____ by its action of December 9, 1929, did not thereby purport to change the amount of the yearly salary provided for in the original contract, the question of the right to change the salary of a public employe during the term of his employment does not concern us in this inquiry. We are confronted with the question, however, of whether or not a contract for services made for a definite term, with a public employe, may lawfully be abrogated or canceled and a new contract providing for a different term of service substituted for the original.

In the consideration of your question it may be well to observe at the outset that Metamora Village School District had no authority to employ a superintendent of schools at all. Since the enactment of the School Code of 1914, the supervision of village and rural district schools is centered in the county superintendent of schools and his assistants appointed by the county board of education of the county school district of which said village or rural district is a part. Although Section 7690, General Code, in terms, authorizes the board of education of a village or rural school district to employ a superintendent of schools, that provision is ineffective, for the reason that supervision of schools in these classes of districts is otherwise provided for. It was held by a former Attorney General, see Opinions of the Attorney General for 1921, page 684:

"A rural board of education is without authority to elect a superintendent of schools under the general language of Section 7690, General Code, since the General Assembly has provided for county supervision of schools by a county superintendent and such assistant county superintendents as may be elected by the county board of education."

The same rule would apply to village boards of education.

This subject is discussed and a history of the legislation with reference thereto reviewed in my opinion No. 1897, addressed to the Bureau of Inspection and Supervision of Public Offices under date of May 23, 1930.

Boards of education in rural and village school districts are authorized by Section 7705, General Code, to employ principals of schools and I am advised that in many districts principals are employed and termed superintendents. I assume that is the situation in Metamora Village School District and that Mr. -----, although nominally employed as a superintendent, was really employed as the principal.

Section 7705, General Code, authorizes boards of education in village and rural school districts to designate from among the teachers employed by said boards, one of the teachers as principal of each high school and consolidated school, and it is provided that such principal upon being so designated, shall be the administrative head of such school; he is employed, however, as a teacher.

As stated above, boards of education in rural and village school districts are authorized by Section 7705, General Code, to appoint teachers for terms of not more than three school years, such term to begin within four months of the date of the appointment. Upon appointment, the clerk of the board of education is charged by statute, Section 7699, General Code, with the duty of notifying the appointee either verbally or in writing, of such appointment and securing from him a reasonable time, to be determined by the board, an acceptance or rejection of such appointment. Said Section 7699 further provides:

“* * * An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause.”

In the case of *Layton vs. Clements*, 7 O. A. 499, wherein questions were considered with reference to an attempt to dissolve a contract made with the teacher, by discharging him, it was said by Judge Hauck, on page 507:

“The contract before us is a solemn and binding obligation between the parties to it, and can not and should not be set aside and held for naught, unless there has been some violation of its terms and provisions. * * *

A contract entered into between a board of education and an individual is just as binding on the parties as if made between individuals; and a court will not permit a board of education to abrogate and hold for naught a valid contract made by its predecessors in office, unless it first establishes its legal right to do so.”

It will be observed from the terms of Section 7699, General Code, that a contract made as provided therein, is binding upon both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause. There is no statutory provision fixing the manner such a contract may be dissolved other than by resignation of the teacher and the due acceptance of such resignation by the board of education. Both parties to such a contract are protected in their rights by the provision that the teacher shall not be dismissed except in the manner provided for by statute and for the reasons therein set forth, and the further provision that if a board of education dismisses a teacher for a frivolous or insufficient reason the teacher shall have a right of action against the district. On the other hand, the board is protected by the provisions of Section 7700, General Code, in that no teacher may be permitted to resign without the consent of the board, and severe penalties are provided by the statute if a teacher does resign or abandons his contract without the board's consent.

The minutes of the Board of Education of Metamora Village School District do not show that Mr. ----- tendered his resignation on December 9, 1929, or at any other time and it is very doubtful whether the tendering of a resignation, even if it had been made on December 9, 1929, would, under the circumstances, permit the board upon acceptance of the resignation to enter into a new contract upon pre-

cisely the same terms excepting as to the length of service with the same person. In fact it may well be questioned whether or not there is any authority whatever to dissolve a contract made with an employe of the board of education, in accordance with Section 7699, General Code, in any other manner than by death of the employe or upon the acceptance of his resignation. I do not consider it necessary to pass upon that question at this time.

It was held by a former attorney general in an opinion of the Attorney General for 1917, at page 2440:

"A board of education of a village school may not extend a teacher's contract one or more years, but may enter into a new contract not to exceed three years, by agreement between the board of education and the teacher, and the new contract will stand in the place of and be a substitute for the old one."

While the above, as a general statement of law, is no doubt correct, it would seem under the statute, that in order to accomplish that result it would be necessary for the teacher to resign, and that resignation be duly accepted, and even then some question might arise with reference to the right of the parties to abrogate such a contract and immediately enter into a new contract with the same person for the same kind of services specified in the old contract only extending over a longer period of time.

One of the questions before the Attorney General, in the opinion referred to, was the right of a board of education in December, 1917, to enter into a contract with a teacher extending his present contract one year, making the same binding upon the board of education taking office January 1, 1918. In answer thereto, it was stated by the attorney general:

"I understand that you mean to inquire whether the board of education which is now in power can make such new contract or can make such extension of the term. This manifestly cannot be done because the length of time which is required by the statute when the term shall begin after the same is entered into is such as will prohibit the present board from entering into the new contract which in effect extends such period of time. In other words, it will be necessary for the board of education which is in power on May 1st of the calendar year in which the term begins to make such change, if any change is so made."

In the case before us, a contract existed between the teacher in question and the board of education on December 9, 1929, which contract would not expire until August 1, 1930. The board attempted to comply with the statute by substituting for this contract a new contract for three years which provided by its terms that it should begin on August 1, 1929. In effect, however, such contract merely extended the term of service of the teacher and really was the making of a new contract for two years from August 1, 1930. Inasmuch as August 1, 1930, is more than four months after the time when the so-called new contract was entered into, I am of the opinion that it was contrary to the statute and therefore illegal.

Respectfully,

GILBERT BETTMAN,

Attorney General.