

be entitled to a judgment therefor. Such an action may be brought in a fiscal year following the one in which the services are rendered. To meet this judgment, if one were rendered, the board would be required to use any available moneys in its treasury, and clearly the obligation may be paid without its being reduced to a judgment.

I am therefore of the opinion, in specific answer to your questions:

First, A board of education is not authorized to employ teachers for the schools of its district and fix a definite salary for those teachers, with the proviso that those salaries will be reduced if the income from taxation is insufficient to meet the obligation.

Second, a board of education may lawfully employ teachers for the ensuing school year on a monthly basis without specifying the number of months the schools of the district will be in session during the school year.

Third, a board of education may lawfully pay from current revenues, any balances due for salaries to teachers in its schools whether such amounts were earned during the current fiscal year or during previous years.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3301.

SCHOOL LIBRARY—BOARD OF TRUSTEES NOT AUTHORIZED TO
ADOPT REGULATIONS GIVING LEAVES OF ABSENCE WITH PAY
TO EMPLOYES FOR PURPOSE OF STUDY.

SYLLABUS:

1. *The board of trustees of a school district library is without authority to grant a leave of absence with pay, to the librarian or his assistants, for the purpose of study in a library school or college, or for any other purpose, during which time he renders no service whatever, even though such leave of absence is granted in the guise of compensation for services rendered.*

2. *In the employment of a librarian and assistants, by a school district library board, the law requires that their compensation be fixed prior to the entering upon such employment.*

COLUMBUS, OHIO, June 5, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The board of trustees of a certain city school district public library has adopted the following regulations with reference to leaves of absence for study upon the part of its employes:

‘After five full years of satisfactory service the Library may grant to members of the staff a leave of absence up to nine months, plus four weeks of vacation, all on half pay, for such further study, usually in library school, as in the judgment of the librarian will make the member of the staff of greater value to the institution.

After three years of satisfactory service the library may grant a leave of absence of six to ten weeks for study, usually in a library school, plus two weeks vacation, on full pay, under conditions similar to above.

When such leaves are accepted by members of the staff they obligate themselves to work for two years with the Public Library in case of a nine months' leave, or one year in case of the shorter leave. In lieu of this service a refund of the salary received during this time, prorated for any time worked after the leave, may be made to the library.'

Requests for such leaves must be made in writing to the librarian and must be acted upon by the board before they may be allowed.

Members of the staff, after a full year's service, may be permitted to take college work up to three hours a week on library time with full pay, if the subjects taken are approved by the librarian and if a grade equivalent to an A or B is received.

In the event that in the librarian's judgment the number of requests for any of these three forms of leave is such that their granting would be seriously detrimental to the work of the library, only such requests will be allowed as seem to be wise, taking into account length of service on the part of the applicants, quality of work done by them and the likelihood of benefit to them.

Question: You are respectfully requested to render this department your written opinion upon the legality of the adoption of such regulations giving leaves of absence with pay to employes for the purpose of study?"

By force of Section 7631, General Code, the board of education of any school district may provide for the establishment, control and maintenance of a school library or libraries within the district or for the establishment, control and maintenance in such district of a public library free to all the inhabitants thereof. Either of said libraries, when established, is to be managed by a board of library trustees whose powers with respect to said libraries are set out in Sections 7637 and 7638 of the General Code. Said Section 7637, which relates to the general powers of the board, reads as follows:

"In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed."

Although the statutes do not specifically authorize a board of library trustees to adopt rules and regulations in connection with the administration of the affairs of the library, that power no doubt exists by virtue of the power extended to the board in general terms as set out in the above statute. It will be observed that in the employing of a librarian and assistants, their compensation is to be fixed previous to such employment, and clearly, unless the rule which you have set out in your inquiry was in effect before the person to whom it is sought to extend the advantages of the rule was employed, said person could not be extended the privileges provided for by the rule.

