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TEACHER WHILE UNDER CONTRACT WITH BOARD OF EDUCATION—LEFT TEACHING POSITION TO SERVE IN ARMED FORCES, WORLD WAR II—LEAVE WAS PRIOR TO EFFECTIVE DATE OF SECTION 4842-10, G. C., SEPTEMBER 16, 1943—UPON RETURN, HONORABLY DISCHARGED, HE DOES NOT HAVE RIGHT TO RESUME CONTRACT STATUS HELD PRIOR TO ENTERING MILITARY SERVICE.

SYLLABUS:

A teacher who, while under contract with a board of education, left his teaching position to serve in the armed forces in World War II prior to the effective date of Section 4842-10 General Code, to wit, September 16, 1943, does not have the right upon returning honorably discharged, to resume the contract status which he held prior to entering such military service.

Columbus, Ohio, September 26, 1945

Hon. Roland Pontius, Prosecuting Attorney  
Jefferson, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Board of Education of one of our local school districts has received an application from a veteran of World

War II for reinstatement, in pursuance of Section 4842-10 G. C. The applicant was a teacher in this district from the fall of 1936 until he was inducted into the Armed Forces, on February 20, 1941. At the time of his induction he had a contract with the district, which terminated at the end of the school year in 1941.

Since the induction the school board has entered into a contract with another teacher for a four year period, to replace the applicant. This contract has been in effect about a year.

We have read the Attorney General's Opinion No. 7076, dated August 17, 1944. The question in our mind is whether or not a soldier who entered the service prior to the effective date of Section 4842-10, G. C., is entitled to the benefits of this section.

You realize the new school year is about to commence, and we would appreciate hearing from you at your earliest convenience."

Section 4842-10, General Code, reads as follows:

"Upon the written request of a teacher, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational or professional or other purposes, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board of education may grant similar leave of absence and renewals thereof to any teacher because of physical or mental disability, but such teacher shall have the right to a hearing on such unrequested leave of absence or its renewals in accordance with the provisions for hearing and appeal in section 4842-12 of the General Code. Upon the return to service of a teacher at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave. Any teacher who leaves a teaching position to serve in the armed services of the auxiliaries thereof organized to prosecute world war II, upon returning honorably discharged from such service, shall resume the contract status held prior to entering military service, subject to passing satisfactorily a physical examination. Such contract status shall be resumed at the first of the school semester or the beginning of the school year following return from the armed services. The term 'armed services' shall be construed according to the definition thereof as provided in Section 486-16a of the General Code."

This section is a part of the new School Code adopted by the 95th General Assembly effective September 16, 1943. It succeeded former Section 7690-4, General Code, but the former act contained no provision dealing with the status of a teacher who leaves his teaching position to enter the military service. The portion of Section 4842-10 relating to leaves of absence is identical in its provisions with said former Section 7690-4.

Opinion No. 7076 to which you refer, was rendered by my immediate predecessor August 17, 1944. It will be seen, on reading it, that in determining the status of the teacher who was employed during the absence of the one in the military service, it was necessary to consider the contract status and right upon return, of the latter. Plainly the power of the board of education to terminate the contract of such substitute teacher depended upon the paramount right of the soldier teacher to resume his contract status upon his return honorably discharged from the military service.

In reaching the conclusion that was announced in that opinion, the effect of Section 4842-10 *supra* was discussed as follows:

*“It would seem, therefore, that Section 4842-10, supra, is part and parcel of each teacher’s contract. Under authority of such section the board of education must be held to agree that if a teacher, during the life of the contract, enters the armed services, he is excused from performance of the contract during the time he is in such armed service and that the board of education, upon his being honorably discharged, is bound to permit him to resume his teaching duties under the terms of such contract, upon compliance with the conditions precedent therein set forth on the other hand, such statute being a part of the teacher’s contract, the teacher who accepts a contract of employment to a teaching position which has become vacant by reason of the fact that the former teacher had entered the armed services would enter into a contract which may or may not be terminated by the happening of the condition, subsequent, namely, the return of the soldier-teacher.”* (Emphasis added.)

Manifestly this statute could not be read into the contract of the teacher who had left his teaching position and gone into the military service before the statute became effective, unless it is to be construed as retroactive in its operation.

It will be noted that the statute quoted uses the expression: "Any teacher who *leaves* a teaching position." The word "leaves" can hardly be given a retrospective meaning. The language used certainly conveys only the idea "if any teacher shall, after the taking effect of this act, leave his teaching position," etc.

The rule is well settled that a statute acts only prospectively and never retroactively unless the legislative intention is clearly expressed that it shall be retrospective in its operation. The principle is stated in 37 Oh. Jur., page 819, thus:

"Courts indulge in the presumption that the legislature intended statutes enacted by it to operate prospectively rather than retroactively. Indeed, the general rule is that they are to be so construed if susceptible of such interpretation or unless the law is retroactive in terms which clearly show such legislative intention as to permit, by no possibility, of any other construction. When the intention of the legislature is to give a statute a retroactive effect, such intention must not be left to inference or construction, but must be manifested by express and unequivocal expression."

The General Assembly in the enactment of statutes frequently does employ words that indicate clearly an intention to give them a retroactive force. For instance, in the amendment of Section 486-16a, relating to employes in the classified service who go into the military service, it was provided:

"Any person who at the time he held or holds an office or position under the classified service and has held such office or position for a period of ninety days or more, *enlisted or enlists in the* armed services of the United States subsequent to December 8, 1941, *was or is* commissioned in said armed services or *was or is* called into said armed services \* \* \* shall, within thirty days after making application therefor, be restored to the office or position held by him immediately prior to his entering into the armed services \* \* \*." (Emphasis added.)

The failure to grant a similar right to a teacher who had previously left his teaching position to enter the military service may seem a harsh discrimination, but we are compelled to apply the law as we find it.

It is the prerogative of the Legislature alone to determine the policy of the law and so to write the law. It is unfortunate that the language

found in the statute concerned does not permit a retroactive interpretation allowing the reinstatement of a teacher who entered the armed services prior to its effective date. However, no court or administrative officer may read into a statute something not manifestly there. It would be a false service to any person seeking reinstatement to a position under the circumstances detailed in your letter to so interpret the statute as to allow his reinstatement. His tenure of employment thereunder would always be questionable and the rights established by continued service would not be secure. With this in mind, I wrote to Governor Frank J. Lausche on August 22, 1945, calling his attention to the situation here discussed in order that remedial legislation might be suggested to the General Assembly.

If the teacher referred to in your communication had been granted a leave of absence by the board of education, and pursuant thereto, entered the military service, he would, of course, be entitled under the provisions of Section 4842-10, General Code, to resume his contract status at the end of such leave of absence or a renewal thereof. Your letter does not suggest that that situation existed in the case you present.

Accordingly, in specific answer to your question, I am compelled to hold that a teacher who, while under contract with a board of education left his teaching position to serve in the armed forces in World War II prior to the effective date of Section 4842-10, General Code, to wit, September 16, 1943, does not have the right upon returning honorably discharged, to resume the contract status which he held prior to entering such military service.

Respectfully,

HUGH S. JENKINS

Attorney General