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MARRIED WOMEN TEACHERS IN PUBLIC SCHOOLS — CONTRACTS OF EMPLOYMENT — LIMITED OR CONTINUING — POLICY AGAINST EMPLOYMENT NOT UNREASONABLE, UNLAWFUL, ARBITRARY, IRRATIONAL OR IRRELEVANT ACT OF BOARD OF EDUCATION — SOUND DISCRETION OF BOARD — STATUS WHERE TEACHER MARRIES IN VIOLATION OF CONTRACT NOT TO MARRY — SECTIONS 7690-1, 7690-6 G.C. — HOUSE BILL 121, 94 GENERAL ASSEMBLY.

SYLLABUS:

1. *The adoption of a policy against the employment of married women teachers in the public schools by an employing board of education is not unreasonable, unlawful, arbitrary, irrational or irrelevant to the task of controlling and managing the public schools or against public policy, and is within the sound discreation of the board of education entrusted by law with the determination of questions of policy in the conduct of the schools of its district.*

2. *Limited contracts with unmarried women teachers in the public schools made in pursuance of Section* 7690-1, *General Code, as amended in House Bill No.* 121 *of the* 94th *General Assembly, may lawfully be made after September* 1, 1941, *for terms authorized by the statute, conditioned upon the teachers refraining from marriage during the term of the contract, and if such a limitation is expressly contained in the contract or is incorporated therein by virtue of existing rules and regulations of the employing board of education, the marriage of the teacher automatically terminates the contract.*

3. *The violation of the rule of a board of education against the employment of married women teachers in the public schools constitutes grounds for the termination of the contract of such teacher whether she is employed under a limited or continuing contract, under the provisions of Section* 7690-6, *General Code, which provides that teacher's contracts may be made to expire for, among other things, wilful and persistent violation of lawful rules of the employing boards, or for other good and just cause.*

Columbus, Ohio, July 18, 1941.

Hon. Hugo Alexander, Prosecuting Attorney,

Steubenville, Ohio.

Dear Sir:

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

"I have recently received a communication from the Board of Education of Toronto in Jefferson County, for an interpretation of a recently enacted Continuing Contract Act which involves employment of teachers in the public school system. I quote the request of the Toronto Board of Education as follows:

'It is our understanding that the law will operate in practically the same manner as The Civil Service Law wherein a teacher once employed will have the privilege of continuing in this employment, without renewal of contract, until such time as the Board of Education can prefer certain specific charges and prove the same for the purpose of removal.

We have a clause in our contracts wherein a woman teacher employed in our schools automatically loses her rights to teach in our schools after she becomes married.'

Section 7690-6 of the new act provides that the contract of a teacher may not be terminated except for gross inefficiency or immorality; for wilful and persistent violations of reasonable regulations of the board of education; or for other good and just cause. As you will note from the request of the Board, the Contracts contain a clause that upon marriage a woman teacher forfeits her right to continue in her employment as a teacher in the public schools. In view of the widespread use of such a contractual clause in many municipalities throughout the state, I sincerely feel that an opinion should emanate from your office on a question of such vital importance. I would therefore appreciate it if you would advise me as to your interpretation of this section of the General Code as it applies to the question at hand."

By Act of the 94th General Assembly (H.B. No. 121) effective September 1, 1941, provision is made for the use of limited and continuing contracts in the employment of teachers in the public schools and for an orderly procedure for the termination or suspension of such contracts. Section 7690-1, General Code, as amended in the said Act, pro-

vides that each board of education shall enter into contracts for the employment of all teachers in the district and shall fix their salaries. It also provides as follows:

> "Contracts for the employment of teachers shall be of two types: limited contracts and continuing contracts. A limited contract for a superintendent shall be a contract for such term as authorized by section 7702 of the General Code, and for all other teachers, as hereinafter defined, for such term as authorized by section 7691 of the General Code. A continuing contract shall be a contract which shall remain in full force and effect until the teacher resigns, elects to retire, or is retired pursuant to section 7896-34 of the General Code, or until it is terminated or suspended as provided in this act and shall be granted only to teachers holding professional, permanent, or life certificates."

