

557.

OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME—AUTHORITY OF BOARD OF TRUSTEES—SECTIONS 1936 AND 1946, GENERAL CODE, CONSTRUED.

SYLLABUS:

*Sections 1936 and 1946, General Code, as amended by Amended Senate Bill No. 162, effective on and after July 26, 1927, confer upon the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home complete control and supervision of the Home and vest in such board the power and duty to select and employ a superintendent, a chaplain, superintendent of schools, instructors and such other officers, assistants and employes, including teachers, as may be required or as the board deems necessary, and constitute the superintendent of the Home the agent or active arm of the board to carry its mandates with respect to the employment and dismissal of all employes into execution.*

COLUMBUS, OHIO, June 2, 1927.

HON. THOMAS E. ANDREWS, *Superintendent, Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter in which you request my opinion as follows:

“Section 1936 of the General Code of Ohio as amended by the 87th General Assembly seems to clearly show the intent to give the Superintendent of the Ohio Soldiers' and Sailors' Orphans' Home the power to employ and dismiss employees subject to ratification by the Board of Trustees. However, Section 1946 of the General Code, also amended by the 87th General Assembly, seems to be in conflict with 1936, in that it provides that the Board of Trustees shall employ all of the employees of the Home, but does not provide for their dismissal by any one.

I think it is generally understood that where the right to employ is conferred, it carries with it the right to dismiss.

In view of the seeming conflict in the above named section, I would respectfully request an opinion as to their construction.”

Sections 1936 and 1946 of the General Code, as amended by Amended Senate Bill No. 162, passed by the 87th General Assembly on April 13th, approved by the Governor on April 27th, and filed in the office of the Secretary of State on April 27th, 1927, read as follows:

“Sec. 1936. The trustees shall establish and maintain schools for such literary, technical, industrial, art and other education of all pupils therein as is practicable, and make necessary arrangements therefor. Within the grounds of the Ohio Soldiers' and Sailors' Orphans' Home, the trustees shall establish and maintain shops wherein suitable trades may be taught and practiced in a thorough and comprehensive manner. Subject to the regulations of the board of trustees, the superintendent of the home shall employ all teachers and instructors for such schools, and said superintendent shall have the right to dismiss and discharge any teacher, or instructor, when in his opinion such action is for the best interests of the Ohio Soldiers' and Sailors' Orphans' Home, and is ratified by the board of trustees.”

“Section 1946. The board of trustees shall have complete control and supervision of the home and shall select and employ a superintendent, a

chaplain, superintendent of schools, instructors and such other officers, assistants and employes as may be required or as they may deem necessary, and shall fix their compensation.

The board may require the superintendent or other employes to furnish bond in such amount as it may deem adequate. Such bond shall be conditioned on the faithful performance of the duties of their office or position, and upon approval by the attorney general shall be filed with the secretary of state. \* \* \*

The sections in their amended form will be effective on and after July 26, 1927. In their present form the sections read as follows:

"Sec. 1936. The trustees shall establish schools for such literary, technical, industrial, art or other education of all pupils therein as is practicable, and make necessary arrangements therefor. Within the ground of the home, they may establish and maintain shops wherein suitable trades may be taught and practiced in a thorough and comprehensive manner. *Subject to their regulations, the superintendent may employ proper teachers, and for cause, dismiss them.*" (Italics the writer's.)

"Sec. 1946. The compensation of the officers and employes of the home shall be fixed by the board of trustees. No person, unless he shall have been in the actual military or naval service of the United States and shall have received an honorable discharge therefrom, shall be eligible to hold the position or office of superintendent. Provided, however, that the provisions of this section shall not affect the tenure of the position or office of the present superintendent."

Section 1931-1, General Code, not referred to in your letter, creating and making certain provisions relating to the Board of Trustees of the Home, provides, *inter alia*:

"\* \* \* \* \*

Such board shall govern, conduct and care for such home, the property thereof and the children therein as provided in the laws governing 'The Ohio Board of Administration' so far as the provisions thereof are not inapplicable and are not inconsistent with the provisions of the laws governing such home.

\* \* \* \* \*

In an opinion of this office, reported in the Annual Report of the Attorney General, 1913, Vol. I, page 153, the then Attorney General, the Honorable Timothy S. Hogan, referred to Section 1842, General Code, which reads in part as follows:

"\* \* \* \* \*

The chief officer shall have entire executive charge of the institution for which he is appointed, except as otherwise provided herein. He shall select and appoint the necessary employes, but not more than ten per cent of the total number of officers and employes of any institution shall be appointed from the same county.

He shall have power to discharge them for cause, which shall be recorded in a book kept for that purpose, and a report of all appointments and resignations and discharges shall be filed with the board at the close of each month. For reasons set forth in writing the board may order the discharge of any employe of any institution.

\* \* \* \* \*

and held:

"The superintendent appoints and discharges the employes, under Section 1842, General Code, and the trustees may, in writing, order the discharge of any employes. \* \* \* The superintendent employs and discharges teachers under Section 1936, General Code."

