

OPINION NO. 79-003**Syllabus:**

1. When, pursuant to R.C. 3319.01, the county superintendent of schools recommends persons to a board of education for the position of local superintendent, the board may accept or reject that recommendation by simple majority. After rejecting two recommendations of the county superintendent, the board may employ or re-employ a person not so recommended provided that three-fourths of the full membership vote in favor of such employment or re-employment.
2. Pursuant to R.C. 3319.02, a board of education of a local school district may employ or re-employ a principal only upon the nomination of the county superintendent of schools. In approving or rejecting such recommendation of the county superintendent, the local board acts by a simple majority vote.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio

By: William J. Brown, Attorney General, February 28, 1979

I have before me your request for my opinion which concerns the employment of a superintendent and a principal by a local school district in your county. In your letter, you describe the sequence of events as follows:

At a regular school board meeting in August of 1978, the county superintendent of schools recommended that the school board re-employ a principal and the superintendent. The contracts of the two individuals expire on July 31, 1979. All five members of the local school board were in attendance. Two voted to re-employ the superintendent, but three voted against re-employment.

Specifically, you have asked whether, under R.C. 3319.01 and 3319.02, a three-fourths vote of the school board is necessary to reject the nominations of the county superintendent.

Employment or re-employment of a superintendent of a local school district is controlled by R.C. 3319.01. That section provides, in pertinent part, as follows:

Except as otherwise provided in this section, the employment or re-employment of a superintendent of a local school district shall be only upon the recommendation of the county superintendent, except that a local board of education, by a three-fourths vote of its full membership, may, after considering two nominations for the position of local superintendent employ or re-employ a person not so nominated for such position.

The "except as otherwise provided" provision refers to that portion of R.C. 3319.01 whereby the incumbent is automatically re-employed for a period of one year in the event that the board fails to notify him of their intention not to re-employ him by the first day of March in the year in which his contract expires.

In 1976 Ops. Att'y Gen. No. 76-034, I had occasion to consider the above quoted portion of R.C. 3319.01. While the opinion did not resolve your precise question, the following language is relevant:

. . . As a rule [R.C. 3319.01] . . . requires a local board to select an appointment only from among those persons recommended for the position by the county superintendent. The board may, however, employ or re-employ a person not recommended by a county superintendent if it has considered at least two persons recommended by the county superintendent. Further, at least three-fourths of the full membership of the board must vote in favor of employing a person not recommended by the county superintendent. This is a two-stage process and both steps must be complied with in order for local board of education to validly employ a person not recommended by the county superintendent . . . (emphasis in original)

The key word in both the statute and in my previous opinion, as they relate to your question, is the word "consider." Essentially, your question is whether, in "considering" the recommendations of the county superintendent, the local board must reject the recommendation by a three-fourths vote or by a simple majority.

When interpreting statutory language, R.C. 1.42 requires that:

Words and phrases shall be construed according to the rules of grammar and common usage.

In reviewing the statute, it is clear that the clause ". . . except that a local board of education, by a three-fourths vote of its full membership, may . . ." modifies the phrase ". . . employ or re-employ a person not so nominated for such

position." Entirely independent of the three-fourths vote provision is the phrase "after considering two nominations for the position of local superintendent made by the county superintendent of schools." It is a parenthetical expression, properly placed between commas, in the sentence ". . . a board of education . . . may . . . employ or re-employ . . ." See, William Strunk, The Elements of Style, pp. 2-3. Also parenthetical to that sentence is the phrase "by a three-fourths vote." However, the word "after" clearly indicates that the need for three-fourths vote does not arise until consideration of at least two of the superintendent's nominees is complete. As there is no indication of what vote is needed to "consider," it would seem that a simple majority prevails. 1978 Ops. Att'y Gen. No. 78-047.

Accordingly, and in answer to the first part of your question, it is my opinion that a nomination for local superintendent made to the local board of education by the county superintendent of schools, pursuant to R.C. 5319.01, may be considered, and rejected, by a simple majority of those members voting on the nomination. There is no need that it be rejected by a three-fourths vote of the board's full membership.

The employment of principals is controlled by R.C. 3319.02. 1975 Ops. Att'y Gen. No. 75-050. That section provides, in pertinent part, as follows:

. . . The board of each city, exempted village, and local school district shall employ principals for all high schools and for such other schools as the board designates . . . In the case of assistant superintendents, principals, and assistant principals in local school districts employment shall be, and in the case of all other administrative personnel in local school districts may be, in accordance with nominations of the superintendent of schools of the county districts of which the local district is a part . . . (emphasis added)

It is clear from this section that the local board may only employ a principal on the recommendation of the county superintendent. Since there is no requirement as to how the vote is to be taken, all that is required to accept or reject the nominations of the superintendent is a simple majority of the members voting. 1978 Ops. Att'y Gen. No. 78-047.

Accordingly, and in answer to the second part of your question, it is my opinion that the board of education may employ or re-employ a principal only upon the recommendation or nomination, of the county superintendent of schools. Employment or rejection is determined by a majority vote of the board members considering the recommendation.

Applying these conclusions to your questions, it is clear that the local school board has, by virtue of its August vote, rejected the recommendations of the county superintendent. The county superintendent must now make further recommendations to the board. In the case of the superintendent, if the board should, by a simple majority,

reject the next recommendation of the county superintendent, then the board could select a local superintendent, not recommended by the county superintendent, provided they elect him by a three-fourths vote of their full membership. In the case of the principal, the board must chose a candidate from one of the persons recommended by the county superintendent. However, the local board has no option, in the case of a principal, to employ or re-employ a person not recommended by the county superintendent for the position, regardless of the vote.

Therefore, it is my opinion, and you are so advised that:

1. When, pursuant to R.C. 3319.01, the county superintendent of schools recommends persons to a board of education for the position of local superintendent, the board may accept or reject that recommendation by simple majority. After rejecting two recommendations of the county superintendent, the board may employ or re-employ a person not so recommended provided that three-fourths of the full membership vote in favor of such employment or re-employment.
2. Pursuant to R.C. 3319.02, a board of education of a local school district may employ or re-employ a principal only upon the nomination of the county superintendent of schools. In approving or rejecting such recommendation of the county superintendent, the local board acts by a simple majority vote.