

7141

HOLDER OF LIFE HIGH SCHOOL TEACHER'S CERTIFICATE  
ISSUED IN 1930—VALID THEN FOR SUPERINTENDENT—  
ELIGIBLE FOR COUNTY SUPERINTENDENT — SECTION  
3319.27 R. C.

SYLLABUS:

Under the provisions of Section 3319.27, Revised Code, the holder of a life high school teacher's certificate issued in 1930, which was then valid for the position of school superintendent is eligible for appointment as county superintendent, notwithstanding the provisions of Section 3319.01, of the Revised Code.

Columbus, Ohio, September 20, 1956

Hon. John L. Sears, Jr., Prosecuting Attorney  
Crawford County, Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Crawford County Board of Education passed a Resolution by a three to two vote to employ W.S.F. as Superintendent of the Crawford County Board of Education. The President of said Board has refused to sign the contract of his employment because he has been informed by the State Department of Education that Mr. F. does not have the necessary qualifications for a Superintendent's Certificate as set up by Section 3319.22 of the Revised Code of Ohio.

"Enclosed herewith is a photostat copy of a Provisional High School Certificate issued by the State of Ohio on September 1, 1926, which states that Mr. F. has the qualifications to superintend the schools in any school district of this State for a period of four years from September 1, 1926. Also enclosed is a photostat copy of a High School Life Certificate issued by the State

of Ohio to Mr. F. on the basis of the Provisional Certificate that I have above mentioned.

"It is my understanding that the State Board of Education claims that by reason of Section 3319.22 of the Revised Code of Ohio, Mr. F. does not now have the necessary qualifications for a Superintendent's Certificate and has therefore refused to issue him any certificate and refuses to recognize him or his signature as Superintendent of the Crawford County Board of Education.

"Based on the above information and the enclosures, I would like your opinion as to the following questions:

"1. Would a contract between the Crawford County Board of Education and one W.S.F. employing Mr. F. as Superintendent of the Crawford County Board of Education be a legal contract?

"2. Does Mr. F., by reason of Section 3319.27, R.C., have the right and the qualifications to be Superintendent of the Crawford County Board of Education?

"3. Would the President of the County Board of Education be held liable for signing a contract employing Mr. F. as County Superintendent if Mr. F. does not have the necessary qualifications? In regard to this third request I would like to call to your attention Attorney General's Opinion No. 2265, page 613, dealing with the legality of payment of funds.

"4. If Mr. F. does not have the necessary qualifications to qualify for Superintendent, what effect, if any, would his employment by the Crawford County Board of Education have upon state and federal aid to the Crawford County Board of Education?

"I am enclosing also a letter from the President of the Crawford County Board of Education as to Mr. F.'s credentials and past employment."

I have been furnished with a photostatic copy of a provisional high school certificate issued to W.S.F. under date of July 27, 1926. This certificate by its terms authorizes Mr. F. to teach "in any high school of Ohio, the subjects listed as majors and minors, *or to superintend the schools in any school district in this state* for a period of four years from September 1, 1926." This certificate was issued by the department of education and signed by the director. Also submitted is a photostatic copy of a certificate issued to said W.S.F. by the state board of school examiners countersigned by the director of education, entitled, "High School Life Certificate". It is recited in the certificate: "This certificate of qualifica-

tions shall supersede the necessity of any and all other examinations by any board of examiners, and shall be valid in all the schools of any school district in the State of Ohio." Endorsed on the certificate are the following words, presumably indicating the subjects authorized for teaching: "Biol Sci Phys Sci. Agric. Earth Sci., Soc. Sci. Man Arts." The certificate bears date June 20, 1930. There is a notation: "Issued On State Provisional Certificate."

There is also submitted a statement by the president of the board of education showing the educational qualifications and service record of Mr. F. as a teacher.

At the time when the life certificate aforesaid was issued, the provisions of the law relating to teachers' certificate (Sec. 7805 et seq., General Code) provided for certificates for various types of teaching and among others, authorized life certificates for high school teaching in certain branches. There was, however, no such classification as "superintendent type." Section 7807-6, General Code provided:

"The superintendent of public instruction shall renew state provisional certificates upon application by the holders thereof, accompanied by a fee of one dollar, upon satisfactory evidence of the applicant's success in teaching. It shall be the duty of the state board of school examiners to issue without examination to a holder of a state provisional certificate, a life certificate of similar kind, upon satisfactory evidence that the holder thereof has completed at least twenty-four months of successful teaching after receiving such provisional certificate."

Here, as will be seen, is express authority to do precisely what was done with Mr. F. He had a provisional certificate, valid for four years, including among other things, authority to hold the position of superintendent, and shortly before its expiration the life certificate was issued, certainly carrying with it the same right.

Although at the time of the issuance of the life certificate above referred to, there was no separate classification in the law relating to the certification of teachers for a certificate known as a "superintendent type certificate," I am informed that under the rules of the department of education then in force, a teacher holding such certificate was eligible to receive appointment to the position of superintendent.

Prior to the enactment of the new school code of 1943, the provisions of the statute relative to employment of a superintendent were contained

in Section 7690 of the General Code, the pertinent portion of which reads as follows :

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries.”

It will be observed that there was no requirement that a superintendent should have any teacher's certificate whatsoever.

