

OPINION NO. 68-156**Syllabus:**

1. The Youngstown City Board of Education may amend its school calendar and thereby call for the teaching services of its teachers to be performed in June, 1969, instead of December, 1968.
2. Noncertificated employees of the Board may be laid off for reasons of economy for the month of December, 1968, without violating the Ohio civil service regulations.
3. Auxiliary services and transportation services provided for students attending non-public schools must be continued for the month of December, 1968, even if the public schools are closed during this period.

To: Martin W. Essex, Supt. of Public Instruction, Columbus, Ohio
By: William B. Saxbe, Attorney General, November 27, 1968

I have before me your request for my opinion on some matters concerning the fact that the Youngstown City Board of Education will be forced to consider the termination of school services on or about December 1, 1968, for the remainder of the calendar year of 1968, in the event that the electors fail to approve the 12-mill levy submitted at the general election.

Your specific questions are:

1. "Can the Board properly suspend the services of a teaching employee for a period such as from December 1 through December 20 and, thus, by amending the school calendar, call for such teaching services in June, 1969, as a part of the contract year?"

2. Can the Board legally suspend, reduce or eliminate the services of noncertificated employees who are affected by civil service regulations on the basis that no funds are currently available or in process of collection for the current year for a period such as December 1, 1968, through December 20, 1968, and, thus, reinstate such services after January 1, 1969?
3. In the matter of auxiliary services, as rendered by the State of Ohio, for example school transportation for students attending nonpublic schools, what then is the prerogative of the Board for suspending such services or, in fact, for continuing such services when such service and programs for public school pupils are suspended for a period such as December 1, 1968 through December 20, 1968?"

Your first question can be answered by an analysis of the pertinent statutes and cases construing them. Section 3313.62, Revised Code, defines the school year as follows:

"The school year shall begin on the first day of July of each calendar year and close on the thirtieth day of June of the succeeding calendar year. A school week shall consist of five days, and a school month of four school weeks."

Section 3313.48, Revised Code, defines the minimum school year as follows:

"The board of education of each city, exempted village, and local school district shall provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof. Every day school so provided shall be open for instruction with pupils in attendance for not less than one hundred seventy-six days in each school year, or as provided in sections 3313.481 [3313.48.1] and 3313.482 [3313.48.2] of the Revised Code, less the number of days the school is closed as a result of public calamity, as provided in section 3317.01 of the Revised Code. * * *"

The court in In re Sheard, 82 Ohio Law Abs. 259, 261 noted the following:

"* * * Sec. 3313.62 R.C., provides for a full twelve month school year beginning on July 1st and ending on June 30th. While the statutes provide for a minimum period of school instruction, Sec. 3313.48 R.C., there are no statutory rules as to when the school term should begin or end. That decision is left to the discretion of the local school board.
* * *" (Emphasis added)

In arranging a schedule for the school year, a board of

education is authorized to designate a date for its official termination. (State ex rel. Brown v. Board of Education, 162 Ohio St. 589)

It is clear that local school boards control the school calendar, and that the boards must schedule a minimum of one hundred seventy-six school days sometime between the first day of July and the thirtieth day of June of the succeeding calendar year. If a school board wishes to schedule no school days in December and a full schedule of school days in June, this would appear to be entirely within its discretion. I have been informed that these teachers have contracted to teach for the "school year" of 1968-1969, which is to consist of some thirty-eight (38) school weeks. The school board has the authority to amend its school calendar and allocate some of these weeks to June, 1969, instead of December, 1968. The teachers need not be "suspended", but rather should be informed of the board's action in amending the school calendar.

The answer to your second question is two-fold. If the noncertificated employees have contracted to perform services for the same 38-week "school year" as the teachers, then the weeks during which their services will be performed may be changed by the above-mentioned amendment of the school calendar. This, of course, would not amount to a suspension, reduction or elimination of their services.

