

such re-employment was to begin, that is, September 1, 1918, and pension to such teacher would accrue from that date.

Such being the case, neither the board of education nor the trustees of the teachers' pension fund in such city has any authority to set another date as the date of the retirement of the teacher in question, since section 7891 plainly provides that the failure of the board of education to re-employ must be deemed to be a retirement, as of the time when re-employment would have begun.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1071.

SCHOOLS—PERSON EMPLOYED AS TEACHER UNDER ONE CONTRACT AND UNDER ANOTHER CONTRACT EMPLOYED AS SCHOOL DRIVER—CONTRACTUAL RIGHTS UNDER EACH CONTRACT DISCUSSED—HOW BOARD OF EDUCATION CAN DISMISS TEACHER

1. *Where a person has been employed as a teacher in a public school under one contract and under another contract at a subsequent date has been employed as a school driver or conveyor of pupils, the release by the board of education from the obligations of the second contract, by motion spread upon its minutes, closes the contract relation as a school driver.*

2. *Where an employe of a board of education submits his resignation or requests a release from his contract, such resignation or release from such employment can not become effective except by the consent of the board of education, and if such employe thereafter fails to perform any of the duties mention in such contract, from which he has not been released by the board of education, such contracting employe is liable to the employing board of education for any damages sustained.*

3. *Where a board of education desires to dismiss any teacher, it is necessary that charges be reduced to writing and filed with the board of education and an opportunity be given the teacher for defense before the board, or a committee thereof, and a majority of the full membership of the board of education upon roll call in favor of such dismissal is required in order to be effective. As to what constitutes inefficiency, neglect of duty, immorality or improper conduct, is for the board of education in its discretion to decide. Teachers dismissed for any frivolous or insufficient reason may bring suit against such district as provided by section 7708 G. C.*

COLUMBUS, OHIO, March 12, 1920.

HON. LEWIS STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion upon the following statement of facts:

"The board of education of _____ township, this county, employed one C. D. P. as a teacher in district No. 5, and at the same time employed said P. to haul certain of the pupils to and from the school.

P. entered upon his duties and taught the school and hauled the pupils until January 10th, this year, when he notified the board that he would no longer haul the pupils to and from school, but that he still intended to teach in district number five.

The board of education insists that P. shall comply with both the con-

tracts, that of teaching and hauling the pupils, and they have asked me whether they have authority to discharge P. as a teacher if he breaks his contract for hauling the pupils.

Would you please give me your opinion as to whether the board has authority to discharge this teacher?"

The statutes bearing upon the subject at hand are the following:

"Sec. 7620. The board of education of a district * * * shall * * * make all other provision necessary for the convenience and prosperity of the school within the districts."

"Sec. 7666. Such board of education shall * * * make all other necessary provisions relative to such schools as may be deemed proper."

"Sec. 7690. Each board of education shall have the management and control of all the public schools of whatever name or character in the district. * * * If deemed essential for the best interest of the schools of the district * * * the board may appoint a superintendent of buildings, and such other employes as it deems necessary, and fix their salaries * * *."

Sec. 7699. Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing 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.

Sec. 7700. All resignations or request for release from contract by teachers, superintendents or employes, must be promptly considered by the board, but no resignation or release shall become effective except by its consent."

In response to a request for further information, a statement signed by the president and clerk of the — township board of education has also been submitted by you to this department. This statement, signed by the proper officers of the board of education, is presumed to be taken in part from the minutes of the board of education

It is found that on June 10, 1919, the minutes show that C. D. P. was employed as a teacher in the — township public schools in former subdistrict No. 5. About three months thereafter, or on September 2, 1919, C. D. P., the same person who was employed in June as a teacher, was employed to convey pupils from district No. 6 to district No. 5, the latter the one in which C. D. P. was to be the teacher for the school year of September, 1919, to September, 1920. It thus appears that C. D. P. occupied the dual capacity of both teacher and driver, being under employment by the board of education under two separate contracts, upon two separate kinds of work.

On January 10, 1920, C. D. P. notified the board of education that he would no longer haul the pupils to and from former subdistrict No. 6 to former subdistrict No. 5.

At a meeting of the board held on January 10, 1920, which meeting was held to "consider the resignation of C. D. P. as conveyor of pupils from district No. 6 to district No. 5," the following motion was passed:

"Moved by B, seconded by W, that the resignation of C. D. P. be accepted and that he be discharged as teacher of district No. 5, *said discharge to take effect at once.*"

The above motion, taken from the minutes of the board of education, such min-

utes being the record bearing upon the resignation of said C. D. P. as a conveyor of pupils, shows an acceptance of the resignation of C. D. P. as a conveyor of pupils, whereupon in the same motion he was discharged as teacher. This record, submitted by the president and clerk of the board of education, such record having been prepared by order of the board of education under date of January 19, 1920, shows that the motion was passed and that there was no roll call upon the motion to discharge said teacher. Attention is therefore invited to the provisions of section 7701 G. C., reading as follows:

“Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality or improper conduct. No teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee thereof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal.”