The clause in the above statute relating to one of the causes mentioned therein whereby a continuing contract may be terminated or suspended, to wit, "or until it is terminated or suspended as provided in this act" manifestly has reference to the limitations upon the termination of teachers' contracts as set up in supplemental section 7690-6, General Code, enacted in the same act of the legislature in which Amended Section 7690-1, General Code, was enacted. It is provided in said Section 7690-6, General Code, that:

> "The contract of a teacher may not be terminated except for gross inefficiency or immorality; for wilful and persistent violations of reasonable regulations of the board of education; or for other good and just cause. * * * "

It is further provided therein that before such contract may be terminated for any of the enumerated reasons, charges shall be preferred against the teacher, in writing, and an opportunity given the teacher for a hearing of the charges. Further provision is made to the effect that "the board of education may suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrants such action."

In practically the same form as it has existed for many years Section 7690, General Code, provides that each county, village and rural board of education shall have the control and management of all the public schools in their respective districts, including the power of employing teachers and other employes and of fixing their salaries, while Section 7705, General Code, provided that the board of education in each village

and rural school district should employ the teachers for the public schools of the said districts for a term "not longer" than three school years. Similar provision was made in Section 7691, General Code, applicable to city school districts only, to the effect that teachers should be employed for a term no "longer" than four school years nor less than one year. In 1939 former Section 7705, General Code, was repealed (118 O.L. 670) leaving Section 7691, General Code, with its four year limitation applicable to all school districts.

It will be observed that neither in former Section 7705, General Code, nor in present Section 7691, General Code, is there an express limitation upon the power of boards of education to make contracts with teachers terminable as to time as may be fixed by the terms of the contract other than that such contracts shall not be for longer periods than three years under former Section 7705, General Code, or for less than one year or more than four years under Section 7691, General Code. The same is true with respect to the provisions of Section 7702, General Code, which relate to the making of contracts with superintendents. This statute provides that contracts with superintendents in county, city and exempted village school districts shall be made by boards of education in those districts for terms "not longer" than five school years.

By express provision of Section 7690-1, General Code, as enacted in House Bill No. 121, supra, limited contracts, as therein defined, shall be governed as to the terms thereof with respect to time by the provisions of Section 7702 for superintendents and by Section 7691, General Code, for other teachers. It follows, therefore, that so far as limited contracts are concerned under the present law, a sound discretion is vested in employing boards of education to agree with the teachers who are so employed as to the termination of such contracts so long as they are not made to extend beyond five years for superintendents or be made to terminate in less than one year or later than four years for teachers. Such contracts may be made to terminate upon the happening of some contingency if agreed to by both parties. In other words, such contracts may now lawfully be made, and might have been so made prior to the enactment of House Bill No. 121 upon conditions as to time, or more properly, conditional limitations, agreeable to both parties.

That is not true, however, as to "continuing contracts" as defined in the law. It is expressly provided in Section 7690-1, General Code, supra,

that a continuing contract shall remain in full force and effect until one of four named contingencies occur: (1) "The teacher resigns"; (2) "elects to retire"; (3) "or is retired pursuant to Section 7896-34, General Code"; (4) "or is terminated or suspended as provided by this act." (Section 7690-6, General Code). Nothing is left to the discretion of the employing board or to the teacher with respect to the matter. The power of the contracting parties to agree to the terms of the continuing contract with respect to its termination is foreclosed by the legislature which expressly and definitely fixes the time and manner of termination of such contracts. The parties cannot lawfully agree otherwise.

The fact that under the law as it existed at the time, permitting a teacher and a board of education to agree that a contract with a teacher would terminate upon the occurrence of some specified event as agreed to, led a former Attorney General in 1934 to hold that a board of education and an unmarried woman may legally agree that the woman be employed as a teacher for a period allowable by the applicable statute and that her contract would automatically terminate in the event of her marriage during the term. See Opinions, Attorney General, 1934, Page 1351. The syllabus of that opinion is as follows:

> "1. When a board of education adopts a reasonable rule for the government of teachers in its employ, and thereafter enters into contracts of employment with teachers who have or should have knowledge of such rule, such rule is a part of the teacher's contract the same as though expressly rewritten therein.
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> 2. When a board of education has adopted a rule that any single female teacher who marries during the life of her contract will automatically forfeit her rights under such contract, such rule is not contrary to public policy and is within the legal powers of the board of education."

Under the doctrine of the aforementioned opinion, with which I am in accord, a limited contract with an unmarried woman under the present law may be made to contain a condition that the contract shall remain in force only so long as the teacher remains unmarried. Such a condition may not, however, be incorporated in a continuing contract inasmuch as the law itself has fixed the time and manner of termination of such contract.

