OPINION NO. 88-059

Syllabus:

1. Supervisory or management level employees who were previously covered by R.C. 3319.081 and who were brought within R.C. 3319.02 by Am. H.B. 107, 117th Gen. A. (1987) (eff. Sept. 10, 1987), became subject to R.C. 3319.02 on September 10, 1987, the effective date of Am. H.B. 107.

2. Such employees retained any contractual rights that had vested pursuant to R.C. 3319.081 prior to September 10, 1987.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 9, 1988

I have before me your request for an opinion concerning the implementation of the amendment of R.C. 3319.02 enacted by Am. H.B. 107, 117th Gen. A. (1987) (eff. Sept. 10, 1987), as it applies to supervisory and management level employees of a local school district who were previously employed under R.C. 3319.081. R.C. 3319.081 governs contracts for nonteaching employees of school districts that are not subject to R.C. Chapter 124.[1] The amendment in question expanded the definition of "other administrator," for purposes of R.C. 3319.02, to include any employee, except the superintendent, "whose job duties enable him to be considered as either a 'supervisor' or a 'management level employee,' as defined in [R.C. 4117.01[2]]." R.C. 3319.02(A). The expanded definition thus includes under R.C. 3319.02 certain employees who had been covered by R.C. 3319.081.

Your questions arise from the fact that the provisions of R.C. 3319.081 and those of R.C. 3319.02 are different in significant respects. R.C. 3319.081, as in effect both at the present time and upon the effective date of Am. H.B. 107, states, in part:

> Except as otherwise provided in division (G) of this section, in all school districts wherein the provisions of Chapter 124. of the Revised Code do not apply, the following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:
>
> (A) *Newly hired regular nonteaching school employees*, including regular hourly rate and per diem employees, *shall enter into*

---

1 R.C. Chapter 124 contains civil service provisions that are applicable to various governmental entities, including city school districts. *See* R.C. 124.01(A). Hence, R.C. 3319.081 is applicable to school districts that are not city school districts. *See, e.g.*, 1972 Op. Att'y Gen. No. 72-058. You have not inquired about the status of employees of city school districts, and this opinion does not consider such employees.

2 R.C. 4117.01 defines "supervisor" and "management level employee" for purposes of provisions governing public employees' collective bargaining. *See* R.C. 4117.01(F), (K).

> *written contracts for their employment which shall be for a period of not more than one year. If such employees are rehired, their subsequent contract shall be for a period of two years.*
>
> (B) *After the termination of the two-year contract* provided in division (A) of this section, *if the contract of a nonteaching employee is renewed, the employee shall be continued in employment,* and the salary provided in the contract may be increased but not reduced unless such reduction is a part of a uniform plan affecting the nonteaching employees of the entire district.
>
> (C) The contracts as provided for in this section may be terminated by a majority vote of the board of education. *Such contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance.* In addition to the right of the board of education to terminate the contract of an employee, the board may suspend an employee for a definite period of time or demote the employee for the reasons set forth in this division. The action of the board of education terminating the contract of an employee or suspending or demoting him shall be served upon the employee by certified mail. Within ten days following the receipt of such notice by the employee, the employee may file an appeal, in writing, with the court of common pleas of the county in which such school board is situated. After hearing the appeal the common pleas court may affirm, disaffirm, or modify the action of the school board.
>
> (D) *All employees who have been employed by a school district* where the provisions of Chapter 124. of the Revised Code do not apply, *for a period of at least three years on November 24, 1967, shall hold continuing contracts of employment pursuant to this section.*
>
> (E) Any nonteaching school employee may terminate his contract of employment thirty days subsequent to the filing of a written notice of such termination with the treasurer of the board. (Emphasis added.)

