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EDUCATION—LOCAL BOARDS OF EDUCATION—AUTHORITY TO EMPLOY EXECUTIVE HEAD—DISCUSSION OF POSITION OF EXECUTIVE HEAD—CONTRACT SYSTEM FOR TEACHERS, SCHOOLS WITH FEWER THAN 800 PUPILS — §3319.11 RC.

SYLLABUS:

1. The board of education of a local school district may appoint more than one principal for such schools in the district as the board deems proper; one principal may be designated as an executive head by such board.
2. In a local school district having more than one principal, one of whom has been designated as executive head, those principals not designated as executive head have the legal status of a principal of the school administrative unit assigned to them by the board of education.
3. An individual employed as an executive head in a local school district may be employed as such for a period of twelve months; a contract purporting to give a longer term is of no effect beyond the first twelve months of the purported contract period.

4. No position, either as teacher or principal, can be acquired as a result of rendering services as an executive head after the termination of the contract period.

5. A board of education of a school district having fewer than eight hundred pupils is governed by Section 3319.11 (A), (B), (C), (D), Revised Code, when contracting with teachers; such board may in its discretion as authorized in Section 3319.11 (B), Revised Code, employ a teacher, new to that district, who has one year's teaching experience in other schools, for a period commensurate with his past experience.

Columbus, Ohio, September 17, 1957

Hon. Philip D. Brumbaugh, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

I have before me your request for my opinion in which you present the following questions:

"1. Whether or not in a local school district the 'Principal' and 'Executive Head' must be one and the same person?

"2. If the person designated as 'Executive Head' must also serve said local district as 'Principal', what is the legal status of such other person in said school district?

"3. Whether or not a contract given by a local school district to an 'Executive Head' for a period in excess of twelve months constitutes a valid and enforceable contract after the expiration of twelve months from its effective date?

"4. If such contract is not enforceable, is such person's relationship with the district terminated, or does he revert to principal or teacher status for the balance of the contract period?

"5. If he does revert, at what salary does he serve the remaining years?

"6. May a person who has acquired continuing contract status in another school district compel the issuance to him of a continuing contract in another school district which has an enrollment of less than 800 pupils?"

In answer to your first question I direct your attention to Section 3319.02, Revised Code, reading in pertinent part:

"The board of each city, exempted village, and local school district shall appoint principals for all high schools and for such other schools as the board designates. Upon recommendation of

the county superintendent, a local board may *designate a principal as executive head* who may be employed as such for a period of twelve months.”
(Emphasis added.)

The position of principal involves essentially an administrative office having certain delegated duties to perform as the board of education designates. The statute speaks of principals for *all high schools*. In adding an authorization for appointing principals “for such other schools as the board designates” the intent must have been present to allow grade schools, junior high schools, elementary schools to benefit from the administrative services to be performed by a principal. With the present trend of school centralization the organization of local school district school facilities into administrative units to be supervised by a principal cannot be ignored. Certification for such supervisory personnel has been provided for in Section 3319.22 (E), (F), (G), (H), (J), Revised Code, such certification classification being in addition to the teaching certification classifications for each type of school.

In a local school district the board of education shall appoint one principal for each high school and may appoint principals for such other schools as the board designates. One of the principals so appointed may be designated as an executive head. The duties of an executive head are the proper subjects of action by the board of education. See Opinion No. 245, Opinions of the Attorney General for 1957, p. 73.

In those local school districts having but one principal, there can be but one person designated executive head unless another principal is appointed. Once the only principal has been designated as an executive head the board of education has the duty of determining whether such executive head will continue to serve also as principal or whether someone else will be appointed as principal. Since the duties of principal as well as executive head are subjects of action by the board of education, I see no reason why one person could not be responsible in both positions, especially when the whole of the supervisory duties of the local school system have been entrusted to one individual. It is to be noted that an executive head is but a principal who has been *designated* to perform certain duties imposed by the board of education in addition to or instead of those duties placed upon principals. Therefore, the answer to your first query must be in the negative.

The answer to your second question must be presented in light of

the answer to your first query. Since the board of education may appoint more than one principal, a principal who is not designated as an executive head has those duties, occupies that position, and has the legal status of principal of that school administrative unit assigned to him by the board of education. The legislature in establishing certification requirements for various types of principals and authorizing city, exempted village and local district boards of education to appoint individuals from among that certificated class to positions of principal must reasonably have intended for some school districts to have more than one principal. It is also to be noted that the language of Section 3319.02, *supra*, commands that at least each high school in the district shall have a principal; the local board *may* designate a principal, once appointed, to serve as an executive head.

In answer to your third question I direct your attention to Opinion No. 681, Opinions of the Attorney General for 1939, page 835, wherein, at pages 836, 837, a discussion of the powers of a board of education was presented:

“ ‘Boards of education are creatures of statute and their duties and authority are marked by legislation.’

“In the case of Board of Education vs. Best, 52 O.S., 138, it is said at page 152:

“ ‘The authority of boards of education like that of municipal councils is strictly limited. They both have only such powers as are expressly granted or clearly implied and doubtful claims as to the mode of exercising the powers vested in them are resolved against them.’