Boards of education speak only through their minutes and the record submitted does not show that C. D. P., as a teacher, was charged in writing with any offense or that an opportunity was given for defense before the board or a committee thereof, nor was there any roll call upon such discharge. The effect of this then is that the board of education, in dismissing C. D. P. as a teacher on January 10, without written charges and without hearing, “said discharge to take effect at once,” violated the provisions of section 7701 above quoted, and the said teacher up to this time has not been removed in conformity with law.

It is within the province of any board of education to dismiss a teacher for inefficiency, neglect of duty, immorality or improper conduct, these being the grounds upon which teachers can be dismissed after proper hearing and by a majority vote of all the members elected to the board of education and upon proper roll call. It is for the board of education to say what constitutes inefficiency as a teacher, whether the duties of the teacher had been neglected, whether he has been immoral, or whether he has been guilty of improper conduct as a teacher. Even the courts will not interfere in the exercise of its discretion by a board of education (unless such discretion is abused), the most recent decision upon such point being that in the case of *Brannon, et al., vs. The Board of Education*, 99 O. S., —, appearing in the *Ohio Law Bulletin* of September 29, 1919, wherein it was held:

“A court has no authority to control the discretion vested in a board of education by the statutes of this state or to substitute its judgment for the judgment of such board upon any question it is authorized by law to determine.

A court will not restrain a board of education from carrying into effect its determination of any question within its discretion except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority.”

Clearly under the provisions of section 7701 G. C. a board of education has statutory authority to dismiss any appointee or teacher on the grounds named in such section and as to what constitutes either of these grounds sufficient for dismissal is for the board of education to say.

Speaking further upon the duties of teachers and their dismissal in certain instances, attention is invited to the following provisions of the law:

“Sec. 7707. * * * But no teacher shall be required by any board to do the janitor work of any school room of the building, except as mutually agreed by *special contract* and for compensation in addition to that received by him for his services as teacher.

Sec. 7708. If the board of education of any district dismisses a teacher for any frivolous or insufficient reason, the teacher may bring suit against such district. If, on trial of the cause a judgment be obtained against the district, the board thereof shall direct the clerk to issue an order upon the treasurer for the sum so found due to the person entitled thereto, to pay it out of any moneys in his hands belonging to the district, applicable to the payment of teachers. * * *

It thus appears that while C. D. P. has not been discharged in the manner required by law, after hearing and proper roll call, on the other hand he can not violate his contract as a school driver or conveyor of pupils at his own free will, for section 7700 says, speaking of resignations of employees or release from their contracts, that, "No resignation nor release shall become effective except by its consent;" that is, the consent of the board of education, the employing party.

In the case at hand the board of education did consent to the release of C. D. P. as a school driver, in its minutes of January 10, 1919, in accepting his resignation as a conveyor of pupils and it therefore has no right of action against him for the violation of his contract as a school driver, having relinquished any claim by its own motion properly entered in the minutes. The motion of September 2, 1919, employing C. D. P. to transport pupils, says that C. D. P. was to "be employed to transport pupils from district No. 6 to district No. 5 at his bid of thirty-five dollars per month." There is no stipulation as to how long this was to run, which should have appeared in the employing resolution, that is, the contract. On the other hand, the employment of C. D. P. as a teacher, under the resolution of June 10, was "for the coming year at ninety dollars per month;" thus in the second instance stating a definite time when such employment was to end.

Based upon the statement of facts given and the law herein cited, it is therefore the opinion of the attorney-general that:

1. Where a person has been employed as a teacher in a public school under one contract and under another contract at a subsequent date has been employed as a school driver or conveyor of pupils, the release by the board of education from the obligation of the second contract, by motion spread upon its minutes, closes the contract relation as a school driver.

2. Where an employee of a board of education submits his resignation or requests a release from his contract, such resignation or release from such employment can not become effective except by the consent of the board of education, and if such employee thereafter fails to perform any of the duties mentioned in such contract, *from which he has not been released* by the board of education, such contracting employe is liable to the employing board of education for any damages sustained.

3. Where a board of education desires to dismiss any teacher, it is necessary that charges be reduced to writing and filed with the board of education and an opportunity be given the teacher for defense before the board, or a committee thereof, and a majority vote of the full membership of the board of education upon roll call in favor of such dismissal is required in order to be effective. As to what constitutes inefficiency, neglect of duty, immorality or improper conduct, is for the board of education in its discretion to decide. Teachers dismissed for any frivolous or insufficient reason may bring suit against such district as provided by section 7708 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.