

OPINION NO. 67-118

Syllabus:

1. A board of education may not withhold salary increments provided in Section 3317.13 (C), Revised Code, for failure on the part of a teacher to acquire the professional growth credits required by the policy of the board of education.

2. A board of education in the administration of its salary schedule, pursuant to Section 3317.14, Revised Code, may not withhold salary increments above the salaries required by the state minimum salary schedule, for failure on the part of a teacher to acquire the professional growth credits required by the policy of the board of education.

3. A board of education may not terminate the employment of a teacher who is the holder of a limited or a continuing contract for failure on the part of such teacher to earn the required professional growth credits established by a policy of the board of education.

To: Martin Essex, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William B. Saxbe, Attorney General, December 22, 1967

Your request for my opinion reads as follows:

"1. May a board of education withhold salary increments provided for in Section 3317.13 (C), Revised Code, for failure on the part of a teacher to ac-

quire the professional growth credits required by the policy of the board of education.

"2. May a board of education in the administration of its salary schedule, pursuant to Section 3317.14 of the Revised Code, withhold salary increments above the salaries required by the state minimum salary schedule, for failure on the part of a teacher to acquire the professional growth credits required by the policy of the board of education.

"3. May a board of education terminate the employment of a teacher who is the holder of a limited or a continuing contract for failure on the part of such teacher to earn the required professional growth credits established by policy of the board of education."

The statutory provisions to be construed by this opinion are found in Section 3317.13, Revised Code, and Section 3317.14, Revised Code, which provided in part:

Section 3317.13, Revised Code

"Each teacher employed by a board of education in a school district shall be fully credited with placement in the appropriate academic training level column in the salary schedule of the district with years of service properly credited pursuant to this section or section 3317.14 of the Revised Code. No rule or regulation shall be adopted or exercised by any board of education which restricts the placement or the crediting of annual salary increments for any teacher according to the appropriate academic training level column.

"(C) Minimum salaries exclusive of retirement and sick leave for teaching personnel employed in the public schools shall be as follows:

"Years of service	Teachers with less than bachelor's degree	Teachers with a bachelor's degree	Teachers with five years of training, but no master's degree	Teachers with a master's degree or higher
0	\$4,300	\$5,000	\$5,200	\$5,500
1	4,480	5,200	5,425	5,750
2	4,660	5,400	5,650	6,000
3	4,840	5,600	5,875	6,250
4	5,020	5,800	6,100	6,500

"Years of service	Teachers with less than bachelor's degree	Teachers with a bachelor's degree	Teachers with five years of training, but no master's degree	Teachers with a master's degree or higher
5	5,200	6,000	6,325	6,750
6	5,380	6,200	6,550	7,000
7	5,560	6,400	6,775	7,250
8	5,740	6,600	7,000	7,500
9	5,920	6,800	7,225	7,750
10	6,100	7,000	7,450	8,000
11	--	7,200	7,675	8,250
12 and more	--	--	--	8,500"

Section 3317.14, Revised Code

"Any board of education participating in funds distributed under Chapter 3317. of the Revised Code shall annually adopt a teacher's salary schedule with provision for increments based upon training and years of service. Notwithstanding section 3317.13 of the Revised Code, the board may establish its own service requirements provided no teacher receives less than the amount required to be paid pursuant to section 3317.13 of the Revised Code and provided full credit for a minimum of five years of actual teaching and military experience as defined in division (A) of section 3317.13 of the Revised Code is given to each teacher"

Your letter requesting my opinion indicates that some boards of education require teachers to acquire a certain number of university credits each year to qualify for annual salary increments.

This policy is clearly in conflict with the provisions of Section 3317.13, supra, which forbid any rule or regulation which restricts the placement or the crediting of annual salary increments for any teacher.

In answer to your second question, a board of education has a mandatory duty to annually adopt a teachers' salary schedule which provides for increments based upon training and years of service.

As used in Section 3317.14, supra, training refers to the academic training level columns of Section 3317.13 (C), supra. These are the minimum classifications permitted, although the board may adopt a schedule with additional training classification not less than the minimum requirements. This is permitted by Section 3317.14, supra, which states that such credits shall be pursuant to Section 3317.13, supra.

A determination of the minimum years of service which shall be credited to the salary increment schedule is established by Section 3317.13, Revised Code:

"As used in this section, 'years of service' includes the following:

"(1) All years of teaching service in the same school district, regardless of training level, with each year consisting of at least one hundred twenty days under a teacher's contract;

"(2) All years of teaching service in another public school, regardless of training level, with each year consisting of at least one hundred twenty days under a teacher's contract; and

"(3) All years of active military service in the armed forces of the United States, as defined in section 3307.02 of the Revised Code, to a maximum of five years. For purposes of this calculation, a partial year of active military service of eight continuous months or more in the armed forces shall be counted as a full year."

Under the provisions of Section 3317.14, supra, a board of education may establish its own "service requirement" within the minimums established by Section 3317.13 (A), supra.

But, Section 3317.14, supra, does not grant a board of education the power to establish additional requirements. Considering Sections 3317.13 and 3317.14, supra, together, it is clear that a board of education must adopt a salary schedule which provides for annual increases in salary at least equal to the minimum schedule of Section 3317.13 (C), supra.

This does not mean that a board of education would be forbidden to grant larger increments to those teachers that do acquire additional university credits. But the board of education cannot make such additional training a mandatory prerequisite to annual salary increments.

For the purposes of this opinion, it is sufficient to note that continuing service contracts and limited contracts are defined and established by Section 3319.11, Revised Code, without quoting the statute.

Under the terms of Section 3319.16, Revised Code, a teacher's contract may be terminated by a board of education only "for gross inefficiency or immorality for willful and persistent violation of reasonable regulations of the board of education, or for other good and just cause."

On the basis of what I have previously stated herein, it is my opinion that the failure of a teacher to earn professional

growth credits pursuant to a board of education policy is not cause for the board to terminate such teacher's contract.

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

1. A board of education may not withhold salary increments provided in Section 3317.13 (C), Revised Code, for failure on the part of a teacher to acquire the professional growth credits required by the policy of the board of education.

2. A board of education in the administration of its salary schedule, pursuant to Section 3317.14, Revised Code, may not withhold salary increments above the salaries required by the state minimum salary schedule, for failure on the part of a teacher to acquire the professional growth credits required by the policy of the board of education.

3. A board of education may not terminate the employment of a teacher who is the holder of a limited or a continuing contract for failure on the part of such teacher to earn the required professional growth credits established by a policy of the board of education.