Pursuant to R.C. 3319.081, a regular nonteaching employee of a local school district is initially hired under a contract for not more than one year. If the employee is rehired, the subsequent contract is for a period of two years. If the contract is renewed after the termination of the two-year contract, the employee "shall be continued in employment" and, accordingly, shall be granted a continuing contract. *See generally, e.g., Ferdinand v. Hamilton Local Board of Education*, 17 Ohio App. 3d 165, 478 N.E.2d 835 (Franklin County 1984), *motion to certify dismissed*, No. 84-1070 (Ohio Sup. Ct. Aug. 2, 1984); *In re Sergent*, 49 Ohio Misc. 36, 360 N.E.2d 761 (C.P. Montgomery County 1976); 1972 Op. Att'y Gen. No. 72-058; 1971 Op. Att'y Gen. No. 71-021; 1968 Op. Att'y Gen. No. 68-095. A contract issued under R.C. 3319.081 may be terminated only for the reasons listed in the statute.

In contrast, R.C. 3319.02, as amended by Am. H.B. 107, provides for contracts of up to five years, and for a mandatory evaluation procedure, but does not provide for continuing contracts. R.C. 3319.02 states, in part:

> (A) As used in this section, *"other administrator" means* any employee in a position for which a board of education requires a certificate of the type described by division (G), (K), or (M) of section 3319.22 of the Revised Code, provided that an employee required to have the type of certificate described by division (K) of such section spends less than fifty per cent of his time teaching or working with students, or *any other employee*, except the superintendent, *whose job duties enable him to be considered as either a "supervisor" or a "management level employee,"* as defined in section 4117.01 of the Revised Code.
>
> (B) The board of education of each school district may appoint one or more assistant superintendents and such other administrators as are necessary....
>
> (C) In city, exempted village, and county districts, assistant superintendents, principals, assistant principals, and other

administrators shall only be employed or reemployed in accordance with nominations of the superintendent of schools of the district except that a city, exempted village, or county board of education, by a three-fourths vote, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the superintendent refuses to nominate after considering two nominees for the position. In local school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent of schools of the county district of which the local district is a part except that a local board of education, by a majority vote, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the county superintendent refuses to nominate after considering two nominees for the position.

The board of education shall execute a written contract of employment with each assistant superintendent, principal, assistant principal, and *other administrator it employs or reemploys. The term of such contract shall not exceed three years except that in the case of a person who has been employed by the school district as an* assistant superintendent, principal, assistant principal, or *other administrator for three years or more, the term of his contract shall be for not more than five years and, unless the superintendent of the district recommends otherwise, not less than two years.* If the superintendent so recommends, the term of the contract of a person who has been employed by the school district as an assistant superintendent, principal, assistant principal, or other administrator for three years or more may be one year, but all subsequent contracts granted such person shall be for a term of not less than two years and not more than five years. When a teacher with continuing service status becomes an assistant superintendent, principal, assistant principal, or other administrator with the district with which he holds continuing service status, he retains such status in his nonadministrative position as provided in sections 3319.08 and 3319.09 of the Revised Code.

A board of education may reemploy an assistant superintendent, principal, assistant principal, or other administrator at any regular or special meeting held during the period beginning on the first day of January of the calendar year immediately preceding the year of expiration of his employment contract and ending on the last day of March of the year his employment contract expires.

Except by mutual agreement of the parties thereto, no assistant superintendent, principal, assistant principal, or other administrator shall be transferred during the life of his contract to a position of lesser responsibility. No contract may be terminated or suspended by a board of education except pursuant to section 3319.16 or 3319.17 of the Revised Code. The salaries and compensation prescribed by such contracts shall not be reduced by a board of education unless such reduction is a part of a uniform plan affecting the entire district. The contract shall specify the employee's administrative position and duties, the salary and other compensation to be paid for performance of his duties, the number of days to be worked, the number of days of vacation leave, if any, and any paid holidays in the contractual year.