“And in the case of Schwing vs. McClure, 120 O.S., 335, it is held:

“ ‘Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.’

“Each school district or other political subdivision of the state is a separate entity and a separate individual unit of the state for governmental purposes and its governing authority or administrative agency created by statute for that purpose is limited in the exercise of the power and authority granted to it to exercising those powers and authority for and on behalf of the subdivision only unless power to join with or cooperate with some other subdivision or agency is expressly conferred upon it by statute.”

The factual question you have presented in your inquiry concerns an individual employed by the board of education of a local school district first as a "superintendent" for a term of two years and subsequently as an "executive head" for four years. At no time was this individual employed as a teacher. He was hired as a school administrator, not as a teacher, even though for certification purposes, a superintendent or principal must first be a certified teacher and, as recognized in Opinion No. 245, *supra*, in some school systems often does perform teaching duties.

Referring to Section 3319.02, Revised Code, *supra*, I find no mention of the individual involved as having been appointed principal nor having been recommended for the position of executive head by the county superintendent as required by that section. The individual in question was initially hired as superintendent; however, I find no legal basis for a local school district to employ a superintendent. The only authority for school boards to employ superintendents is to be found in Section 3319.01, Revised Code:

"The board of education in each *county, city, and exempted village* school district shall * * * 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. * * *"
(Emphasis added.)

From the language of Section 3319.02, *supra*, a board of education of a local school district *may* designate a principal as executive head. However, once the board acts to designate a principal as executive head, such *employment* by the board is limited to a term of twelve months. In the resolution submitted with your request the board purported to contract with an individual to serve as executive head, for a term of four years. Such action is beyond the authority of the board and as such the contract is valid only within the limits of the authority of the board.

This position is further supported by Section 3319.07, Revised Code, reading in pertinent part as follows:

"In city and exempted village districts no teacher or principal shall be employed unless such person is nominated by the superintendent of schools of such district. Such board of education, by a three-fourths vote of its full membership may re-employ and teacher whom the superintendent refuses to appoint. In local school districts, no teacher or principal shall be employed unless

nominated by the superintendent of schools of the county school district * * *

This function of nomination must reflect the different status of local school districts from that enjoyed by city and exempted village districts.

Clearly, a contract for the employment of a *superintendent* by a board of education of a local school district is not authorized by law. The subsequent contract as executive head failed in complying with the statute: (1) no recommendation by county superintendent: (2) no appointment as principal: (3) term of contract unauthorized by the statute. In failing to observe the express command of the statute the board of education could not legally make such a contract.

Therefore, the answer to your third question must be in the negative.

The answer to your fourth question is determinable from what I have said in the process of answering your third question; however, in specific answer thereto, the individual in the situation you present has no status either as principal or teacher to which he may revert. There is no balance in the contract period for the longest period for which *an executive head may be employed is one year*. The resolution adopted by the local board of education terminated any contractual relation if such a relation existed. See Opinion No. 3060, Opinions of the Attorney General for 1953, p. 451.

This answer to question four makes it unnecessary to consider your fifth question.

In answer to your sixth question I direct your attention to Section 3319.11, Revised Code, reading in pertinent part:

“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, 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 two years nor more than five years provided that the teacher's educational quali-

fications 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 may at any time grant a continuing contract."

(Emphasis added.)

You will note that the hiring board may hire a teacher who is a new teacher in that district and who has at least one year's experience in other schools for a term not to exceed five years. However, the board is given discretion to hire for a term which will be commensurate with the teacher's past experience. In the face of such language I am impelled to advise you that a teacher such as you suggest cannot compel the issuance of a continuing contract, the definition of which is to be found in Section 3319.08, Revised Code, reading as follows:

"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."

Applying that rule of construction with regard to specific statutes controlling general statutes, the specific contract system provided in Section 3319.11, Revised Code, for schools having fewer than eight hundred pupils must prevail as against the general contract system found in Section 3319.11, Revised Code. To hold otherwise would render the specific provision without effect, a result contrary to the express intent of the legislature.

In specific answer to your enumerated questions, it is my opinion and you are, therefore, accordingly advised that:

1. The board of education of a local school district may appoint more than one principal for such schools in the district as the board seems proper; one principal may be designated as an executive head by such board.

2. In a local school district having more than one principal, one of whom has been designated as an executive head, those principals not designated as executive head have the legal status of a principal of the school administrative unit assigned to them by the board of education.

3. An individual employed as an executive head in a local school district may be employed as such for a period of twelve months; a contract purporting to give a longer term is of no effect beyond the first twelve months of the purported contract period.

4. No position, either as teacher or principal, can be acquired as a result of rendering services as an executive head after the termination of the contract period.

5. A board of education of a school district having fewer than eight hundred pupils is governed by Section 3319.11 (A), (B), (C), (D), Revised Code, when contracting with teachers; such board may in its discretion as authorized in Section 3319.11 (B), Revised Code, employ a teacher, new to that district, who has one year's teaching experience in other schools, for a period commensurate with his past experience.

Respectfully,
WILLIAM SAXBE
Attorney General