

4750.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY,  
OHIO, \$152,136.00.

COLUMBUS, OHIO, October 2, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

4751.

TEACHER—CERTIFICATE MAY BE REVOKED BY DIRECTOR  
OF EDUCATION WHEN HEARING AND EVIDENCE  
DISCUSSED.

**SYLLABUS:**

1. *By favor of Section 7805-10, General Code, the Director of Education may revoke a teacher's certificate previously issued by the State Board of School Examiners if, upon hearing as provided by the statute, it is shown by satisfactory and proper evidence that the holder of such certificate had obtained the same by fraud or misrepresentation.*

2. *Upon a hearing looking to the revocation of a teacher's certificate as provided by Section 7805-10, General Code, where the accused appears and contests the revocation, all the evidence presented on either side of the controversy shall be presented under oath.*

3. *A letter from a foreign university although ostensibly written and signed by a proper and recognized official of such university, may not properly be admitted as evidence of the facts stated in the letter upon hearings conducted in pursuance of Section 7805-10, General Code, unless the accused fails or refuses to appear for the hearing.*

COLUMBUS, OHIO, October 3, 1935.

HON. E. L. BOWSHER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

“1. May the director of education revoke a life certificate previously issued if the facts show that the holder of such certificate presented and certified to false credentials as the basis upon which a life certificate was issued?”

2. May a letter from a foreign university, written and signed by a proper and recognized official of such university, be admitted as evidence of fact in determining the falsification of application data on which a life certificate was issued?"

Under the law as it existed prior to the enactment of Senate Bill 66 of the 91st General Assembly, which Act became effective September 5, 1935, life certificates to teach in the public schools of this state were granted by the State Board of School Examiners by favor of former Section 7807 and related sections of the General Code of Ohio. Authority was extended by these statutes to the State Board of School examiners to grant life certificates of different grades to applicants therefor, upon the presentation by the applicant of evidence of required scholarship, professional training and successful teaching experience satisfactory to the board. It would be presumed, of course, that anyone now possessing such a certificate had presented to the board satisfactory evidence as a prerequisite to the granting of the certificate. And it should no doubt be presumed that the board, in the performance of its duties, had made some investigation at least as to the genuineness of the evidence submitted, as it will always be presumed that public officers do their duty in the performance of official duties. If, in fact, the evidence submitted by an applicant as a prerequisite to the granting of a certificate was false or fraudulent as to material fact and such evidence was presented wilfully and with knowledge of its falsity, and such evidence was relied upon by the board, and the board was thereby misled, the fraud, if proven by equally satisfactory evidence would, in my opinion, vitiate the entire proceeding and merit the cancellation of the certificate in the absence of any prescribed statutory method of revoking such certificate. However, the evidence to substantiate such fraud should at least be as "satisfactory" as was that to merit the granting of the certificate in the first instance and should be presented to the certifying authority, unless the law provides otherwise, in an orderly manner and in accordance with law if such procedure is provided for by law.

Under the terms of said Senate Bill 66 of the 91st General Assembly, it is provided that all certificates theretofore issued shall retain their validity for the kinds of positions for which they were valid when issued.

Under the law as it existed prior to the enactment of said Senate Bill 66, no express authority was granted by statute to any agency to revoke state teachers' certificates granted by the State Board of School Examiners. The present law expressly provides for the revocation of such certificates and directs that the same shall be done by the Director of Education in the manner therein provided for. Section 7805-10, General Code, as enacted in said Senate Bill 66, is as follows:

"If at any time the holder of a certificate be found intemperate,

immoral, incompetent, negligent, or guilty of other conduct unbecoming to his position, the director shall revoke the certificate. Such evidence must be presented in writing, of which the accused shall be duly notified, and no certificate shall be revoked without a personal hearing with the privilege of witnesses under oath on both sides, unless the holder thereof refuse or fail to appear for the hearing. The expenses to the state of such hearing shall be paid by the state treasurer, from the general revenue fund on warrant drawn by the state auditor."