An assistant superintendent, principal, assistant principal, or *other administrator is, at the expiration of his current term of employment, deemed reemployed at the same salary plus any increments that may be authorized by the board of education, unless he notifies the board in writing to the contrary on or before the first day of June, or unless such board, on or before the last day of March of the year in which his contract of employment expires, either reemploys him for a succeeding term or gives him written notice of its intention not to reemploy him. The term of reemployment of a person reemployed under this paragraph shall be one year, except that if such person has been employed by the school district as an* assistant superintendent, principal, assistant principal, or *other administrator for three years or more, the term of reemployment shall be two years.*

(D) *Each board of education shall adopt procedures for the evaluation of all* assistant superintendents, principals, assistant

principals, and *other administrators and shall evaluate such employees in accordance with those procedures.* The evaluation based upon such procedures shall be considered by the board in deciding whether to renew the contract of employment of an assistant superintendent, principal, assistant principal, or other administrator. The evaluation shall measure each assistant superintendent's, principal's, assistant principal's, and other administrator's effectiveness in performing the duties included in his job description and the evaluation procedures shall provide for, but not be limited to, the following:

(1) *Each* assistant superintendent, principal, assistant principal, and *other administrator shall be evaluated annually through a written evaluation process.*

(2) The evaluation shall be conducted by the superintendent or his designee.

(3) In order to provide time to show progress in correcting the deficiencies identified in the evaluation process the completed evaluation shall be received by the evaluatee at least sixty days prior to any action by the board of education on the employee's contract of employment.

Termination or suspension of an assistant superintendent, principal, assistant principal, or *other administrator's contract shall be pursuant to section 3319.16 or 3319.17 of the Revised Code.*

The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in this section shall prevent a board of education from making the final determination regarding the renewal or failure to renew the contract of any assistant superintendent, principal, assistant principal, or other administrator.

Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board of education shall notify each such employee of the date that his contract expires and that he may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session to discuss the reasons for considering renewal or nonrenewal of his contract.

(E) On nomination of the county superintendent of schools a county board of education may employ supervisors, special instruction teachers, and special education teachers. Such employees shall be employed under written contracts of employment for terms not to exceed five years each. Such contracts may be terminated by a county board of education pursuant to section 3319.16 of the Revised Code. Any supervisor, special instruction teacher, or special education teacher may terminate his contract of employment at the end of any school year after giving the county board of education at least thirty days written notice prior to such termination. On the recommendation of the county superintendent of schools the contract or contracts of any supervisory teachers, special instruction teachers, or special education teachers may be suspended for the remainder of the term of such contracts where there is a reduction of the number of approved supervisory teacher units or special instruction teacher units allocated to the school district pursuant to section 3317.05 of the Revised Code. (Emphasis added.)

See generally State ex rel. Specht v. Painesville Township Local School District Board of Education, 63 Ohio St. 2d 146, 149, 407 N.E.2d 20, 22-23 (1980) ("[a]n administrative position, which is highly executive in nature and broad in its discretionary powers, facilitates the need for a separate employment scheme as set forth in R.C. 3319.02"); 1975 Op. Att'y Gen. No. 75-050. R.C. 3319.02 provides that termination or suspension of the contract of an "other administrator" shall be pursuant to R.C. 3319.16 or R.C. 3319.17. R.C. 3319.16 sets forth procedures for terminating a contract "for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause." R.C. 3319.17 permits a reasonable reduction in the number of teachers when required "by reason of decreased enrollment of pupils, return to duty

of regular teachers after leaves of absence, or by reason of suspension of schools or territorial changes affecting the district."

You have stated your questions as follows:

(1) Was the status of supervisory or management level employees affected as of September 10, 1987 or is their status first governed by Section 3319.02 of the Revised Code with respect to the renewal of their employment for the 1988–1989 school year?

(2) If their status was changed, effective September 10, 1987, in what manner(s) was their employment relationship affected?

(3) Does the statute terminate the continuing contract status of those supervisors and management level employees who had achieved continuing contract status prior to September 10, 1987? If so, when was that loss of continuing contract status effective?

