

440

1. ABSENCE—COUNTY BOARD OF EDUCATION—AUTHORIZED TO GRANT LEAVE OF ABSENCE TO SUPERINTENDENT FOR PERIOD OF NOT MORE THAN TWO SCHOOL YEARS—MAY RENEW SUCH LEAVE—BOARD WITHOUT AUTHORITY TO PAY SALARY WHILE SUPERINTENDENT ON SUCH LEAVE—SECTION 4842-10, G. C.
2. COUNTY SUPERINTENDENT, EMPLOYED BY YEAR, IS FULL TIME EMPLOYEE—SERVICE FOR WHICH HE IS COMPENSATED BY A YEAR'S SALARY IS NOT LIMITED TO MONTHS WHEN SCHOOL IS IN SESSION—SECTION 4842, G. C.

SYLLABUS:

1. A county board of education is authorized by Section 4842-10, General Code, to grant a leave of absence to its superintendent for a period of not more than two school years, and may renew such leave at his request, but such board is without authority to pay such superintendent his salary while on such leave.

2. A county superintendent of schools who is employed by the year, pursuant to the provisions of Section 4842, General Code, is a full time employe and his service, for which he is compensated by a year's salary, is not limited to the months when school is in session.

Columbus, Ohio, September 7, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“In May, 1945, the county board of education of a county granted the county superintendent of schools leave of absence

for two years beginning June 1, 1945, so that said superintendent could enter Red Cross Services. At such time the county superintendent was serving under a five year contract at a specified annual salary, which contract expires July 31, 1947.

The board of education employed another person as county superintendent for a period beginning June 1, 1945, at a specified annual salary.

It is the intention of the board of education to pay the superintendent who was granted a leave of absence for the months of June and July, and to also pay the person employed in his stead for those two months.

May we respectfully request your opinion upon the following questions:

1. Does the county board of education have authority to grant to the county superintendent a leave of absence with pay during the period of time schools are not in session, when by their action in employing another as superintendent it is indicated that they have need for his services as superintendent?
2. Does a county or city superintendent of schools who is employed by the year, earn the salary fixed by the board of education during the time school is in session; or does the salary apply to the year of employment. Or, in other words, is such superintendent entitled to be paid on the basis of the number of months school is in session, or should the salary be prorated over the year for which he is employed?"

Section 4842, General Code, provides in part as follows:

"The board of education in each county, city, and exempted village school district shall, at a regular meeting held not later than July first of the calendar year in which the term of the superintendent expires, appoint a person possessed of the qualifications hereinafter provided, to act as superintendent of the public schools of the district, for a term *not longer than five years, beginning August first and ending on the thirty-first day of July.* * * * Provided, that in the event of a vacancy occurring in the office of superintendent during the term of his employment, the board of education promptly shall appoint a superintendent for a term not to exceed five years from the next preceding August first. Provided, also, that if the vacancy occur through resignation or removal for cause, the superintendent thus resigning or removed shall be ineligible for reappointment

to such office until after the reorganization of the board of education following the next general election of members of such board. No person shall be appointed to the office of superintendent who is not possessed of a certificate of the superintendent type, as defined in Section 4857-1 of the General Code, unless such person had been employed as a county, city or exempted village superintendent prior to August 1, 1939. At the time of making such appointment or designation of term, such board of education shall fix the compensation of the superintendent.

Such superintendent shall be the executive officer for the board of education, direct and assign teachers and other employes of the schools under his supervision, except as provided by law, assign the pupils of the schools under his supervision to the proper schools and grades, provided, however, that the assignment of a pupil to a school outside of his district of residence be approved by the board of education of the district of residence of such pupil; and perform such other duties as the board of education may determine." (Emphasis added.)

It will be observed that the statute specifically provides that the term of the superintendent's employment shall begin on August 1st and end on July 31st. There is certainly nothing in this statute which suggests that the superintendent's obligation for a year is ended when he has worked ten months, and that having done so, he is entitled to his full year's salary. Nor would any arrangement by which the board pays him his salary in nine or ten installments instead of twelve have any bearing on his rights or obligations. It seems manifest that the duties of a superintendent are so varied and continuous that he might be said to be on duty during the whole year, subject of course, to such reasonable vacation periods as the board of education might allow him. A different rule obviously applies to a teacher whose duties begin and end with the period during which the school is in session.

In this connection it seems proper to consider Section 4842-7, General Code, which relates to contracts for employment of teachers. This section defines two types of contracts, viz., limited contracts, which for superintendents are limited as stated in Section 4842, *supra*, and for all other teachers to four years, and continuing contracts, which are to remain in force until the teacher resigns, elects to retire, or is retired, or until removed as provided by law. This section then contains the following definitions:

“‘Year’ as applied to term of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service.”