With reference to those persons who were employed after the adoption of this rule, so that it might be said the rule was a part of the terms of their

employment, the question would arise as to whether or not the library board could lawfully adopt such a rule and thereby provide that a part of the compensation of the employe should consist of the right to various leaves of absence as set out in the rule during which time they were to receive regular compensation although they render no service.

Upon examination of the rule as stated by you, it appears that under certain circumstances, employes are to be granted vacations on half pay or full pay for the purpose of study in a library school or elsewhere or, under certain circumstances, to take college work up to three hours a week with full pay. There is apparently contemplated that a monthly or yearly salary for such employes is to be fixed before entering upon the employment and that thereafter, when the employe has rendered service for a certain length of time, he is to be granted these privileges. If the various times of absence with full pay or half pay as mentioned in the rule are to be considered a part of the compensation of the employe, the making of such an arrangement does not, in my opinion, consist of fixing the compensation previous to the term of employment as is contemplated by the statute.

A similar question was considered by this office with reference to the granting of a sabbatical leave to a teacher in Kent State College. It was held with reference thereto:

"The Kent State College has no authority to grant an extended leave of absence to an instructor and pay him for such period, when such leave is for the purpose of rest, recreation and education of the instructor. Such a procedure would result in expending the public funds for the benefit of the individual."

See Opinions of the Attorney General for 1929, page 1906. A former Attorney General held in an opinion which is found in the Opinions of the Attorney General for 1917, at page 862:

"A board of education has no right to grant teachers permission to attend an educational convention or conference and cannot pay a substitute in his absence."

To the same effect is an opinion of the Attorney General found in Opinions of the Attorney General for 1926, at page 386 where it is held:

"A board of education of a city school district has no authority to establish a rule permitting teachers leave of absence for a semester upon half salary where during such period said teachers render no services whatsoever."

In the case of *State of Ohio ex rel. Marani v. Wright, Auditor of the City of Cleveland*, 17 O. C. C., N. S. 396, it was sought by a procedure in mandamus to compel the Auditor of the City of Cleveland to allow for payment by the said city the necessary traveling expenses incurred by the building inspector of said city on a trip to Columbus to attend a convention of building inspectors of various municipalities for the ostensible purpose of acquiring information and knowledge with reference to the duties of a building inspector. The mandamus was refused. In the course of the opinion of the court it was said:

"Here, * * the purpose of the journey was to acquire such information in regard to the duties of his office as the building inspector might reasonably acquire while in attendance upon a convention of officials holding like positions, in various cities. We are unable to see how such an object relates itself either directly or with reasonable necessity to the duties of the relator's office. He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, and the salary paid him is presumably adapted to secure the degree of efficiency in these respects which the city desires that its building inspector shall possess. If a person relatively uneducated, inexperienced and inefficient in the discharge of the duties of the position of building inspector were appointed at a salary proportioned to his fitness, it might as well be argued that his deficiencies may thereafter be supplemented at the charge of the municipality which he serves by directing him to attend an architectural school and to render his bills for board and tuition to the city. The salary attached to the office of building inspector is presumed to be sufficient to enable him to maintain his professional or official efficiency at proper standard."

It is axiomatic that public office or public employment should not be regarded as a sinecure. The service rendered is presumed at least to be commensurate with the compensation, and it would clearly be an illegal expenditure of public funds to pay an employe for doing nothing. Theoretically, of course, the rule which you state has been adopted by the library board in question does not contemplate the expenditure of public money without proper return therefor. However, the arrangement which the rule authorizes does not result in providing a fixed compensation, in my opinion, such as is contemplated by the statute and is therefore an unauthorized exercise of power on the part of the board of library trustees.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3302.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN ASHLAND COUNTY.

COLUMBUS, OHIO, June 5, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3303.

INSURANCE—LIABILITY AND PROPERTY DAMAGE UPON VEHICLES USED FOR TRANSPORTING CHILDREN'S HOME INMATES TO SCHOOL—MAY NOT BE PROCURED BY COUNTY COMMISSIONERS AND HOME'S TRUSTEES.

SYLLABUS:

Neither a board of county commissioners, nor the trustees of a children's