Your questions concern the status of supervisory or management level employees who were previously covered by R.C. 3319.081 and now come within the provisions of R.C. 3319.02. The statutory amendment that brought about this change became effective on September 10, 1987. *See* Am. H.B. 107. Nothing in the bill indicates that any provisions of the statute were to take effect at any other time. It follows, accordingly, that the persons who were affected by the amendment became subject to R.C. 3319.02 as of September 10, 1987. ***See generally State ex rel. King v. North Gallia Local Board of Education***, 29 Ohio Op. 2d 55, 198 N.E.2d 786 (Ct. App. Gallia County 1963).

This conclusion does not, however, define with precision the status of each employee who was affected by the amendment, since the status of a particular employee depends upon all statutory provisions and circumstances relating to that individual, including provisions that may have granted vested rights and the terms of any contract or collective bargaining agreement that may affect the employment. *See, e.g.,* R.C. 3319.081; R.C. Chapter 4117. You have not indicated that any collective bargaining agreement applies to the employees in question, and I am not considering any such agreement. I assume that your questions relate to the issue of whether any provisions contained in R.C. 3319.081 or rights derived under that section prior to the effective date of Am. H.B. 107 remain in effect, or whether the amendment cancelled all benefits that were conferred under R.C. 3319.081 and left the employees in positions governed only by the statutory provisions of R.C. 3319.02. Am. H.B. 107 does not address this issue. *Compare* Am. H.B. 107 *with* R.C. 3319.02 ("[w]hen a teacher with continuing service status becomes an assistant superintendent, principal, assistant principal, or other administrator with the district with which he holds continuing service status, he retains such status in his nonadministrative position as provided in [R.C. 3319.08 and 3319.09]"). *See generally* 1983 Op. Att'y Gen. No. 83–022 at 2–81 n. 1 (uncodified language addressing the civil service status of personnel of the Ohio Highway Research Board when that Board became the Transportation Research Board).

You have not indicated specific positions with which you are concerned, and I am unable to use the opinion-rendering function to determine the rights of particular persons or to analyze the provisions of particular agreements. *See, e.g.,* 1983 Op. Att'y Gen. No. 83–087 at 2–342 (the Attorney General is "without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary..."). I am, accordingly, providing a general analysis of the statute, which may be applied as appropriate in particular circumstances. *See generally State ex rel. Cutler v. Pike County Joint Area Vocational School District*, 6 Ohio St. 3d 138, 140, 451 N.E.2d 800, 802 (1983) ("[w]hatever contractual rights to compensation [appellant teachers] may have with respect to their continuing contracts may be the subject of appropriate civil action involving the application of relevant contract law principles"); *Ferdinand v. Hamilton Local Board of Education*, 17 Ohio App. 3d at 171, 478 N.E.2d at 842 ("[a] board of education is bound by a continuing contract under ordinary contract law...").

It is a general rule in Ohio that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." R.C. 1.48. *See, e.g., Kiser v. Coleman*, 28 Ohio St. 3d 259, 503 N.E.2d 753 (1986); *Jennyo v. Warner & Swasey Co.*, 57 Ohio St. 2d 13, 385 N.E.2d 630 (1979); 1981 Op. Att'y Gen. No. 81-067. This general rule serves to implement constitutional prohibitions against the enactment of retroactive laws. Ohio Const. art. II, §28 states: "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts...." U.S. Const. art. I, §10 also prohibits the enactment of laws impairing the obligations of contracts, as follows: "No State shall...pass any...Law impairing the Obligation of Contracts...." *See, e.g., Fraternal Order of Police v. Hunter*, 49 Ohio App. 2d 185, 360 N.E.2d 708 (Mahoning County 1975), *motion to certify overruled* (Ohio Sup. Ct. Sept. 26, 1975), *cert. denied*, 424 U.S. 977 (1976); Op. No. 81-067. Since Am. H.B. 107 is not expressly made retrospective, it must be presumed to be prospective in its operation. *See generally State ex rel. King v. North Gallia Local Board of Education.*