The question, therefore, arises whether or not a rule of a board of education to the effect that married women will not be employed to teach

in the public schools of the district, and that marriage of any woman teacher who is employed under a continuing contract is grounds for terminating the contract of the teacher, is a reasonable and valid rule which if violated by the teacher may be the basis of charges looking to the termination of the contract as being within the enumerated reasons named in Section 7690-6, General Code, supra, for which a teacher's contract may be terminated, — whether the marriage of the teacher constitutes either "wilful and persistent violation of the reasonable regulations of the board of education;" or for "other good and just cause," as the expressions are used in the said statute.

Courts of other states where questions relating to the reasonableness and efficacy of a rule of a board of education providing against continuing in employment women teachers who marry are not in entire accord. A number of such cases are reviewed in annotations in A.L.R. Vol. 81, page 1033 and Vol. 118, page 1092. An examination of the authorities listed in these annotations discloses that the cases, with few exceptions, do not turn upon the question of the reasonableness or validity of the rule. The great majority of these cases turn upon facts peculiar to the particular case and on the provisions of the statute in force in the particular state relating to the grounds for removal of teachers and are not particularly helpful so far as furnishing a general rule applicable in our present inquiry. Seldom has any court held that a rule against marriage of women teachers is unreasonable, unlawful or unenforcable where the applicable statute contains grounds for removal, included within which marriage in defiance of a rule of the employing board to the contrary, may be included except in a few instances where the case so holding has been overruled or the doctrine upon which it is based, modified.

In the case of Elwood v. State, 203 Ind., 626, 180 N.E. 471, 81 A.L.R., 1027, decided by the Supreme Court of Indiana in 1932, it is held, as stated in the first branch of the syllabus:

> "The marriage of a woman teacher is not 'other good and just cause' within the provisions of a teachers' tenure law that a teacher may be dismissed for reasons enumerated, or 'other good and just cause'."

In 1937 the Supreme Court of Indiana decided the case of McQuaid v. State ex rel. Sigler, 211 Ind., 595, 6 N.E., (2d) 547, 118 A.L.R. 1079. In deciding this case the earlier Elwood case was overruled. The first branch of the syllabus of the McQuaid case is as follows:

> "Where a woman teacher's contract of employment is made with specific reference to or with full knowledge of a rule or policy, adopted in good faith, that marriage shall be ground for terminating a woman teacher's employment, marriage is a 'good and just cause' within the provisions of a Teachers' Tenure Law that a definite contract of a permanent teacher may be canceled for incompetency, insubordination, neglect of duty, immorality, justifiable decrease in a number of teaching positions, 'or other good and just cause'."

In the case of Richards v. District School Board, 78 Ore., 621, 153 Pac., 482, it appeared that a school board attempted to enforce a rule providing that marriage of a woman teacher automatically terminated her service. The court held that the rule was unreasonable. In a later Oregon case, Hendryx v. School District (1934), 148 Ore., 83, 35 Pac. 2d. 235, the doctrine of the Richards case was somewhat modified, and it was held that:

> "Board of directors of school district held authorized to adopt a rule against married female teachers, and to insert conditions in teaching contracts voiding contract upon marriage of female teacher under statute authorizing board to hire and make contracts with teachers."

In the McQuaid case, supra, decided in 1937, it is said in the opinion of Fansler, J., after referring to the Oregon case, Richards v. School Board, supra:

> "The case seems to stand alone in holding that as a matter of law, marriage is not a legal ground for dismissal where there is discretion vested in school authorities to dismiss for just and good cause."

In Sheldon v. School Committee of Hopedale, 276 Mass., 230, 177 N.E. 94, 94, the court said:

> "A decision that wise administration of public schools calls for the elimination of women teachers if they are married is not so irrational that it is inconsistent in law with good faith in dealing witth the question of dismissal."

In Rinaldo v. Dreyer, 294 Mass., 167, 1 N.E. 2d. 37 (1936), it is held that "good cause" within statute authorizing dismissal of teachers employed at discretion includes any ground which is put forward by the committee in good faith and which is not arbitrary, irrational, unreasonable or irrelevant to the committee's task of building up and maintaining an efficient school system. The statute there mentioned provided that a

teacher employed at discretion "shall not be dismissed except for inefficiency, incapacity, conduct unbecoming a teacher * * * , insubordination or other good cause." The court in that case held that under the rule of the school committee the marriage of a woman teacher should terminate her contract and operate as an automatic resignation of the teacher. Marriage of a woman teacher was "good cause" for dismissal within the statute. See also Houghton v. School Committee (1940 — Mass.) 28 N.E., 2d. 1001.

