

2022.

CONTRACT—EXECUTED BY VILLAGE BOARD OF EDUCATION WITH
SUPERINTENDENT OF SCHOOLS BEFORE DATE OF REPEAL OF
SECTION 4740, GENERAL CODE—VALID.

SYLLABUS:

A contract entered into with a superintendent of schools, by authority of former Section 4740, General Code, prior to the effective date of the repeal of said statute, is a valid contract, binding upon both parties thereto until such contract is dissolved, expires, or the said superintendent is dismissed for cause.

COLUMBUS, OHIO, June 24, 1930.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“A village board of education in a county school system elected a superintendent on May 16, 1929, for a term of three years from August 1, 1929. The minutes of the board of education read as follows:

‘The hiring of a Superintendent was discussed, the former applicants’ credentials being brought out, whereupon it was moved by A., seconded by S., that Mr. B. be employed as Superintendent of P. Schools for a period of three years beginning August 1, 1929, and ending July 31, 1932, and that the salary for the first year be \$5,000, \$5250 the second and \$5500 the third, and the president and clerk be and hereby are authorized and directed to execute contracts accordingly.’

A contract was written up, in which contract there is no mention of contracting with this man as superintendent but only as teacher. This was signed by the board and a copy signed by the man who was elected superintendent.

The village in this school district has the population of a city (13,811) by unofficial report of the 1930 census. It is still in the county system. At the time of the election of this man, May 16, 1929, the board assumed that the district was a district with a superintendent under Section 4740, but the repeal of that section became effective a few days before August 1, 1929.

An attempt is now being made to claim that the board could not elect a superintendent as shown in the minutes, that the contract was void, and that the man elected has no claim to hold the position for the two remaining years.

We would like to have your opinion as to whether this person who was elected by the board has a binding contract on which salary must be paid at the rate stipulated.”

It appears from your statement, that the resolution of the board in question purported to employ a superintendent of schools, whereas the contract entered into by authority of the resolution, recited that the person employed was employed as a teacher. I am also informed that Mr. B., himself, had filed an application for a position as superintendent and understood when he signed the contract to be accepting employment as a superintendent. Moreover, he has been acting under the contract, during the school year of 1929-1930, as superintendent. That being true, I have no doubt the contract should be construed in accordance with the intention of the parties, as a contract employing a superintendent.

It has been held by the Supreme Court in the case of *State ex rel. vs. Evans et al.*,

90 O. S., 243, at page 251, that the proceedings of boards of education are not to be judged with the same exactness and precision as would be the journal of a court. Under the circumstances as stated by you, I have no hesitancy in saying that the action of the board would be construed as the employing of a superintendent if in fact the board was authorized to employ a superintendent of schools at that time.

You state that the board assumed that the district was a district authorized to employ a superintendent by authority of former Section 4740, General Code.

Upon the adoption of the School Code of 1914, a plan for the county supervision of schools was provided for. The schools within each county school district, that is in all rural and village school districts, were to be supervised by a county superintendent of schools and district superintendents, later assistant county superintendents, selected by the county board of education of the county school district within which the village and rural school districts were located. Somewhat of an exception was made to such county supervision in cases of village or rural school districts, which at that time employed a superintendent of schools, whereby those districts which already employed a superintendent and which officially certified to the clerk of the county board of education on or before July 20, 1914, that they would continue to employ superintendents might lawfully employ such local superintendents. This exception was contained in Section 4740, General Code, as then enacted. Said Section 4740, General Code, has been amended several times since 1914. As it was in effect under the several amendments from 1914 until its repeal in 1929, it authorized certain school districts to provide for local supervision of their schools by the employment of local superintendents of schools who, acting under the county superintendent of schools, but independently of any assistant county superintendent of schools, should superintend the schools of the districts. From the statement in your letter, I assume the district in question had been a district authorized by force of former Section 4740, General Code, to employ a superintendent of schools and this opinion is drawn with that understanding in mind.

Section 4740, General Code, authorizing certain village and rural districts to employ local superintendents of schools was repealed by the 88th General Assembly, in House Bill No. 362 (113 O. L., 685, 688). Said House Bill No. 362 was passed by the General Assembly on April 6, 1929, filed in the office of the Secretary of State on April 27, 1929, and became effective on July 26, 1929. Said act contains the following provision:

"This act shall not be construed to affect any rights which might exist under and by virtue of the sections hereby repealed at the date this act goes into effect."

The substantial legal question therefore to be determined, is whether or not the resolution of the board of education in question, adopted May 16, 1929, and the contract entered into in pursuance of said resolution was effective to constitute a valid, binding contract, inasmuch as the action so taken was taken after the passage of the act repealing Section 4740, General Code, but before that repeal became effective. I am informed that a written contract was entered into with Mr. B., as stated in your letter, within a few days after the passage of the resolution by the board of education on May 16, 1929.

It is provided by Section 7699, General Code, that upon the appointment of any person to any position under the control of a board of education, the clerk shall notify such person verbally or in writing of his appointment and secure from him within a reasonable time, to be determined by the board, his acceptance or rejection of such appointment. This notification and acceptance need not necessarily be in writing. However, there is no objection in those cases to the drawing up of a formal written

contract as was done in the present case. Said Section 7699, General Code, after stating that the clerk shall notify the appointee and secure from him an acceptance or rejection of the appointment, states:

"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."

Inasmuch as Section 4740, General Code, was in effect on May 16, 1929, and until July 26, 1929, and a formal appointment of a superintendent was made by resolution of the board and such appointment was accepted prior to the effective date of the repeal of Section 4740, General Code, I am of the opinion that there existed between Mr. B. and the board of education of the school district in question a contract binding both parties thereto until such time as it may be dissolved, expires or the appointee dismissed for cause.

The inquiry thus resolves itself into the question of whether or not the repeal of Section 4740, General Code, served to dissolve the contract. In addition to the fact that the act of the Legislature providing for the repeal of Section 4740, General Code, provided also that that repeal should not affect any rights that might exist under the sections of the Code repealed at the date the act goes into effect, it is a well established principle of law that the repeal of a statute does not affect vested rights under it. Lewis Sutherland on Statutory Construction, Section 672.

In an opinion rendered by me under date of June 1, 1929, which opinion may be found in the published opinions of the Attorney General for 1929 at page 688, there was under consideration the validity of a contract made with a superintendent of schools by authority of Section 4740, General Code, which contract had been entered into on March 28, 1929. In the course of the opinion it is said:

"It may be noted that by the terms of House Bill No. 362 of the 88th General Assembly, Section 4740, General Code, was repealed, the repeal to become effective July 26, 1929. This fact, however, would make no difference in the instant case if the contract with the superintendent had been consummated prior to the effective date of the repeal of the statute."

I am therefore of the opinion in specific answer to your question, that the contract of employment with Mr. B., as superintendent of the schools of P. district for a period of three years beginning August 1, 1929, in accordance with the appointment made by resolution of the board of education of P. district passed on May 16, 1929, is a valid and legal contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2023.

OPTOMETRY—APPLICANT MUST BE TWENTY-ONE YEARS OF AGE
TO TAKE EXAMINATION FOR SUCH PRACTICE.

SYLLABUS:

A person under the age of twenty-one years may not, under the provisions of Sec-