Legislative enactments dealing with the status of governmental employees are generally considered to be matters of policy that are subject to change at the discretion of the legislature. *See, e.g., Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938) ("[t]he principal function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal when a subsequent legislature shall determine to alter that policy"); *National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co.*, 470 U.S. 451 (1985). It has, thus, been recognized that the General Assembly may, by legislative action, remove certain governmental employees from the classified civil service without violating constitutional prohibitions against the taking of property, the impairment of contractual rights, or the enactment of retroactive laws, and without violating due process or equal protection guarantees. *See, e.g., Shearer v. Cuyahoga County Hospital*, 34 Ohio App. 3d 59, 516 N.E.2d 1287 (Cuyahoga County 1986), *motion to certify overruled*, No. 87-174 (Ohio Sup. Ct. March 5, 1987); *Lawrence v. Edwin Shaw Hospital*, 34 Ohio App. 3d 137, 517 N.E.2d 984 (Franklin County 1986).[3] *See generally* Ohio Const. art. XV, §10; *Fuldauer v. City of Cleveland*, 32 Ohio St. 2d 114, 290 N.E.2d 546 (1972); *State ex rel. Gordon v. Barthalow*, 150 Ohio St. 499, 83 N.E.2d 393 (1948); *Jackson v. Kurtz*, 65 Ohio App. 2d 152, 154, 416 N.E.2d 1064, 1066 (Hamilton County 1979) ("[a] public employee holds his position as a matter of law and not of contract"); 1955 Op. Att'y Gen. No. 5699, p. 434; 1937 Op. Att'y Gen. No. 1190, vol. II, p. 2065 at 2069 ("[t]here can be no doubt but that the legislature could change the civil service laws at will"); 1933 Op. Att'y Gen. No. 203, vol. I, p. 281 (civil service protection given to employees in the classified service of a city disappears when the city reverts to a village form of government).

Where, however, governmental employees hold vested contractual rights, those rights are not subject to change at the discretion of the legislature, but are, instead, protected by the constitutional prohibitions against laws impairing the obligation of contracts. *Indiana ex rel. Anderson v. Brand* concerned a state law that provided for indefinite contracts between teachers and school corporations that were to remain in force unless succeeded by new contracts or cancelled as provided by statute. The United States Supreme Court found that contracts entered into pursuant to that law granted the teachers vested rights which could not lawfully be impaired by repeal of the statute. The Court stated, 303 U.S. at 100 (footnote omitted): "[I]t is established that a legislative enactment may contain provisions

---

[3] I am aware that, in 1986 Op. Att'y Gen. No. 86-015, I concluded that persons who held a particular position in the classified service on the effective date of a statutory amendment changing those positions to the unclassified service retained the protections afforded to classified employees. That opinion may be subject to question on the basis of subsequent case law—*i.e., Shearer v. Cuyahoga County Hospital*, 34 Ohio App. 3d 59, 516 N.E.2d 1287 (Cuyahoga County 1986), *motion to certify overruled*, No. 87-174 (Ohio Sup. Ct. March 5, 1987), and *Lawrence v. Edwin Shaw Hospital*, 34 Ohio App. 3d 137, 517 N.E.2d 984 (Franklin County 1986). *See* 1988 Op. Att'y Gen. No. 88-017 at 2-67 n. 1. *See also* 1981 Op. Att'y Gen. No. 81-100.

which, when accepted as the basis of action by individuals, become contracts between them and the State or its subdivisions within the protection of [U.S. Const.] Art. 1, §10." *See generally Perry v. Sindermann*, 408 U.S. 593, 601 (1972) ("[a] written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless sufficient 'cause' is shown"); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) ("[p]roperty interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits").

Ohio's continuing contract provisions for the employment of teaching personnel were modeled on those of Indiana, *see State ex rel. Kohr v. Hooker*, 106 Ohio App. 1, 3, 152 N.E.2d 788, 790 (Tuscarawas County 1958), and have been found to grant teachers vested contractual rights. *Ludwig v. Board of Education*, 72 Ohio App. 437, 441, 52 N.E.2d 765, 767 (Hamilton County 1943) (citations omitted), states of a teacher's continuing contract:

> It is true that the relation between the plaintiff and the board of education was contractual, the obligation of which was protected against impairment by any state law by Section 10, Article I of the Constitution of the United States and by the due process provision of the Fourteenth Amendment thereof.