This definition might suggest that the superintendent’s duties are ended for the year when he has served one hundred and twenty days. However, the limitation expressed is “not less than” and no ceiling is fixed. While this definition purports to be “for the purposes of this act”, it was plainly intended only to establish a minimum period during the year for which a teacher might be engaged, and for which he or she might claim credit on the teaching years necessary to establish a right to a continuing contract. As already suggested, the duties of the superintendent could not possibly be confined to a service of ten months, much less a period equal to approximately five months in a calendar year.

There is no fixed rule governing the length of vacation which an administrative board like a school board may grant to its administrative officers or employes. There is such a rule by statute in the case of employes of the administrative departments. Section 154-20, General Code, grants them fourteen days in each year. Likewise, employes of a city fire department are allowed two weeks’ leave by Section 17a, General Code.

My immediate predecessor, in an opinion found in 1939 Opinions Attorney General, page 917, pointed out that independent of statutory authority, it was within the discretion of public officers to allow their employes reasonable vacations and suggested that Section 154-20, *supra*, might be used as a guide to determine what was a reasonable time. The same opinion was expressed in 1943 Opinions Attorney General, page 153. In the case of a school superintendent, it is conceivable that he might have sufficient office assistants so that his work could be carried on for a somewhat longer vacation period than that above suggested. But that is quite a different proposition from the grant of a leave of absence, with pay for an extended period.

The granting of leaves of absence to teachers (which term, by the express provisions of Section 4842-7, General Code, includes superintendents) is covered by Section 4842-10 of the General Code. That section provides in part:

“Upon the written request of a teacher, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational or professional *or other purposes*, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board of education may grant similar leave of absence and renewals thereof to any teacher because of physical or mental disability, but such teacher shall have the right to a hearing on such unrequested leave of absence or its renewals in accordance with the provisions for hearing and appeal in Section 4842-12 of the General Code. Upon the return to service of a teacher at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave.”

(Emphasis added.)

While that section does not expressly state that such leave of absence is without pay, that is the irresistible inference, since such leave, by the terms of the statute, may be for a period of two years, plus a renewal when requested, and under certain circumstances may be imposed on a teacher by the board without his consent. Furthermore, it is contemplated that a substitute teacher is to be employed to do the work of the one on leave. In the absence of any provision in the statute authorizing any such leave with pay, one cannot escape the conclusion that the legislature did not intend that a superintendent or other teacher on leave should be entitled to draw a salary, particularly when a substitute had to be employed to perform the service incident to the position.

Your statement of facts shows that in the case presented, the board proposes to have one superintendent on a granted two years' leave of absence performing no service, but being paid his full salary as superintendent for one-sixth of a year, while another superintendent is employed to do the work and is also drawing a superintendent's salary. This, it appears to me to be not merely an abuse of the board's discretion, but an action clearly beyond its legal authority. The statute gives the board the right to employ a superintendent, but not two superintendents at the same time.

I note an opinion rendered by one of my predecessors and found in 1930 Opinions, Attorney General, page 1443, in which it was held:

“Salaried employes of a board of education, which had in force a rule permitting those employes to choose whether or not

their yearly salary should be spread over a twelve-month period or a ten-month period, who elect to be paid on the basis of a twelve-month year, may resign at any time during the year and lawfully be paid at that time the difference between what is then due them on the basis of a twelve-month year and what would be due them had they elected to be paid on the basis of a ten-month year."

The then Attorney General applied this rule to the superintendent who resigned during the year, and sanctioned his receipt of twelve months' salary based on ten months' service, apparently on the theory that he had the same right that was conceded to teachers whose duties only contemplate ten months of actual service. It appears to me that the Attorney General overlooked the essential difference between the service required of an administrative officer and that required of a teacher, and I cannot agree with his conclusion. However, that opinion turned on the application of a particular rule which he regarded as a part of the contract with the superintendent as well as with the teachers, and I do not, therefore, feel called upon to overrule it.

In specific answer to your inquiries, it is my opinion :

1. A county board of education is authorized by Section 4842-10, General Code, to grant a leave of absence to its superintendent for a period of not more than two school years, and may renew such leave at his request, but such board is without authority to pay such superintendent his salary while on such leave.

2. A county superintendent of schools who is employed by the year, pursuant to the provisions of Section 4842, General Code, is a full time employe and his service, for which he is compensated by a year's salary, is not limited to the months when school is in session.

Respectfully,

HUGH S. JENKINS

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