If, however, some or all of these noncertificated employees are employed on a twelve-month basis, then it would be necessary for them to be laid off during the month of December, 1968, for reasons of economy. There is abundant authority for such an economy move, as is illustrated by the syllabus in De Remer v. Board of Education of Akron City School District, 72 Ohio App. 283:

"Public bodies, which for their operation are dependent upon funds derived from taxes, must necessarily, and in the absence of laws to the contrary are required to, curtail their operations so as to keep their expenditures within their available funds; and a sound public policy demands that, in the interest of public economy, they have a right to reduce their working forces by layoffs, in order to prevent deficiencies in the public funds."

Similar decisions have been reached in other cases which specifically hold that the civil service laws are not violated by such economy layoffs. (See Curtis, Safety Director v. State ex rel. Morgan, 108 Ohio St. 292; State ex rel. Buckman v. Munson, Dir., 141 Ohio St. 319)

Your third question concerns "auxiliary services" which are rendered to non-public schools. These services are, for the most part, authorized under Section 3317.06 (H), Revised Code. The funding is separate from the other parts of the local school district's program. The local school district acts as a conduit for the flow of money from the state to the non-public schools. Therefore, the closing of the public schools in Youngstown during December, 1968 will not necessitate suspending the flow of money for these auxiliary services to the non-public schools.

The particular service which you mention in your third question is that of transportation for students attending non-public schools. As you know, this particular service is authorized and controlled by Section 3327.01, Revised Code, which states as pertinent:

"In all city, exempted village, and local school districts where resident elementary school pupils live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the non-public school which they attend the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.

"In all city, exempted village, and local school districts the board may provide transportation for resident high school pupils to and from the high school to which they are assigned by the board of education of the district of residence or to and from the non-public high school which they attend for which the state board of education prescribed minimum standards pursuant to division (D) of section 3301.07 of the Revised Code.

"In determining the necessity for transportation, availability of facilities and distance to the school shall be considered.

"A board of education shall not be required to transport elementary or high school pupils to and from a non-public school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation, appointed under section 3327.011 3327.01.1 of the Revised Code, for the attendance area of the district of residence.

"Where it is impractical to transport a pupil by school conveyance, a board of education may, in lieu of providing such transportation, pay a parent, guardian, or other person in charge of such child, an amount per pupil which shall in no event exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in this state during the next preceding year.

"In all city, exempted village, and local school districts the board shall provide transportation for all children who are so crippled that they are unable to walk to and from the school for

which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and which they attend.

" * * * * * * * * * *"
(Emphasis added)

The use of the word, "shall", in the above portion of the statute makes it mandatory that school districts transport resident elementary school pupils who live more than two miles from their schools and transport the described crippled children. Other portions of the above section make it optional for the districts to transport high school students and optional to transport elementary students who live within two miles of their schools. This statute and the regulations and guidelines of the State Board of Education make it clear that each school district must provide the above-mentioned mandatory transportation to students attending non-public schools, and that whatever permissive or optional transportation is provided for students attending public schools must also be provided for students who attend non-public schools. The only exception is that provided by the statutory requirement that the non-public school in question must be within thirty minutes of direct travel time from the collection point.

The Youngstown City Board of Education is reimbursed for the transportation costs involved in transporting pupils to non-public schools in accordance with a formula adopted by the State Board of Education pursuant to Section 3317.051, Revised Code. The Board will be reimbursed for such costs regardless of whether or not the public schools are in session in December, 1968. Therefore, the closing of the public schools in December, 1968 should not affect the Board's duty to provide transportation for pupils attending non-public schools.

The Youngstown City Board of Education cannot, of course, control the school calendar of the non-public schools in the area. However, the above transportation duties clearly devolve upon the Board even if the calendars do not coincide.

Therefore, if the Board decides to close the public schools for the month of December, 1968, it still must provide the usual pupil transportation services to those pupils who will be attending the non-public schools in its area.

Accordingly, it is my opinion and you are hereby advised that:

1. The Youngstown City Board of Education may amend its school calendar and thereby call for the teaching services of its teachers to be performed in June, 1969, instead of December, 1968.
2. Noncertificated employees of the Board may be laid off for reasons of economy for the month of December, 1968, without violating the Ohio civil service regulations.
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