

1287.

KENT STATE COLLEGE—SABBATICAL LEAVE FOR TEACHER, WITH SALARY, UNAUTHORIZED.

SYLLABUS:

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.

COLUMBUS, OHIO, December 13, 1929.

HON. J. O. ENGLEMAN, *President, Kent State College, Kent, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“Many colleges and universities and some public schools in various parts of the country, grant sabbatical leave for a year at a time and usually on half pay, to members of their faculty or teaching staff who have been in continuous service for a period of at least six or seven years, and who are willing to use the year of leave for further study to increase their teaching efficiency when they return to the system or college granting them leave. My judgment is that action of the Board of Trustees here granting sabbatical leave to one or two members of the faculty for study next year, would be to the best interests of the college. Before making such recommendation to the Board, I wish to be advised as to whether there is anything in the laws of Ohio to prevent payment of salary to a faculty member on such leave.

Inasmuch as I noted in the annual report of the President of Miami University that sabbatical leave on half pay had been enjoyed by one or two members of his faculty recently, I assume that there are no legal obstacles, but still thought it best to have an opinion from you before recommending it to the Board.”

Webster's New International Dictionary defines the term “sabbatical”, among other things, as:

“Pert. to or like the Sabbath; enjoying or bringing an intermission of labor.”

In ancient times the term “sabbatical year” referred to the commandment to the Israelites to suffer their fields and vineyards to lie without tillage every seventh year. “Sabbatical leave” in connection with college management, has reference to a period allowed for rest, travel or research, which originally occurred every seventh year. However, in modern times “sabbatical leave” has reference to any period allowed for rest, travel or research, and probably any other leave granted to such person could be said to be included within the term.

In connection with your inquiry, you are referred to an opinion found in the Opinions of the Attorney General for 1926, page 386, wherein it was held, as disclosed by the syllabus:

“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 service whatsoever.”

The facts presented to the Attorney General, and upon which the opinion was based, disclosed that the rule authorized leaves of absence to be granted upon half pay for one semester by the superintendent, with the approval of the board of education, for, upon the following conditions, among others:

- “(1) A teacher must have taught in the Cleveland schools for at least seven years and shall not have had more than 33 years teaching experience.
- (2) * * *
- (3) * * *
- (4) Leave may be granted for study in approved courses to be taken in approved institutions of higher learning.
- (5) Leave may be granted for travel in foreign countries, or for restoration to health on the recommendation of a physician acceptable to the Superintendent of Schools and the Board of Education.”

The following is quoted from the body of said opinion:

“Examination of the above rule clearly reveals that under certain conditions therein outlined a teacher may receive half salary during a full semester without rendering any service whatsoever.

It is a general rule of law that money cannot be expended from the public treasury without proper authorization of statute; that is to say, a board of education in expending any of the public funds in its treasury should make such expenditures in compliance with some specific statute covering same, or wherein such expenditure is clearly implied.”

The conclusions above reached by the then Attorney General were made, after a consideration, among others, of Section 7620, General Code, which authorizes boards of education to make all provisions necessary for the convenience and prosperity of the schools, and Section 7690, General Code, which authorizes boards of education to establish rules and regulations, etc. The conclusion of the Attorney General undoubtedly might have been different if a case had been presented wherein at the time of the employment of a superintendent, as a part of the consideration of said contract of employment, certain leaves were to be granted to such a superintendent. However, when no such arrangements are made at the time of entering into such contract, it would then appear that any leave of absence granted thereafter would be a mere gratuity on the part of the board of education, for the benefit of the employe, and would amount to an abrogation of a contract entered into with the superintendent and the salary of said superintendent may not be increased during his term. It is doubtful, however, whether the reason last expressed would apply in the case of a teacher in the public schools, because of the express provisions of the statute which authorizes the salary of a teacher to be increased during the term of the contract.

