

1251.

ASSISTANT COUNTY SUPERINTENDENT OF SCHOOLS—ELECTION BY BOARD OF EDUCATION—MAY BE PERSON WHO HAS PREVIOUSLY BEEN EMPLOYED AS TEACHER—LENGTH OF TERM.

SYLLABUS:

In the absence of abuse of discretion on the part of the county board of education, such board may elect one or more assistant county superintendents of schools for a term of not to exceed three years, without regard to whether or not the person or persons so elected had previously been employed as teachers in the schools of the county district, or elsewhere.

COLUMBUS, OHIO, November 10, 1927.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows :

“Is it legal for a county board of education to employ an assistant county superintendent for three months if such person has completed a teaching term of nine months? In other words this would provide for the employment, if legal, of the same person as teacher for nine months and for the other three months as assistant county superintendent.”

By the terms of Section 7703 and 7705, General Code, teachers in city school districts are appointed by the superintendent of schools, subject to confirmation by the board of education of the district. In rural and village districts (other than exempted village districts) teachers are employed by the district board of education either after nomination by the county superintendent or assistant county superintendent, or without such nomination if done by a majority of the full membership of the board, for terms of not more than three years. Assistant county superintendents are elected by the county board of education, as provided by Section 4739, General Code, and may be so elected for a term of not to exceed three years. This implies that they may be elected for a lesser term than three years if the county board of education determines that such action is expedient.

Teachers may be employed for the regular school year as defined in Section 7689, General Code, to-wit, beginning on the 1st day of July of any calendar year, and ending on the 30th day of June of the succeeding calendar year, or if summer schools or teachers training classes are maintained during the time not included within the regular school year, and in counties where normal schools are maintained during the summer months teachers may be employed for such time as they are needed. In an opinion of this department, viz., Opinion No. 1245, rendered under date of November 9th, 1927, to the prosecuting attorney at Delaware, Ohio, it is held that teachers in the public schools may be employed for part time only, and if so employed they may devote their remaining time to other activities.

While your inquiry does not state in what capacity the teacher referred to in your letter was employed, or during what part of the year he was employed, I take it the time for which he was employed has expired and that the time which it is proposed to employ him as assistant county superintendent is for the remaining portion of a twelve months' period immediately succeeding the nine months he was employed as a teacher, and that any employment he might become engaged in for this three months' period would in no way interfere with his duties as a teacher.

Simply because a person may have previously been employed as a teacher in one of the school districts of a county school district is no reason why he should not be

employed by the county board of education in the capacity of an assistant superintendent. The duties of an assistant county superintendent of schools are set forth in Section 7706, General Code, and include the spending of such portion of his time as the county superintendent may designate in actual classroom supervision. The remaining portion of his time shall be spent for organization and administration purposes and in the instruction of teachers.

If no schools are in session and the work of the county superintendent with respect to organization and administration purposes is not so onerous as to require the help of an assistant, there might be no occasion for the employment of an assistant superintendent, and the employment of one merely to provide a sinecure for a person who was employed as a teacher during a part of the year, thus providing an income for him during the vacation period, would be an abuse of discretion on the part of the county board of education. This, however, is a question of fact in each instance.

Section 4739, General Code, provides :

“One or more assistant county superintendents, as may be determined by the county board of education, may be elected for a term of not to exceed three years in each county school district by the county board of education on the nomination of the county superintendent. * * * ”

It will be observed that the question of whether or not one or more assistant county superintendents shall be employed, is left to the determination of the county board of education. In the absence of abuse of discretion on its part in determining whether or not an assistant county superintendent or more than one assistant county superintendent shall be elected, the determination of the county board of education would be final.

Specifically answering your question, I am of the opinion that in the absence of abuse of discretion on the part of a county board of education, such board may elect one or more assistant county superintendents of schools for a term of not to exceed three years, without regard to whether or not the person or persons so elected had previously been employed as teachers in the schools of the county district or elsewhere.

It will be noted that the above opinion is given with the understanding that as stated in your letter, the teacher had “*completed* a teaching term of nine months.” I assume from this statement that upon his employment as assistant county superintendent, the teacher in question does not intend to teach in any of the schools under his jurisdiction during any period of time for which a contract of employment is made, while he is serving as assistant county superintendent. As above stated Section 7705, General Code, provides, *inter alia*, that a village or rural school district board of education “shall employ no teacher for any school unless such teacher is nominated therefor by the county superintendent or assistant county superintendent except by a majority vote of its full membership.” The impropriety of a teacher occupying a position in which he would be vested by law with the power to recommend his own employment as a teacher in preference to other teachers in obvious, and in such a case the two positions under consideration would be clearly and plainly incompatible.

Respectfully,
EDWARD C. TURNER,
Attorney General.