

OPINION NO. 68-090

Syllabus:

1. The clerk of a county board of education is not eligible for the increased compensation provided to "non-teaching employees" by Amended Substitute Senate Bill No. 350, effective December 1, 1967.

2. The clerk of a local, city, or exempted village board of education is a "nonteaching employee" within the terms of Amended Substitute Senate Bill No. 350 and is, therefore, entitled to the increased compensation provided therein.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William B. Saxbe, Attorney General, June 6, 1968

Your request for my opinion reads in part as follows:

* * * * *

"We have received several inquiries from local school districts in our county as to whether or not the Clerk of the Board of Education is included as a non teaching employee under the provisions of Section 7D of amended substitute Senate Bill No. 350."

Section 7 (D), Amended Substitute Senate Bill No. 350, effective December 1, 1967, reads as follows:

"For school years 1967-1968 and 1968-69, each city, exempted village, local, county, and joint vocational school district shall spend for increased salaries for noncertificated employees an amount equal to eighty dollars times the number of approved classroom units for the school district, in addition to payments made pursuant to the compensation plan required by division (A) of this section for such noncertificated employees. Each regular nonteaching employee shall receive an increase in compensation of ten cents per hour to a maximum of two thousand eighty hours per year, provided

that no such employee shall receive an increase of less than one hundred dollars per year. The increases in compensation made pursuant to this section may include plans established pursuant to section 3313.202 of the Revised Code. Increases in compensation authorized by this section shall not apply to employees whose wage rates are established in accordance with the procedures set forth in Chapter 4115. of the Revised Code."

The term "nonteaching employee" is defined in several sections of the Revised Code. In Section 3313.202, for the purposes of procuring group medical insurance, the definition of "nonteaching employees" is as follows:

"* * * 'Nonteaching employees' as used in this section means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code."

Another definition of "nonteaching employee" is found in Chapter 3309. of the Revised Code, for the purposes of the Public School Employees Retirement System. Section 3309.01, Revised Code, provides, in pertinent part, as follows:

"As used in Chapter 3309. of the Revised Code;

"(A) 'Employer' means boards of education, school districts, joint vocational districts, * * * or other agencies within the state by which an employee is employed and paid, * * *

"(B) 'Employee' means any person employed by an employer as defined in division (A) of this section in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code; * * *

"* * * * * * * *"

As the above statutory definitions demonstrate, the primary requisite of a "nonteaching employee" is that he be employed by the school system in a position for which a certificate issued pursuant to Sections 3319.22 to 3319.31, inclusive, of the Revised Code, is not needed. Amended Substitute Senate Bill No. 350 recognizes this definition by the use of the term "noncertificated employees". Since the board of education is the governmental and administrative body of the school district, 48 Ohio Jurisprudence Second, Sections 58 and 59, and the clerks of the boards of education are employees of the boards, Schrock v. Board of Education of Euclid City School District, 141 Ohio St. 528, (1943), it follows that those clerks of such boards who are not required to have certificates issued pursuant to Sections 3319.22 to 3319.31, inclusive, of the Revised Code, are "noncertificated

employees" within the terms of Amended Substitute Senate Bill No. 350 and are entitled to the benefits conferred therein.

Amended Substitute Senate Bill No. 350, supra, does not confer any compensation benefits upon the clerk of a county board of education because those duties are imposed upon the county superintendent by Section 3313.22 of the Revised Code. The county superintendent is required to have a certificate by virtue of Section 3319.01 of the Revised Code.

However, the clerks of the boards of education of local, city, and exempted village school districts are not required to have a certificate issued pursuant to Section 3319.22 to Section 3319.31, inclusive, of the Revised Code, and are, therefore, within the compensation grants of Amended Substitute Senate Bill No. 350, supra.

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

1. The clerk of a county board of education is not eligible for the increased compensation provided to "nonteaching employees" by Amended Substitute Senate Bill No. 350, effective December 1, 1967.

2. The clerk of a local, city, or exempted village board of education is a "nonteaching employee" within the terms of Amended Substitute Senate Bill No. 350 and is, therefore, entitled to the increased compensation provided therein.