See also State ex rel. Cutler v. Pike County Joint Area Vocational School District, 6 Ohio St. 3d at 139, 451 N.E.2d at 801 (recognizing that certain teachers with continuing contracts have a vested interest in the teaching of electronics); *Harrison v. Board of Education*, 60 Ohio App. 45, 54, 19 N.E.2d 522, 526 (Cuyahoga County 1938) ("[t]he relation of a teacher and the board [of education] is contractual by law"). *See generally Ryan v. Aurora City Board of Education*, 540 F.2d 222 (6th Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977); *Ferdinand v. Hamilton Local Board of Education.*

The continuing contract language of R.C. 3319.081 relating to nonteaching school employees is not identical to that governing teaching employees. *See* R.C. 3319.08 ("[a] continuing contract is a contract that remains in effect until the teacher resigns, elects to retire, or is retired pursuant to [R.C. 3307.37], or until it is terminated or suspended..."); R.C. 3319.09(C) ("'[c]ontinuing service status' for a teacher means employment under a continuing contract"); R.C. 3319.11 (continuing service status and contracts for teachers); R.C. 3319.17. R.C. 3319.081 states only that, in certain circumstances, the employee "shall be continued in employment." R.C. 3319.081(B). R.C. 3319.081(D) specifies that "[a]ll employees who have been employed by a school district where the provisions of [R.C. Chapter 124] do not apply, for a period of at least three years on November 24, 1967, shall hold continuing contracts of employment pursuant to this section." The words "pursuant to this section" do indicate, however, that a person who is "continued in employment" pursuant to R.C. 3319.081(B) is employed under a continuing contract. *See, e.g., Ferdinand v. Hamilton Local Board of Education; In re Sergent*; Op. No. 72-058 (a nonteaching employee who has continuing contract status retains that status when transferred to another nonteaching position, and is entitled to a continuing contract); Op. No. 71-021; Op. No. 68-095 (syllabus, paragraph 2) (R.C. 3319.081 "provides that each non-teaching employee of a school be granted a continuing contract upon the completion of three years of continuous employment"). It has generally been concluded that the intention behind R.C. 3319.081 was to give nonteaching school employees continuing contract rights of the same sort as those given to teaching employees. *See, e.g., State ex rel. Soller v. West Muskingum Local Board of Education*, 29 Ohio St. 2d 148, 280 N.E.2d 382 (1972) (syllabus) (referring to the "continuing contract status" of a nonteaching employee); *Ferdinand v. Hamilton Local Board of Education; Pertuset v. Board of Education*, 33 Ohio Misc. 161, 164, 293 N.E.2d 887, 888 (C.P. Scioto County 1972); Op. No. 71-021. *See generally Gates v. Board of Education*, 8 Ohio App. 2d 76, 220 N.E.2d 715 (Monroe County 1966), *aff'd*, 11 Ohio St. 2d 83, 228 N.E.2d 298 (1967); *In re Sergent*. A nonteaching employee who is in continuing contract status is, accordingly, an employee who is employed under a continuing contract. *Cf.* R.C. 3319.09(C) ("'[c]ontinuing service status' for a teacher means employment under a continuing contract").

