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EDUCATION, BOARD OF—SCHOOL DISTRICT NEWLY CREATED—SECTION 4831 G. C.—NOT REQUIRED TO RECOGNIZE VALIDITY OF CONTRACT OF TEACHER COMPLETING SECOND YEAR OF FIVE YEAR LIMITED CONTRACT—CONTRACT EXECUTED BY BOARD OF EDUCATION—ABOLISHED AS INCIDENT TO CREATION OF NEW DISTRICT—SECTION 4842-14 G. C.

SYLLABUS:

The board of education of a school district newly created under authority of Section 4831, General Code, is not required, under the provisions of Section 4842-14, General Code, to recognize the validity of the contract of a teacher who is completing the second year of a five-year limited contract theretofore executed by the board of education which was abolished as an incident to the creation of such new district.

Columbus, Ohio, December 13, 1950

Mr. Clyde Hisson, Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested as to the contract rights of a teacher, based upon the following statement of facts:

"The board of education of a new school district, created under authority of Section 4831-1, held its first meeting in May, 1950. It did not employ a teacher who was completing the second year of a five-year *limited* contract in one of the local districts during the school year 1949-1950 but did employ a qualified teacher, who had not taught in any one of the local districts now comprising this new district, to teach the subjects which the high school teacher in one of the local districts taught and was qualified to teach.

Question

"Do Sections 4842-13 and 4842-14 of the General Code require the new board of education to recognize the validity of the contract of the teacher who is completing the second year of a five-year limited contract?"

The general rule applicable to a teacher's contract with boards of education in cases where the board's term of office expires prior to the expiration of such contract is stated in 70 A. L. R. 802, as follows:

"In the absence of statutory provision, it is generally held that a school board may contract with a superintendent or teacher for a period extending beyond the term of the board."

In the case which you have described the term of the contract had not expired at the time of the creation of a new school district under authority of Section 4831-1, General Code, and the abolition of the old local board by operation of law, with a new board succeeding to the powers and duties theretofore reposing in the old. The question thus becomes one of ascertaining to what extent, if any, pertinent statutory provisions require a departure from the general rule above stated.

Sections 4842-13 and 4842-14, General Code, mentioned in your inquiry, read as follows:

"When by reason of decreased enrollment of pupils, return

to duty of regular teachers after leaves of absence, or by reason of suspension of schools or territorial changes affecting the district, a board of education decides that it will be necessary to reduce the number of teachers, it shall have full authority to make reasonable reduction. But, in making such reduction, the board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who shall, within each teaching field affected, give preference to teachers on continuing contracts and to teachers who have greater seniority. Teachers, whose continuing contracts are suspended, shall have the right of restoration to continuing service status in the order of seniority of service in the district if and when teaching positions become vacant or are created for which any of such teachers are or become qualified."

Section 4842-14.

"If an entire school district or that part of a school district which comprises the territory in which a school or schools are situated is transferred to any other district, or if a new school district is created, the teachers in such districts or schools employed on continuing contracts immediately prior to such transfer, or creation shall, subject to the limitations imposed by section 4842-13 of the General Code, have continuing service status in the newly created district, or in the district to which the territory is transferred."

The former section is applicable only in those cases where, for reasons stated in the statute, the board "decides that it will be necessary to reduce the number of teachers." I do not understand that to be the case here since you state that a new teacher has been employed by the board to assume the duties of the teacher whose contract status is here being considered. For this reason I must conclude that Section 4842-13, General Code, is not applicable to the present situation.

Section 4842-14, General Code, however, is clearly applicable since it purports to define the contract status of teachers in the event of the creation of a new school district embracing the schools in which they were theretofore employed.

This section provides that those teachers having continuing service status shall continue in that status in the new district.

"Continuing service status" is defined in Section 4842-7, General Code, as employment under a continuing contract. This section also makes a clear distinction between *continuing* contracts and *limited* contracts.

There is a clear implication by application of the maxim "Expressio unius est exclusio alterius," in Section 4842-14, General Code, that the status of teachers employed under limited contracts in schools transferred to a newly created district was not intended by the Legislature to be preserved in such new district; and I conclude that such status in the instant case was not so preserved.

This conclusion is in harmony with that reached in 1946 Opinions of the Attorney General, Opinion No. 1099, in which it was stated that where a new school district was created a teacher, although entitled to be retained in a continuing service status as a teacher, was nevertheless not entitled to be retained as supervising principal despite the execution of a five year contract by the old board appointing him to that position.

Finally, it is to be observed that this statutory provision, Section 4842-14, General Code, became effective on September 16, 1943, and was therefore in effect at the time the contract in question was executed. It is well settled in Ohio that the law of the place where a contract is made enters into, and becomes a part of, the contract so that it must be construed accordingly. 9 O. Jur. 416, Contracts, Section 189. There is, therefore, no question of unlawful abrogation of a contract in a case of this kind.

In specific answer to your inquiry, therefore, it is my opinion that the board of education of a school district newly created under authority of Section 4831, General Code, is not required, under the provisions of Section 4842-14, General Code, to recognize the validity of the contract of a teacher who is completing the second year of a five-year limited contract theretofore executed by the board of education which was abolished as an incident to the creation of such new district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.