The Kent State Normal School was established in pursuance of an act of the 78th General Assembly, 101 v. 330, which authorizes “two additional State normal schools, one in northeastern Ohio and one in northwestern Ohio.” The act further disclosed its purpose to extend to the people the benefits and advantages to be derived from teacher training both theoretical and practical. Section 3 of said act authorized the Governor to appoint, with the advice and consent of the Senate, five competent persons to constitute a board of trustees as soon as the General Assembly appropriated sufficient money for the purchase of sites and the erection of buildings. Section 4 of the act provided for the organization of the board and further provided:

“The boards of trustees in connection with the presidents of the normal schools shall select and appoint an able and efficient corps of instructors for

the said schools, provide a suitable course of study for the theoretical and practical training of students who desire to prepare themselves for the work of teaching, fix rates of tuition and provide proper equipment.

* * *

And said board of trustees shall do any and all things necessary for the proper maintenance and successful and continuous operation of said normal schools and may receive donations of lands and moneys for the purpose of said normal schools."

Section 6 of said act provided:

"The said normal schools shall be supported by such sums and in such manner as the general assembly may from time to time provide."

In this connection, it may be noted that amended Senate Bill No. 70, as enacted by the 88th General Assembly, expressly provided for the changing of the names of "Bowling Green State Normal School" and "Kent State Normal School" established under the act hereinbefore referred to, to "Bowling Green State College" and "Kent State College" and said act was designated by the Attorney General as Section 7924 of the General Code. It may further be noted in this connection, that the original act was not given a General Code designation at the time of its passage, either by the Legislature or the Attorney General.

From the foregoing, it will be observed that the Legislature in defining the powers and duties of the board of trustees of your institution, confined itself to general expressions rather than setting forth a detailed method of procedure as it has done with reference to the procedure of boards of education generally, although in the main, the general powers are the same. While it may be said that the strict construction with reference to the powers of boards of education does not necessarily apply to your board of trustees, inasmuch as the expenditures for the benefit of your institution are made from funds appropriated by the Legislature, the rules of law governing expenditures from the public treasury will apply. That is to say, no money may be drawn from the public treasury except in pursuance of lawful authority, and any doubt with reference to the authority to make such expenditures must be resolved in favor of such treasury. If a contract is entered into to employ an instructor for a definite term, at a definite salary, and later it is decided to permit such an employe to have a leave of absence at which time he will render no services to your institution, it will readily be seen that such action is an abrogation of the contract, the result of which is a distinct loss to the State. In other words, such action, deprives the institution of the services of the employe and is nothing more than a gratuity to him whereby he is permitted to travel and enjoy any other activities or educate himself at the expense of the public treasury. While as above stated, your board would have power to enter into such an agreement at the time of the employment, if leave of absence was regarded as a part of the consideration for the services of such employe to be performed under such contract, the granting of such leave after such a contract of employment was made would in all probability constitute an abuse of the power. As hereinbefore stated, the statutes relative to the governing of your institution are rather broad, and in general terms, yet every institution granted such power is subject to the rule that in the exercise thereof its acts must be reasonable. In all probability the practice of granting sabbatical leave to professors in colleges is more extensive in those institutions which are not supported wholly by the public treasury, and of course in so far as such procedure would not deplete the public treasury, a different question would be presented.

It appears that the board of trustees of the Kent State College has power to enter into a contract when a teacher is employed, the terms of which would permit said teacher to have a leave of absence for such period of time as was mutually agreed

upon between your board and the teacher, provided that such leave is a part consideration for the services to be performed. However, it is further my opinion that if a contract has been entered into fixing a definite salary for a definite period the granting of an extended leave of absence would be nothing further than a gratuity flowing from your institution to said teacher, and inasmuch as his salary is paid from the public treasury, such an authorization would amount to an abuse of discretion.

It may be possible, of course, that a university may have such an interest in the development of some particular source of knowledge which would be a public benefit which would justify the designation of an instructor to make a research relative to a particular subject which of course would result in such instructor performing services in that line for the benefit of the university. However, such instances will be rare, and such a practice would not be a precedent for granting a leave for the benefit and accommodation of the instructor.

In conclusion, it is my opinion that 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1288.

APPROVAL, BONDS OF RIDGEVILLE TOWNSHIP RURAL SCHOOL
DISTRICT, LORAIN COUNTY—\$60,000.00.

COLUMBUS, OHIO, December 13, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1289.

APPROVAL, BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY—
\$25,000.00.

COLUMBUS, OHIO, December 13, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.