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1. TEACHERS IN PUBLIC SCHOOLS—EXEMPTED VILLAGE SCHOOL DISTRICT—THREE YEAR LIMITED CONTRACTS MADE IN 1941—CONTRACTS AUTHORIZED AND LEGAL—PROVISO—CERTIFICATION AND LEGAL REQUIREMENTS AS TO RECOMMENDATION OF SUPERINTENDENT OF SCHOOLS WERE MET.
2. TEACHER—THREE YEARS' TEACHING RECORD IN PURSUANCE OF CONTRACT OR FROM YEAR TO YEAR—CONTINUING CONTRACT—WHERE SUPERINTENDENT OF SCHOOLS RECOMMENDS CONTINUING CONTRACT, DUTY OF DISTRICT BOARD OF EDUCATION TO TENDER CONTRACT—BOARD MAY BY THREE-FOURTHS VOTE OF FULL MEMBERSHIP REJECT SUCH RECOMMENDATION.

SYLLABUS:

1. Three year limited contracts with teachers in the public schools of an exempted village school district which were entered into in 1941, were authorized and were legal provided the teachers were qualified as to certification and the requirements of the law as to the recommendation of the superintendent of schools were met.

2. A teacher in an exempted village school district qualified as to certification, who has taught for at least three years in his district, whether such years of service were in pursuance of a three year contract or from year to year, is eligible for the tender of a continuing contract and if under such circumstances the superintendent of schools recommends the granting of a continuing contract to the teacher, it is the duty of the board of education of the district to tender such a contract to the teacher unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation.

Columbus, Ohio, April 30, 1943.

Hon. Louis F. Sheridan, Prosecuting Attorney,
Ironton, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“An exempted village school board has requested an opinion upon the following situations. As I have been unable to find

authorities determining these issues, I will appreciate your opinions.

1. Is a three year limited contract given in 1941 to teachers, at that time working under a one year local contract, legal?
2. Is a teacher who has been employed for three years by default (that is by the Board of Education not serving any notice by March 31st of any school year) automatically to receive a continuing contract provided all educational requirements are met?"

In Section 7690-1, General Code, which was enacted in 1941 as a part of the so-called Teachers' Tenure Law (Sections 7690-1 to 7690-8, inclusive, of the General Code) it is provided that each board of education shall enter into contracts for the employment of all teachers in the public schools. Further provision is made therein to the effect that contracts for the employment of teachers shall be of two types—limited contracts and continuing contracts. A limited contract is defined as a contract for such term as is authorized by Section 7691, General Code; a continuing contract is defined as a contract which shall remain in full force and effect until the teacher resigns, retires or is retired or until the contract is terminated or suspended as provided by law.

Prior to the enactment of the Teachers' Tenure Law, there had been in force for several years Section 7691, General Code. This section as it was amended in 1939 and as it has been in force since that time, provides inferentially that teachers in the public schools may lawfully be employed for limited periods of one, two, three or four years, in the discretion of the employing board. The authority extended to a board of education in the 1941 enactment contained no limitation as to such employment of teachers so far as their previously having been employed for any fixed length of time was concerned. Such employment might have been consummated if properly done, whether the teacher previously had been employed under local contract for one or more years or whether he ever had been employed as a teacher locally or elsewhere. Prior to the enactment of the Teachers' Tenure Law, such contracts were not expressly designated "limited" contracts although as a matter of fact, they were necessarily limited as to time because that was the only class of such contracts then known to the law. Continuing contracts were not recognized until the so-called Teachers' Tenure Law became effective, September 1, 1941.

You do not state in your first question whether the contract mentioned was entered into prior to September 1st of 1941 or later in the

year. It is immaterial, however, as there seems to be no doubt but that three year limited contracts with teachers might have been entered into in exempted village school districts at any time in the year 1941, whether before or after September 1st provided, of course, the teachers were qualified as to certification and had been properly recommended for such positions by the superintendent of schools.

It is provided in Section 7690-1, General Code, that continuing contracts shall be granted only to teachers holding professional, permanent or life certificates. "Continuing service status" for a teacher is defined therein as "employment under a continuing contract." With these definitions in mind, it may be noted, speaking generally, that the eligibility of a teacher for a continuing contract is fixed by the first paragraph of Section 7690-2, General Code, wherein it is provided:

"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."

However, it should be pointed out that the tender of such a contract does not alone cause the contract to come into existence. The making of any contract involves the elements of offer and acceptance, and the offer or tender of the contract does not create a contract or cause it to become existent without acceptance.

Where re-employment of a teacher who is eligible for employment on a continuing contract is involved, the provisions of the second paragraph of Section 7690-2, General Code, are controlling. It is there provided:

"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 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."

In order to determine the eligibility of a teacher for a continuing contract under the first paragraph of Section 7690-1, General Code, it is

immaterial whether he was employed from year to year in pursuance of the notice of March 21st of each year mentioned by you or under a three year contract. Service under such circumstances for three years would clearly bring the teacher within the terms of the first paragraph of Section 7690-2 quoted above, and accord him the eligibility thereby afforded.

At the close of your second question, with respect to the right of a teacher under certain circumstances automatically to receive a continuing contract, you make use of the expression, "providing all educational requirements are met." Of course, educational requirements such as proper certification for a teacher must be met in any and all cases before a teacher may be employed under any circumstances either upon a limited or continuing contract. The only place in the law where the specific provision "providing the teacher's educational qualifications have been fulfilled" appears is in paragraph (c) of the second proviso of Section 7690-2, General Code, and has reference to a contract system as set up in the said proviso for school districts of under eight hundred pupils. As such a system does not prevail in any exempted village school district upon which your entire inquiry is predicated, I assume that for our present purpose the expression may be considered as being outside the inquiry and may be disregarded.

In the light of what has been said, I am of the opinion :

1. Three year limited contracts with teachers in the public schools of an exempted village school district which were entered into in 1941, were authorized and were legal, provided the teachers were qualified as to certification and the requirements of the law as to the recommendation of the superintendent of schools were met.

2. A teacher in an exempted village school district qualified as to certification, who has taught for at least three years in his district, whether such years of service were in pursuance of a three year contract or from year to year, is eligible for the tender of a continuing contract and if under such circumstances the superintendent of schools recommends the granting of a continuing contract to the teacher, it is the duty of the board of education of the district to tender such a contract to the teacher unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation.

Respectfully,

THOMAS J. HERBERT,
Attorney General.