Am. H.B. 107 does not address the precise time or manner in which the provisions of R.C. 3319.02 are to come into effect with respect to individuals who were previously employed under R.C. 3319.081. On the basis of the principles discussed above, however, it appears that such employees became subject to R.C. 3319.02 as soon as the provisions of Am. H.B. 107 came into effect. The provisions of Am. H.B. 107 did not, however, terminate any contractual rights that the employees had. Thus, their employment continues in accordance with contracts that pre-date the amendment until such time as those contracts terminate according to their own terms, unless the rights granted by such contracts are waived. *See, e.g., Ferdinand v. Hamilton Local Board of Education. See generally Dorian v. Euclid Board of Education*, 62 Ohio St. 2d 182, 185, 404 N.E.2d 155, 158 (1980) ("Ohio's teacher tenure law provides teachers under continuing contracts with the expectation of continued employment"); *State ex rel. Ford v. Board of Education*, 141 Ohio St. 124, 127, 47 N.E.2d 223, 224-25 (1943) ("[t]he principle of law is well established that one is free to waive the rights and privileges which are due him, whether secured by contract, conferred by statute, or guaranteed by the Constitution, so long as there is no violation of public policy"); *State ex rel. King v. North Gallia Local Board of Education*, 29 Ohio Op. 2d at 57, 198 N.E.2d at 788-89 (a teacher's continuing contract "remains in effect until the teacher resigns, elects to retire, or is retired for cause under the provisions of [R.C. 3319.16]"; a statutory amendment "applied only to future contracts, i.e., contracts after its effective date"); 1937 Op. Att'y Gen. No. 1190 at 2069-70 (employees whose positions were, by action of the General Assembly, changed from the classified to the unclassified service, "unless appointed for a definite term, otherwise fixed by statute or by contract, hold their positions only at the pleasure of the appointing power"). *See also* 1983 Op. Att'y Gen. No. 83-063. An individual who was employed under a contract pursuant to R.C. 3319.081 on September 10, 1987, thus retained such rights as he had under that contract, even though he became subject to R.C. 3319.02 as of that date. *See generally, e.g., Ferdinand v. Hamilton Local Board of Education*, 17 Ohio App. 3d at 169, 478 N.E.2d at 840 ("a nonteaching employee holding a continuing contract has a superior right of employment over a nonteaching employee on a limited contract which will expire").

The rights and obligations of a particular employee depend upon the terms of the contract under which he is employed, and such rights and obligations are subject to judicial determination, rather than to analysis in an opinion of the Attorney General. *See generally State ex rel. Cutler v. Pike County Joint Area Vocational School District; Ferdinand v. Hamilton Local Board of Education.* I am, thus, unable to opine upon the question of how a particular employment relationship was affected by the enactment of Am. H.B. 107. I will, however, by way of example, consider contractual language of the sort addressed in *Ferdinand v. Hamilton Local Board of Education*, 17 Ohio App. 3d at 166, 478 N.E.2d at 837-38:

> Said employee hereby agrees to be employed in the public schools of said District, subject to the assignment of the Superintendent of Schools and the Board of Education for an indefinite period until he/she resigns, elects to retire, is retired according to law, or until this contract is terminated or suspended pursuant to Section 3319.081 of the Revised Code of Ohio.***

An employee serving pursuant to such a contract on September 10, 1987, retained the right to continued employment until one of the specified events occurred—that is, until the employee resigned, retired, or was retired, or until the contract was terminated or suspended pursuant to R.C. 3319.081. R.C. 3319.081 provides for termination or suspension only for the reasons set forth therein. As the court stated in *Ferdinand*:

> [W]e hold...that a nonteaching continuing contract may ordinarily be terminated only for the reasons set forth in R.C. 3319.081. In extraordinary circumstances, a nonteaching continuing contract may be terminated for what is in the nature of impossibility of performance, such as lack of work or lack of funds, but, when a contract is to be terminated by a board for such extraordinary reasons, the burden is upon the board to demonstrate the existence of the necessity of terminating the continuing contract.

17 Ohio App. 3d at 171, 478 N.E.2d at 842. The enactment of Am. H.B. 107 did not, in itself, terminate or suspend contracts entered into under R.C. 3319.081.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Supervisory or management level employees who were previously covered by R.C. 3319.081 and who were brought within R.C. 3319.02 by Am. H.B. 107, 117th Gen. A. (1987) (eff. Sept. 10, 1987), became subject to R.C. 3319.02 on September 10, 1987, the effective date of Am. H.B. 107.

2. Such employees retained any contractual rights that had vested pursuant to R.C. 3319.081 prior to September 10, 1987.