

Conservation Council may not accept and hold a salaried position in the Division of Conservation.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5155.

CONTRACT—DISCUSSION OF CONTRACT RIGHTS OF
SUPERINTENDENT OF SCHOOLS AND BOARD OF
EDUCATION.

SYLLABUS:

1. *A superintendent of schools lawfully employed by the board of education of an exempted village school district prior to December 31, 1930, continues under said contract as the city superintendent of schools until such contract is lawfully dissolved, expires by lapse of time or the superintendent is dismissed for cause, in the event the exempted village school district is advanced to a city school district by reason of a change in population as shown by the census of 1930.*

2. *The board of education in a city school district which is the successor of an exempted village district, is without power to dissolve or abrogate the contract for services with its superintendent of schools, which contract had been entered into by its predecessor, the board of education of the exempted village district by motion or resolution without the consent of the said superintendent, unless it is done by the preferring of charges against the said superintendent and his dismissal in the manner provided for by Section 7701, General Code. If such a contract is dissolved with the consent of the said superintendent he is ineligible for reappointment to such position until after the reorganization of the board of education following the next general election of members of such board. To dissolve such a contract with the consent of the superintendent and reappoint him to the same position prior to the reorganization of the board following the next general election of members of such board would be doing indirectly what is forbidden to be done directly by the formal resignation of the superintendent and his reappointment, as provided by the terms of Section 7702, General Code.*

3. *Where a vacancy occurs in the office of the superintendent of schools in a city school district by reason of the resignation of the said superintendent or his removal for cause, or the dissolution of his contract for services done with his consent, the same person is ineligible for re-*

appointment to such office until after the reorganization of the board of education following the next general election of members of such board.

COLUMBUS, OHIO, February 8, 1936.

HON. ARTHUR L. HOOPER, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“A situation has arisen involving a contract of employment of the Superintendent of Schools of the Toronto City School District, which is as follows:

In 1930, the now City of Toronto, which at that time was classified as a village, the Board of Education in that place elected a superintendent for a period of four years beginning July 1, 1930, until and including July 1, 1934, with a salary for the first year of \$4,300.00, and increasing \$100.00 per year until the fourth year salary would amount to \$4,600.00.

On June 6, 1932, after the Toronto school system was changed from a village school district to a city school district, the Board of Education, by motion, rescinded the contract formerly entered into and which would not have otherwise expired until July 1, 1934, and in its stead introduced a contract for the employment of a superintendent for a period of five years beginning July 1, 1932, and expiring July 1, 1937, at a salary of \$4,000.00 per year. This contract was acceptable to the superintendent in that it increased his tenure of office.

In July of 1934, a question arose as to whether or not the City School Board could rescind the contract entered into while they were a village school board, and they therefore rescinded the contract of 1932 to 1937 and recognized the contract of 1930 to 1934, and since the original contract expired in July of 1934, they entered into a contract employing the same superintendent for the amount of \$4,000.00 per year for a period of five years, to wit, July 1, 1939.

The Board is desirous of knowing their position in this matter although there is no friction upon the part of the Board or the superintendent, and they would appreciate an answer to the following questions, namely:

1. Did the Board of Education of the Toronto City School District have the right to rescind a contract of the Toronto Village Board of Education?

2. If it did not have this right, did the contract of the said superintendent with the said Toronto Board of Education continue in full force until its termination on July 1, 1934?

3. If so, is not the said superintendent entitled to recover the salary named in said contract for the year July 1, 1932, to July 1, 1933, and July 1, 1933, to July 1, 1934, as stipulated in said contract? The salary paid him during these years was that named in the contract given on June 6, 1934, and was accepted as the salary under a new contract and not as payment under the original contract made in 1930.

4. Is the contract made in 1934 following the completion of the contract made in 1930, the legal contract under which the said superintendent is now working?

I would greatly appreciate your favoring me with an opinion on this matter at your earliest convenience."

