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CONTINUING CONTRACT :

1. TEACHER — QUALIFIED — CERTIFICATION — WITHIN LAST FIVE YEARS, TAUGHT AT LEAST THREE YEARS IN DISTRICT—ELIGIBLE FOR CONTINUING SERVICE STATUS.
2. TEACHER TAUGHT IN DISTRICT UNDER LIMITED CONTRACTS FOUR OR FIVE YEARS—ELIGIBLE FOR CONTINUING SERVICE STATUS—BY REASON OF THOSE FACTS ALONE, TEACHER DOES NOT ACQUIRE RIGHT UPON REEMPLOYMENT TO CONTINUING CONTRACT.
3. TEACHER EMPLOYED UNDER LIMITED CONTRACT—REEMPLOYMENT—REQUIREMENTS AS TO WRITTEN NOTICE — SUPERINTENDENT'S RECOMMENDATION — ON OR BEFORE APRIL 30.
4. AUTHORITY, BOARD OF EDUCATION—MAY REFUSE TO REEMPLOY TEACHER RECOMMENDED BY SUPERINTENDENT—THREE-FOURTHS VOTE OF FULL MEMBERSHIP REQUIRED—REEMPLOYMENT CONTRACT MUST BE CONTINUING—SECTION 4842-8 G. C.

SYLLABUS :

1. A teacher qualified as to certification, who within the last five years has taught for at least three years in the district, is eligible for continuing service status.

2. A teacher who has taught in a district under limited contracts for four or five years and who is eligible for continuing service status, does not by reason of those facts alone, acquire a right upon reemployment, to a continuing contract.

3. A teacher eligible for continuing service status, who has been employed by a board of education under a limited contract may, upon the superintendent's recommendation be re-employed on a limited contract for not to exceed two years, provided that a written notice of the intention to make such recommendation has been given to the teacher, with reasons therefor, on or before the 30th day of April.

4. A board of education has authority under Section 4842-8, General Code, to refuse to re-employ a teacher eligible for continuing service status, who has been recommended for re-employment by the superintendent, but only if the board of education by a three-fourths vote of its full membership rejects the superintendent's recommendation. If the board does accept the recommendation of the superintendent that such teacher be re-employed, the contract of re-employment must be a continuing contract.

Columbus, Ohio, April 29, 1952

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

I have your request for my opinion relative to the right of a teacher, under certain circumstances, to receive a continuing contract. Your letter reads in part as follows:

"The Sandy Valley Board of Education has asked that I request that you get an opinion from the Attorney General regarding the interpretation of the law regarding continuing contracts.

"The teacher in question has a life certificate and has taught in Magnolia School for four years. If the board hires her for the coming year, which will make her fifth year, does her contract automatically become continuing or will it be continuing if they give her a contract after she has completed her five years in this system?

"It will be necessary to receive this opinion as soon as possible, as any teacher not to be rehired must be notified before April 30, or thirty days before the closing of school term, which in this case will be April 27.

"The letter quoted does not state all the facts and I may advise you that the school district is one of over 800 pupils. The teacher in question has taught for only four years in the district making the request and had not attained a continuing contract status elsewhere. More specifically the question which we would like to have answered may be set forth as follows:

"1. Is a teacher eligible for continuing service status who has taught only three years in one district or must she have taught at least 5 years, 3 of which were in the district?

"2. If five years are required before eligibility for continuing service status, would a teacher who is re-employed for her fifth year automatically become of continuing status or is such status attained only upon re-employment after completion of five years teaching?

"3. In the case of a teacher eligible for continuing service status, can re-employment on a one year contract only be made upon the superintendent's recommendation after the giving of proper notice to the teacher?

"4. Can a board of education refuse to re-employ a teacher eligible for continuing service status who has been recommended

for re-employment by the superintendent, if such board by $\frac{3}{4}$ vote rejects the recommendation?"

The questions raised involve a consideration of the provisions of Sections 4842-7 and 4842-8, of the General Code. Section 4842-7 defines limited and continuing contracts, 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 4842 of the General Code, and for all other teachers, as hereinafter defined, for a term not to exceed five years. 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 by law and shall be granted only to teachers holding professional, permanent or life certificates."

The definition of the words, "continuing service *status*," as contained in the last paragraph of this section, is as follows:

"'Continuing service status' for a teacher means employment under a continuing contract."