At best, a teacher's certificate is a mere license. It has none of the elements of a contract, and does not confer an absolute right but only a personal privilege. A clear statement of the law with respect to teachers' certificates and their revocation will be found in *Ruling Case Law*, Vol. 24, page 613, where it is stated:

"In many jurisdictions there are statutes providing for the licensing of persons qualified to teach in the public schools. This power is fundamentally in the legislature. The latter may likewise provide for the revocation of licenses, and in doing so it violates no constitutional right, for a license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed. The legislature may delegate the right to license teachers or to revoke their licenses to a ministerial board or officer, and in granting, refusing, or revoking any such license such tribunal does not exercise judicial power in violation of constitutional provisions. Consequently a teacher deprived of his license by such a tribunal is not deprived of his constitutional rights of access to the courts, or to just compensation for the taking of property. But a board or an officer in matters connected with a teacher's license has a discretion so far analogous to judicial discretion as to offer protection from any claim for damages on account of any mere mistake in his decision or error in judgment, whether in granting or withholding a license, though he will be liable if this discretion is wilfully or corruptly abused to the injury of the teacher. It has been said that one accepting a license to teach school cannot usually resort to the courts to prevent its revocation on statutory grounds by the proper school officers; but where the statute specifies the grounds on which a license may be revoked by a school superintendent, the courts will protect a teacher against a revocation on grounds not included in the statute."

A number of authorities are cited in support of the text. See also *Marrs vs. Matthews*, 270 S. W., 586 (Tex.); *Clure vs. School District*, 166 Wis., 452, 6 A. L. R., 736; *Measles vs. Owen*, 46 S. W., 2nd, 40. In the *Clure* case, supra, it is held:

“The validity of a teacher’s certificate cannot be attacked in an action by him to recover his salary, if the statute places authority to nullify certificate in the county and state superintendent of schools.”

From the fact that a mere license confers no estate or vested right, it follows that it is at all times revocable at the pleasure of the authority from which it emanates. *Doyle vs. Continental Insurance Company*, 94 U. S. 355. See with respect to the revocation of licenses generally, opinion of the Attorney General reported in the published *Opinions of the Attorney General for 1933*, at page 809, wherein a number of authorities are cited. As the power to issue state teachers’ certificates emanates from the state by express authority of the legislature, it necessarily follows that the legislature has power to determine for what causes and in what manner the revocation shall be made, as it has done by the enactment of Section 7805-10, General Code. It also follows that where a statute sets forth the manner of revocation and the causes for which a certificate may be revoked, it cannot be revoked in any other manner or for any other cause.

While the statute, Section 7805-10, General Code, does not expressly enumerate among the causes for which a teacher’s certificate may be revoked, fraud or misrepresentation by the holder of the certificate in securing it in the first place, it is a well recognized rule of law that a license obtained by fraud may be revoked on the theory that it is void *ab initio*. See *Corpus Juris*, Vol. 33, page 565; *Opinions of the Attorney General for 1933*, page 809.

In proceedings aimed at the revocation of a teacher’s certificate, the statute should be followed strictly. Specific charges should be filed in writing and a copy thereof served upon the person whose certificate it is sought to revoke. A reasonable time should be given before the “personal hearing” provided for by the statute is held and the right extended to the holder of the certificate to appear and contest the proposed revocation by the presentation of evidence under oath in exoneration or defense of the specific charges against him.

The Director of Education in conducting proceedings looking to the revocation of a teacher’s certificate does not act in a judicial capacity but merely as an administrative or executive officer. *State ex rel. vs. Gray*, 114 O. S., 270. The technical rules of evidence as they would apply in judicial hearings do not apply in a proceeding of this kind. However, where a statute accords to a licensee in a proceeding to revoke his license, the right of witnesses under oath as does Section 7805-10 supra, he has a right to demand

what the statute gives him, unless he refuses or fails to appear for the hearing and insist on his rights as given to him by the statute. A mere letter from someone, stating certain relevant facts would not in my opinion be proper evidence of the truth of those facts in a hearing conducted in pursuance of Section 7805-10, General Code, unless the accused should fail or refuse to appear for the hearing, as they are mere statements of the writer or signer of the letter not under oath as the statute provides. I am therefore of the opinion:

1. By favor of Section 7805-10, General Code, the Director of Education may revoke a teacher's certificate previously issued by the State Board of School Examiners if, upon hearing as provided by the statute, it is shown by satisfactory and proper evidence that the holder of such certificate had obtained the same by fraud or misrepresentation.

2. Upon a hearing looking to the revocation of a teacher's certificate as provided by Section 7805-10, General Code, where the accused appears and contests the revocation, all the evidence presented on either side of the controversy should be presented under oath.

3. A letter from a foreign university although ostensibly written and signed by a proper and recognized official of such university, may not properly be admitted as evidence of the facts stated in the letter upon hearings conducted in pursuance of Section 7805-10, General Code, unless the accused fails or refuses to appear for the hearing.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4752.

APPROVAL, NOTES OF PERRYVILLE VILLAGE SCHOOL DISTRICT, ASHLAND COUNTY, OHIO, \$2,849.00.

COLUMBUS, OHIO, October 2, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*