Section 4686, General Code, reads in part, as follows:

"When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district."

By reference to Section 7699, General Code, it will be observed that when an appointment is made by a board of education of any person to any position under the control of the board, and the clerk notifies such person of his appointment and he accepts the appointment, a contract exists between the parties, which contract is binding upon both parties thereto until it is dissolved, expires, or the appointee is dismissed for cause. The terms of the statute with respect to this matter are, after providing that upon the appointment of any person to any position under the control of the board of education the clerk shall notify such person of his appointment, the conditions thereof, and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment: "An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause." The provisions of the statute as to formal notification and acceptance are no doubt waived, if the appointee enters upon the discharge of his duties under an appointment by a board of education, with the knowledge and approval of the board. A contract arises under such circumstances the same as though formal notification and acceptance strictly in accordance with the statute had taken place.

In an opinion of my predecessor, found in the published Opinions

of the Attorney General for 1931, page 855, where questions relating to the transition of a village school district to a city school district by reason of a change in population were under discussion, it was stated:

“The territory comprising the new district remains the same as that of the former district. Contracts of the former district must be carried out and its obligations met as these could not lawfully be impaired or abrogated, and the old board is continued and administers the affairs of the district in the interim until a new board is elected.”

In that opinion it is held:

“Where, in a village school district which was automatically advanced to a city school district, by reason of a change of population, on December 31, 1930, there had been employed a person whose employment had existed by reason of a contract made by authority of Section 4740, General Code, prior to the effective date of its repeal, and that contract had not yet expired, the person so employed continues as an employe of the city district in accordance with the terms of his former contract, and possesses the power and is charged with the duties of a city superintendent of schools from and after December 31, 1930, and until said contract expires or is dissolved or he be dismissed for cause.”

In another opinion, found in the Opinions of the Attorney General for 1931, page 596, it was held:

“In an exempted village school district which is advanced to a city district by reason of a change in population, the superintendent of schools possesses the power and is charged with the duties of a city superintendent of schools from and after December 31, 1930.”

I understand that the Toronto Village School District was an exempted village in 1930, and therefore the superintendent of schools appointed at that time, who accepted the appointment or entered upon the performance of his duties with the knowledge and approval of the board of education of the district, became the city superintendent of schools when the municipality advanced by reason of the result of the census of 1930 to a city and the school district by reason thereof, became a city school district. His contract continued in force until such time as it was dissolved, expired, or the appointee dismissed for cause.

No power existed in the city board of education to merely rescind

the contract or reconsider the action taken by the village board with respect to this contract, and make a new contract with the same man with different conditions and for a different term, either with or without the approval of the superintendent in question. Such action, if done with the approval of the superintendent, would, in effect, be a resignation of the superintendent and his immediate reappointment which is contrary to law. Section 7702, General Code, provides as follows:

“The board of education in each city school district at a regular meeting, between May 1st and August 31st, shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, beginning within four months of such appointment and ending on the 31st day of August.

Provided, that in the event of a vacancy occurring in the office of the superintendent prior to May 1st, the board of education may appoint a superintendent for the unexpired portion of that school year.

Provided, also, that if the vacancy occur through resignation or removal for cause, the superintendent thus resigning or removed shall be ineligible for reappointment to such office until after the reorganization of the board of education following the next general election of members of such board.”

I am therefore of the opinion in response to the questions submitted:

1. The Board of Education of the Toronto City School District did not have the power to rescind or abrogate the contract in question.
2. Inasmuch as it does not appear that the superintendent's contract had been legally dissolved, nor was he dismissed for cause, his contract as made in 1930 continued until it expired by lapse of time.
3. The superintendent is entitled to be paid for his services until July 1, 1934, in accordance with the terms of the contract made with him by the Toronto Exempted Village School District Board of Education in 1930.
4. Under the facts as outlined in your inquiry, the superintendent in question is now working under the contract made in July of 1934.

Respectfully,

JOHN W. BRICKER,
Attorney General.