The statutes frequently use the expression "eligible for continuing service status." I look, therefore, to Section 4842-8, General Code, for the definition of this phrase. It is there provided:

"Teachers *eligible* for continuing service *status* in any school district shall be those teachers qualified as to certification who *within the last five years* have taught for at least three years *in the district*, and those teachers who, having attained continuing contract *status* elsewhere, have served two years in the district, but the board of education, upon the superintendent's recommendations, may at the time of employment or at any time within such two-year period declare any of the latter teachers eligible."

(Emphasis added.)

We therefore observe that a teacher may be *eligible* for continuing service status but not have that status, since continuing service status implies that a teacher is actually employed under a continuing contract, which shall remain in full force and effect until the teacher resigns, elects to retire or is retired pursuant to the provisions of the teachers retirement law, or is removed for cause.

Turning to the definition of "eligibility" as above set forth, it is to be noted that a teacher is eligible for continuing service status in any school district, provided (1) he has *within the last five years* taught at least *three years* in that district, or (2) he has attained a continuing contract status, that is, he has been actually employed under a continuing contract elsewhere, and has served two years in the district where he now seeks a continuing contract. It does not appear, however, that the mere fact that one is "eligible" gives him any right to a continuing contract or for that matter, to any contract.

Section 4842-8, General Code, contains the following provision, which appears to give the superintendent considerable authority virtually to force the re-employment of a teacher on a continuing contract, when he has become eligible for same. This provision reads as follows:

"Upon the recommendation of the superintendent of schools that a teacher *eligible for continuing service status* be re-employed, *a continuing contract shall be entered into* between a board of education and such teacher *unless the board by a three-fourths vote of its full membership rejects* the superintendent's recommendation. However, the superintendent may recommend re-employment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years, provided that written notice of the intention to make such recommendation has been given to the teacher with reasons therefor on or before the thirtieth day of April, but upon subsequent reemployment only a continuing contract may be entered into." (Emphasis added.)

Here, it will be noted that when a teacher has thus become eligible, a continuing contract *shall be entered into upon the recommendation of the superintendent*, unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation.

Answering your first question, I see nothing in the statute which requires that a teacher must have taught for at least five years in the district in order to be eligible for continuing service status. The statute makes it plain that "one who within the last five years has taught for at least three years in the district" is eligible.

In view of that conclusion, your second question does not call for an answer.

There is a further provision in Section 4842-8, General Code, which appears to bear on your third question. It reads as follows:

“However, the superintendent may recommend re-employment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years, provided that written notice of the intention to make such recommendation has been given to the teacher with reasons therefor on or before the thirtieth day of April, but upon subsequent reemployment only a continuing contract may be entered into.”

The words, “such teacher” refer to a teacher mentioned in the preceding sentence, who is “eligible” for, but has not acquired the continuing contract “status” and has not acquired that status elsewhere. Such a teacher may be recommended by the superintendent for *reemployment* under a *limited* contract for not to exceed two years, provided that written notice of his intention to make such recommendation has been given (presumably by the superintendent) with reasons therefor on or before the 30th day of April. There is nothing in this sentence that would compel the board to follow his recommendation, and it would appear that it might decide not to reemploy the teacher; but if the board does follow the superintendent’s recommendation and does give the teacher a limited contract for not to exceed two years, then upon the expiration of that contract, if the board decides to reemploy that teacher (which it is not required to do), “only a continuing contract may be entered into.”

In further consideration of the rights of a teacher who has been employed by the board under a limited contract, attention should be given to that provision of the fifth paragraph of Section 4842-8 *supra*, which reads as follows:

“Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice of its intention not to re-employ him or her on or before the thirtieth day of April or thirty days prior to the termination of such teacher’s school year, whichever date occurs the earlier.”

Specifically answering your questions submitted, it is my opinion:

1. A teacher qualified as to certification, who within the last five years has taught for at least three years in the district, is eligible for continuing service status.

2. A teacher who has taught in a district under limited contracts for four or five years and who is eligible for continuing service status, does not by reason of those facts alone, acquire a right upon reemployment, to a continuing contract.

3. A teacher eligible for continuing service status, who has been employed by a board of education under a limited contract may, upon the superintendent's recommendation be re-employed on a limited contract for not to exceed two years, provided that a written notice of the intention to make such recommendation has been given to the teacher, with reasons therefor, on or before the 30th day of April.

4. A board of education has authority under Section 4842-8, General Code, to refuse to re-employ a teacher eligible for continuing service status, who has been recommended for re-employment by the superintendent, but only if the board of education by a three-fourths vote of its full membership rejects the superintendent's recommendation. If the board does accept the recommendation of the superintendent that such teacher be re-employed, the contract of re-employment must be a continuing contract.

Respectfully,

C. WILLIAM O'NEILL

Attorney General