In the enactment of the new school code of 1943, it was provided in Section 4842 General Code, now Section 3319.01 Revised Code :

“The board of education in each county, city, and exempted village school district shall, at a regular meeting held not later than the first day of July of the calendar year in which the term of the superintendent expires, appoint a person possessed of the qualifications provided in this section, to act as superintendent of the public schools of the district, for a term not longer than five years beginning the first day of August and ending on the thirty-first day of July. If the superintendent is employed on a continuing contract, the board may, by resolution, designate that he is to continue for a term not to exceed five years, and he may not be transferred to any other position during such term. If a vacancy occurs in the office of the superintendent during the term of his employment, the board promptly shall appoint a superintendent for a term not to exceed five years from the next preceding first day of August. If the vacancy occurs through resignation or removal for cause, the superintendent thus resigning or removed shall be ineligible for reappointment to such office until after the reorganization of the board following the next general election of members of such board. No person shall be appointed to the office of superintendent who is not possessed of a certificate of the superintendent type, as defined in section 3319.22 of the Revised Code, unless such person had been employed as a county, city, or exempted village superintendent prior to August 1, 1939. At the time of making such appointment or designation of term, such board shall fix the compensation of the superintendent.”

It is stated in your letter that the state board of education claims that by reason of the provisions of this section, Mr. F. does not now

have the necessary qualifications for a superintendent's certificate, and has therefore refused to issue him any certificate. The question accordingly arises whether, in view of all the facts and the present provisions of the statutes, Mr. F. does now have such a status as would authorize the board of education to employ him as superintendent.

Section 3319.22, Revised Code, provides for the issuance of a certificate of state wide validity to teachers in accordance with standards, rules and regulations authorized by law. The authority to adopt such regulations was, prior to the recent statutes establishing a state board of education, lodged in the superintendent of public instruction. By that recent change, it is lodged in the state board of education. (Section 3319.23, R. C.) Section 3319.22 establishes certain types of certificates, among others:

“(C) High school, valid for teaching the subjects named in such certificate in grades seven to twelve, inclusive;

“(F) High school principal, valid for teaching the subjects named in such certificate or for supervision in junior or senior high schools;

“(H) Superintendent, valid for teaching the subjects named in such certificate, for supervising in elementary and high schools or for administrative duties in a school system;

\* \* \*.”

The question underlying your inquiry is whether Mr. F. has either of the qualifications set forth in Section 3319.01 supra, or whether, under some other provision of the law he may be eligible to appointment as superintendent notwithstanding the limitation of that section.

As having a very substantial bearing on the question, I call attention to Section 3319.27, Revised Code, which was enacted in 1943, being also a part of the new school code, and reading as follows:

“The superintendent of public instruction may renew for like period and validity, any provisional certificate issued prior to September 5, 1935, upon satisfactory evidence of the applicant's professional standing, and, if experienced, teaching success.

“The superintendent also shall establish standards in accordance with which he may convert provisional and life certificates issued prior to September 5, 1935, into certificates of the various types provided for in section 3319.22 of the Revised Code. All such certificates issued prior to September 5, 1935, shall, without

such conversion, retain their validity for the kinds of positions for which they were valid when issued.”

This section was amended by the 101st General Assembly by the substitution of “the state board of education” for the words “the superintendent of public instruction.” If, therefore, the life certificate which Mr. F. received in 1930, was then valid for the position of superintendent, I can see no reason why it is not still valid for that purpose. That it was then sufficient for a superintendency, there can be no doubt, and I understand that the department of education concedes that point.

It is true that the rules which the department of education has from time to time been authorized to establish for issuing teachers' certificates may have been changed, but I can only construe the final sentence of Section 3319.27 as being intended positively to preserve the full validity of all provisional and life certificates issued prior to September 5, 1935, under the laws and rules in force at the time of their issuance. Section 3319.27, in effect, established a rule of its own *putting that matter beyond the rule making power of the department*. And note that the validity of such certificates is preserved “for the *kind of positions* for which they were valid when issued.” This last mentioned section may seem in some measure to be in conflict with the provision of Section 3319.01 *supra*, setting forth the necessary qualifications of a superintendent. But if the two sections are read together, it is manifest that there is no necessary conflict; that Section 3319.01 is prospective in its outlook, whereas Section 3319.27 creates an exception in favor of those who were qualified under previous provisions of the law. It is merely a variation of what is commonly referred to as the “grandfather clause”, in many statutes, which prescribes new and exacting qualifications for entering certain professions, but preserves the right of those who have had long experience and are well established in those professions, to continue in the same without having to submit to examination.

Therefore, since Mr. F. is the possessor of a life certificate issued prior to September 5, 1935, which was then valid for the superintendency of a school district, such certificate is, by virtue of the provisions of Section 3319.27, Revised Code, still valid for such position, and he is not subject to the conditions imposed by Section 3319.01, Revised Code. This conclusion, which is in direct answer to your first and second questions, appears to dispose of all questions raised by your communication, and therefore no discussion of the remaining questions is called for.

Accordingly, it is my opinion that under the provisions of Section 3319.27, Revised Code, the holder of a life high school teacher's certificate issued in 1930, which was then valid for the position of school superintendent is eligible for appointment as county superintendent, notwithstanding the provisions of Section 3319.01, of the Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General