

OPINION NO. 69-025

Syllabus:

1. The board of education of each city, exempted village, and local school district by employment contract with the teacher provides what shall constitute "regular duties" and "additional duties" and determines the amount of compensation relative to each, as authorized by Section 3319.08, Revised Code.

2. Unless the contract between the board of education and the teacher provides that the teacher's regular duties shall include the possible assignment of substitute teaching duties, such assignment would constitute duties beyond the regular teaching duties. Such additional duties and the compensation therefor are the proper subject of a supplemental contract.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, March 5, 1969

I have before me your predecessor's request for my opinion on the following question:

"In one of the local school districts located in our County, the superintendent has followed the practice on occasions, where it is impossible to obtain a substitute, of assigning regular teachers from the staff that have 'planning periods' during various periods of the day, to take over classes of an absent teacher.

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"The question has thus arisen as to whether or not such teachers who fill in for an absent teacher on such a casual basis must be paid for these assignments over and above their regular contract rate, and also whether or not this is to be considered as a duty beyond the regular duty of a teacher."

Section 3319.07, Revised Code, inter alia, provides:

"The board of education of each city, exempted village, and local school district shall employ the teachers of the public schools of their respective districts.* * *"

The procedure to be followed by the board of education for the employment of teachers of the public schools is provided in part by Section 3313.18, Revised Code. The clerk of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall be a public record, cf. Section 3313.26, Revised Code.

Section 3319.08, Revised Code, inter alia, provides:

"The board of education of each city, exempted village, and local school district shall enter into written contracts for the employment and reemployment of all teachers and shall fix their salaries which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code.

"If a board of education adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract.

"The board of education of each city, exempted village, and local school district may include in such contract duties beyond the regular duties and for such additional duties the salary of the teacher may be supplemented. Such boards may discontinue at any time the assignments of special duties beyond the regular classroom teaching duties and the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties. In addition to supplemental salary payments as provided in this section, such boards of education may grant salary increase at any time without the imposition of additional duties. * * *

"Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract is a contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates."

Pursuant to Section 3319.08, Revised Code, the contract of employment of each teacher shall be in writing. The rights and duties existing between the board of education and the teacher depend upon the terms of their contract. Such contract, of course, is subject to any conditions or limitations imposed thereon by statute.

The terms "regular duties" and "additional duties" are not specifically defined by statute. What shall constitute "regular duties" and "additional duties" and the compensation for each may therefore be the subject of agreement between the parties at the time each contract of employment or reemployment is entered. Additional duties may also be the subject of a supplemental agreement between the board of education and the teacher.

Your inquiry did not submit a specific teacher's contract for consideration. Obviously, contractual provisions specifically dealing with the subject of your inquiry would be controlling.

Section 3319.10, Revised Code, provides that teachers may be employed as substitute teachers to take the place of regular teachers absent on account of illness or on leave of absence or to fill temporary positions created by emergencies. Such substitute teachers receive compensation for such employment. It is logical to conclude that a regular teacher who performs the normal day-to-day teaching duties and, in addition, also performs the duties of a substitute teacher, is performing "additional duties."

Section 3319.08, Revised Code, empowers the board of education to contract for duties beyond the teacher's regular duties and to compensate such teacher for the performance of such duties. A determination to assign duties not previously contracted for, and the compensation to be paid therefor, would be the proper subject of a supplemental contract.

It is therefore my opinion that:

1. The board of education of each city, exempted village, and local school district by employment contract with the teacher provides what shall constitute "regular duties" and "additional duties" and determines the amount of compensation relative to each, as authorized by Section 3319.08, Revised Code.

2. Unless the contract between the board of education and the teacher provides that the teacher's regular duties shall include the possible assignment of substitute teaching duties, such assignment would constitute duties beyond the regular teaching duties. Such additional duties and the compensation therefor are the proper subject of a supplemental contract.