In England the power of educational authorities to remove women teachers upon their marriage has been sustained. Short v. Poole, (1926) 1 Ch. (Eng.) 66; Fennell v. East Ham (1926), 1 Ch. (Eng.) 641; Price v. Rhonda Urban Council (1923), 2 Ch. (Eng.) 372; 14 Br. Rul. Cases, 611, note, and 643, note.

Other cases supporting this principle are People v. Maxwell, Supt. of Schools, 87 App. Div., 131, 83 N.Y. Supp., 1098; Bleckie v. Cromwell Consolidated District, 186 Minn., 38, 242 N.W. 339; Coleman v. School District, 87 N.H., 465, 183 Atl., 556, and Ansorage v. Green Bay, 198 Wisc., 320, 224 N.W. 119. A number of similar cases might be cited.

In some cases courts have held that marriage of a woman teacher is not ground for the dismissal of the teacher. In practically all such cases the reason given is that marriage being not an evil in itself is not included within the causes enumerated in the applicable statute for which a teacher may be dismissed or her contract terminated, and in at least one case that has come to my attention it is held that marriage of a teacher in violation of a rule of the employing board is not included within a provision of the statute authorizing dismissal for "good and just cause." School District of Wildwood v. State Board of Education, 116 N.Y.Law, 572, 185 Atl., 664. This case is in accord with the earlier Indiana case. Elwood v. State, 203 Ind., 626, which, as has been pointed out herein, was later overruled by the Supreme Court of Indiana, McQuaid v. State, ex rel. Sigler, 211 Ind., 595.

I have found no case involving a statute such as ours which provides indirectly for termination of a teacher's contract for, among other things, wilful and persistent violation of reasonable regulations of the board of

education, or "for insubordination," as it is sometimes expressed in similar statutes, where it is held that marriage of a woman teacher in defiance of a rule of the board of education to the contrary, did not constitute grounds for dismissal. Nor have I found any authority holding that a rule of a board of education against marriage of women teachers is unlawful, irrational, arbitrary, unreasonable, irrelevant to the employer's task of building up and maintaining an efficient school system or against public policy.

Whether or not married women teachers should teach in the public schools is a question about which there may be an honest difference of opinion. It is a matter about which, for the purposes of this opinion, I have no concern, and it is not necessary for our present purpose to elaborate on the possible arguments for and against such policy. It is sufficient to say that reported decisions of courts in various jurisdictions, both in this country and in England, have taken the position that the adoption of a policy that married women should not be employed or permitted to continue in employment as teachers in the public schools, is a matter that is within the sound discretion of school authorities entrusted with the maintenance and control of the schools and employment of teachers therefor.

From my examination of a great number of decisions of courts where this question was involved, I am convinced that it is a matter entirely within the discretion of the employer, and that the adoption of such a policy is not unreasonable or against public policy.

Although there are no court decisions in Ohio dealing with the question, the principle upon which the opinion of the Attorney General in 1934, hereinbefore referred to, is founded, is clearly in accordance with the view taken by the courts in the cases referred to. It may be noted, moreover, that the said opinion has been consistently followed since 1934, and has not been challenged in court.

I am therefore of the opinion that:

(1) The adoption of a policy against the employment of married women teachers in the public schools by an employing board of education is not unreasonable, unlawful, arbitrary, irrational or irrelevant to the task of controlling and managing the public schools or against public

policy, and is within the sound discretion of the board of education entrusted by law with the determination of questions of policy in the conduct of the schools of its district.

(2) Limited contracts with unmarried women teachers in the public schools made in pursuance of Section 7690-1, General Code, as amended in House Bill No. 121 of the 94th General Assembly, may lawfully be made after September 1, 1941, for terms authorized by the statute, conditioned upon the teachers refraining from marriage during the term of the contract, and if such a limitation is expressly contained in the contract or is incorporated therein by virtue of existing rules and regulations of the employing board of education, the marriage of the teacher automatically terminates the contract.

(3) The violation of the rule of a board of education against the employment of married women teachers in the public schools constitutes grounds for the termination of the contract of such teacher whether she is employed under a limited or continuing contract, under the provisions of Section 7690-6, General Code, which provides that teachers' contracts may be made to expire for, among other things, wilful and persistent violation of lawful rules of the employing boards, or for other good and just cause.

Respectfully,

THOMAS J. HERBERT,

Attorney General.