Sections 1936 and 1946 as amended relate to the same subject matter and are therefore in *pari materia* and must be so construed. The provisions of the two sections are seemingly in conflict with each other and must be harmonized so that force and effect will be given to each if possible. With reference to the provisions of the two sections under consideration the language of Judge Price in the case of *Beverstock vs. Board of Education*, 75 O. S. 144, 149, is pertinent:

"\* \* \* It is true that the provision is imperfectly, and even bunglingly, drawn, and exhibits negligence and perhaps ignorance in its phraseology, but these marks should not defeat the operation of the statute, if we can, by the fair use of its language, arrive at the true legislative purpose. \* \* \* It is the duty of the court when called upon to deal with the legislation of a co-ordinate department of our government, to so construe a statute, if possible, as to give it a sensible effect and make it of binding force. A statute can not be held void for uncertainty, if any reasonable and practical construction can be given to its language. Mere difficulty in ascertaining its meaning, or the fact that it is susceptible of different interpretations, will not render it nugatory. Doubts as to its proper construction will not justify us in disregarding it. It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and give full force and effect to every enactment of the General Assembly not obnoxious to constitutional prohibition."

Amended Senate Bill No. 162 in amending sections 1936 and 1946 makes a substantial change in the language of section 1936 and a radical change in the provisions of section 1946. Section 1936 as it now reads provides that subject to the regulations of the board of trustees "the superintendent may employ proper teachers, and, for cause dismiss them", and the superintendent's power to appoint and discharge employes is found in section 1842, *supra*, as above pointed out. The new section 1936 provides that subject to the regulations of the board the superintendent "*shall employ all teachers and instructors for such schools, and said superintendent shall have the right to dismiss and discharge any teacher, or instructor, when in his opinion such action is for the best interests of the \* \* \* home, and is ratified by the board of trustees.*" Section 1946 as it now reads contains no provision whatever with reference to the employment of teachers, instructors or other employes, while the section as amended confers upon the board of trustees complete control and supervision of the home and provides that such board "*shall select and employ a superintendent, a chaplain, superintendent of schools, instructors and such other officers, assistants and employes as may be required or as they may deem necessary.*"

While section 1936 speaks of teachers, no provision with reference to teachers being contained in section 1946, in view of the sweeping language of this latter section it seems clear that it was intended to invest in the board of trustees the power and authority to select and employ all necessary employes at the home including teachers. That is to say, in my opinion the legislature has manifestly no intention to make a distinction between teachers and instructors, but on the other hand has used the words interchangeably. This view finds support in the definitions of the two words contained in Webster's New International Dictionary, which defines "teacher" as "one who teaches, or instructs; especially one whose occupation is to instruct; an instructor; tutor, \* \* \*" and an "instructor" as "one who instructs or imparts knowledge; a teacher. \* \* \*"

When an act is amended by the legislature, it is presumed that the change was intentionally made to effect some purpose. In the language of the Supreme Court of Ohio in the case of *Lytle, et al. vs. Baldinger, et al.*, 84 O. S. 1, 8:

"The presumption is, that every amendment of a statute is made to effect some purpose. That purpose may be either to add new provisions and conditions to the section as it then stands, or for the purpose of making plain the meaning and intent thereof."

It is also to be presumed that the legislature enacts new sections with full knowledge of the existing condition of the law and with reference to it. 36 Cyc. 1146. It must be said, therefore, that the legislature, with the knowledge that the power to employ and discharge teachers and other employes was by sections 1936 and 1842, supra, vested in the superintendent, subject to the power of the board to direct the discharge of an employe, amended sections 1936 and 1946 to effect some purpose. And it is manifest from the sweeping provisions of Section 1946 as amended, that it was the intention of the legislature to vest "the complete control and supervision of the home" in the board of trustees, which is directed to "employ a superintendent, a chaplain, superintendent of schools, instructors, and such other officers, assistants and employes as may be required or as they may deem necessary."

While section 1936 as amended, is in seeming conflict with the new section 1946 in so far as the employment of teachers and instructors is concerned, it will be observed that the power to employ teachers and instructors is conferred upon the superintendent, subject to the regulations of the board of trustees and that the dismissal and discharge of any teacher or instructor by the superintendent is not effective until "ratified by the board of trustees." Reading the two amended sections together, it appears that the General Assembly intended to invest in the board the complete control and supervision of the home and to constitute the superintendent the agent or the active arm, so to speak, to carry out the mandates of the board. If this construction be followed, and it is my opinion that it is the correct one, any seeming inconsistency between the two sections disappears.

I am therefore of the opinion that sections 1936 and 1946, General Code, as amended by Amended Senate Bill No. 162, effective on and after July 26, 1927, confer upon the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home complete control and supervision of the home and vest in such board the power and duty to select and employ a superintendent, a chaplain, superintendent of schools, instructors and such other officers, assistants and employes, including teachers, as may be required or as the board deems necessary, and constitute the superintendent of the home the agent or active arm of the board to carry its mandates with respect to the employment and dismissal of all employes into execution.

In passing it is proper to point out that the civil service laws of the state apply to your institution, and that appointments must be made in conformity with those laws

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*