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FIRST TERM OF LOCAL CLERK OF SCHOOL DISTRICT AS EFFECTIVE OCTOBER 23, 1961, IS A TWO-YEAR PROBATIONARY TERM EVEN THOUGH HE MAY HAVE HELD SAID OFFICE PRIOR TO THAT DATE, AND ELECTIONS FOR SUCH CHECKS SHOULD BE HELD AT MEETING TO BE CONDUCTED ON FIRST MONDAY OF JANUARY, 1962. §§3313.22, 3313.14, R.C.

SYLLABUS:

The first term of a clerk of a local, exempted village, or city school district elected pursuant to Section 3313.22, Revised Code, as effective October 23, 1961, is a two-year probationary term, and this is true even though the person so elected has previously served two years as clerk under said Section 3313.22 as existing prior to that date; and elections for clerks of such districts should be held at the organization meeting to be conducted on the first Monday of January, 1962, in accordance with Section 3313.14, Revised Code.

Columbus, Ohio, November 20, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Under date of July 6, 1961, the 104th General Assembly passed Amended House Bill No. 572, which was approved by the Governor under date of July 24, 1961, amending Section 3313.22 of the Revised Code relative to the election of a school board clerk. The effective date of this Act is October 23, 1961.

"Section 3313.22 of the Revised Code, as amended by House Bill No. 572, provides that the board of education of each local, exempted village and city school district at an organizational meeting shall elect a clerk who may be a member of the board and, in the case of a local school district, such clerk may be a teacher regularly employed as a teacher by such board. The clerk shall initially serve for a two year probationary term and thereafter, if reappointed, shall serve for a four year term. Such clerk may be removed at any time for cause by a two-thirds vote of the entire board. If reappointed, as provided by this section, the board shall execute a written contract of employment for such four-year term and each four-year term thereafter.

"A number of inquiries have been received in this office as to whether the two year probationary term begins with the first election of the clerk after the effective date of House Bill No. 572, namely October 23, 1961, or whether in the case of a clerk of a school district having a long term of service, such probationary period is not applicable, but with the next succeeding term for which the clerk is elected covering a full four year period.

"Giving consideration to the foregoing, will you please issue your formal opinion on the following question:

"Is the two year probationary term which a clerk of a school district must initially serve applicable in those instances in which a school clerk has previously accumulated a two-year period of satisfactory service?"

"In view of the substantial interest in this question by clerks of the various school districts of the State of Ohio, your early consideration of this question will be appreciated."

Previous to October 23, 1961, Section 3313.22, Revised Code, provided that the clerk of the board of education of each local, exempted village, and

city school district was elected by the board for a term not to exceed four years. As amended by the 104th General Assembly, effective October 23, 1961 (Amended House Bill No. 572), said Section 3313.22 reads:

“The board of education of each local, exempted village, and city school district at an organization meeting shall elect a clerk who may be a member of the board and in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board. The clerk shall initially serve for a two-year probationary term and thereafter, if reappointed, shall serve for a four-year term. Such clerk may be removed at any time for cause by a two-thirds vote of the entire board. If reappointed as provided in this section the board shall execute a written contract of employment for such four-year term and each four-year term thereafter. In the case of a county board, the county superintendent shall act as clerk of such board, but the tenure and removal provisions described in this section shall not apply to him.”

Thus, as of October 23, 1961, the clerk of a local, exempted village, or city school district is elected initially for a two-year probationary term and, thereafter, if reappointed, serves for a four-year term. The question presented by your request is whether a clerk who has served at least two years under an election held prior to October 23, 1961, may be now elected for a four year term, or whether his initial term after that date is limited to two years.

It would seem that a clerk who had been serving under an election held prior to October 23, 1961, would have already served what would amount to a probationary period. That is, the school board would have had time to ascertain whether it approved of the work of the clerk, and whether it desired his services for a new term. Quite apparently, however, the legislature did not see fit to include a provision in the law whereby a clerk in office as of the effective date of the bill would receive credit for a probationary period already served. Possibly, the fact that the personnel of the school board is subject to change during the term of the clerk may have influenced the legislature in this regard.

In any event, however, Section 3313.22, *supra*, as effective October 23, 1961, provides specifically that the first term for a clerk elected, pursuant to that section, is a two-year probationary term, and in the absence of any intention to the contrary, I must conclude that this includes clerks who may have already served two years under an appointment made before

the section was amended. As is stated in the second paragraph of the syllabus in the case of *Slinguff, et al., v. Weaver, et al.*, 66 Ohio St., 621 :

“2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

The further question arises as to whether clerks serving as of October 23, 1961, continue to serve, and, if so, for how long. As to this, it will be noted that the organization meeting for a board of education is held on the first Monday of January of each year (Section 3313.14, Revised Code). Thus, an organization meeting will be held on the first Monday of January, 1962; and under present Section 3313.22, *supra*, an election for clerk may be held on that day.

In view of the new provisions, therefore, it is my opinion that the boards of education should on that date elect clerks for two-year probationary terms; and the present clerks should retain their positions until that date. Regarding the removal of present clerks serving specific terms, it will be noted that under former Section 3313.22, *supra*, a clerk served at the pleasure of the board even though hired for a term (*Schrock v. Board of Education of Euclid School Dist.*, 141 Ohio St., 528, 533). Accordingly, the respective boards have full authority to terminate services as of the first Monday of January, 1962; and in view of the new provisions of law, have a duty to elect new clerks at that time.

Accordingly, in answer to your specific question, it is my opinion and you are advised that the first term of a clerk of a local, exempted village, or city school district elected pursuant to Section 3313.22, Revised Code, as effective October 23, 1961, is a two-year probationary term, and this is true even though the person so elected has previously served two years as clerk under said Section 3313.22 as existing prior to that date; and elections for clerks of such districts should be held at the organization meeting to be conducted on the first Monday of January, 1962, in accordance with Section 3313.14, Revised Code.

Respectfully,
MARK McELROY
Attorney General