

4614.

COUNTY EDUCATIONAL EQUALIZATION FUND — AGREEMENT
WHEREBY TEACHER AGREES TO RETURN PART OF SALARY TO
SCHOOL DISTRICT IS ILLEGAL.

SYLLABUS:

1. *Where a school teacher's salary is fixed at \$800.00 per year he should be counted in determining the number of teachers employed in the district as a basis for computing the proportionate share of the county educational equalization fund to which the district is entitled by virtue of Section 7600, General Code, regardless of an attempt on the part of the board of education to require the teacher to agree to return a portion of his salary to the district as a condition of his receiving the appointment.*

2. *An agreement on the part of a teacher in the public schools, whereby he agrees to return a portion of the salary fixed for him, to the district, which agreement the teacher was forced to make as a condition of his contract of employment, is illegal and void, for the reason that it is against public policy and is, in effect, an attempt indirectly to diminish the salary of the teacher during the term of his appointment, which act the board of education of the district is prohibited from doing directly by the terms of Section 7690-1, of the General Code.*

COLUMBUS, OHIO, September 15, 1932.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“A rural board of education hires teachers at the legal minimum of \$800.00 per year. However, on a sheet of paper separate from the contract was a statement of the following general type: ‘I agree, on my own free will and accord, to return to the Board of Education the sum of \$30.00 per month’. This board of education compelled this group of teachers to sign the supplementary contract before they would issue them their regular contracts.

Is not this an evasion of the law and, if this action on the part of the board of education can be proven, can this board participate in the distribution of the 2.65 mills county equalization levy?”

Boards of education are authorized and directed by Sections 7690 and 7705, General Code, to employ teachers for the public schools of their districts. This should be done by the passage of the proper resolutions at regularly convened sessions of the boards of education in carrying out this power, and the minutes of the several boards should show the action taken.

Section 7690-1, General Code, provides that each board of education shall fix the salaries of all teachers, which may be increased but not diminished during the term for which the appointment is made.

Section 7699, General Code, provides that upon the appointment of any person to any position under the control of the board of education, the clerk must promptly notify such person verbally or in writing, of his appointment and the conditions thereof. The clerk is further directed to request and secure from the

appointee within a reasonable time, to be determined by the board, his acceptance or rejection of such appointment. It is further provided:

"An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause."

It is the resolution of the board determining to employ the teacher, the fixing of his salary, and his notification and acceptance in accordance with the terms of Section 7699, General Code, that constitute the contract of employment. This contract may be reduced to writing, and often is, but it is not necessary that this be done, as a verbal acceptance of the notification made by the clerk is, by the terms of the statute, sufficient to constitute a contract.

From your statement it does not appear that the board, in the case in question, incorporated the provision in their resolution determining to make the appointment, that the teacher was required to return \$30.00 per month of his salary which the board had fixed at \$800.00 per year.

If the board did incorporate that provision in its resolution of appointment, thus making that as a condition of the appointment, it would clearly amount to the fixing of the salary at whatever amount a reduction of \$30.00 per month would lessen the amount of salary fixed.

I gather from your statement that the agreement which the board required the teacher to sign, to return \$30.00 per month, was a separate agreement from the agreement of the board to employ him at \$800.00 per year, and probably no record of this agreement appears on the minutes of the board. I take it, therefore, that the salary was fixed at \$800.00 per year, and the agreement mentioned was simply a supplemental or side agreement which the board required the teacher to sign.

By the phrase "legal minimum of \$800.00 per year", as used in your letter of inquiry, I assume is meant the minimum salary spoken of in Section 7600 of the General Code.

Since 1920, we have not had in this state what is commonly referred to as a "minimum salary law" for teachers. That is to say, the law since 1920 does not fix a minimum salary for teachers, as it formerly did. What was formerly referred to as the "minimum salary law" for teachers, was first enacted in 1906 (98 O. L., 200) and was known as Section 3960-1, Revised Statutes.

As then enacted, said Section 3960-1, Revised Statutes, provided that no person should be employed to teach in any public school in the state for less than \$40.00 per month; and when any school district in the state had not sufficient money to pay its teachers \$40.00 per month, for eight months in each year, after its board of education had made the maximum school levy authorized by law, three-fourths of which should be for the tuition fund, the said school district was entitled to receive from the state treasury sufficient money to make up the deficiency. That was the beginning of what has been commonly called "State Aid" for schools. This statute was later codified as Section 7595, General Code, and related then, as it has since, to state aid for weak school districts.

A similar provision, with some modification as to amount, was carried along through several subsequent revisions of the statute after 1906, until 1920, when Section 7595, General Code, was amended, making very substantial changes in the method of providing state aid for weak school districts by apportioning to those districts moneys from the reserve in the state common school fund for the purpose of equalizing educational advantages throughout the state. (108 O. L., Part

2, page 1307). The provisions for a minimum salary for teachers were not incorporated in the statute as then enacted.

At the same time Section 7595, General Code, was amended as stated above, in 1920, Section 7600, General Code, was amended to provide for the distribution of what was then known as the "State Common School Fund", being the fund arising from the proceeds of the levy provided for by Section 7575, General Code, as then in force.

As then enacted, Section 7600, General Code, provided that the "State Common School Fund" should be apportioned to each school district, partly on the basis of the number of teachers employed in the district, but no teacher was to be counted unless he was paid at least \$800.00 per year. The effect of this was not to require that teachers be paid a minimum amount of \$800.00 per year, but that, if they were not paid at least that amount, the district would suffer by not receiving so great a proportion of the State Common School Fund.

Both Sections 7575 and 7600, General Code, have since been amended. As now in force, the proceeds of the levy directed to be made by the terms of Section 7575, General Code, resulting from collections in the territory of the county outside of city and exempted village school districts therein, constitutes what is known as a "County Educational Equalization Fund". Section 7600, General Code, as now in force, provides for the distribution of the proceeds of this levy to village and rural school districts comprising the several county school districts. The distribution there provided for is based in part, on the number of teachers and, as before, it provides that teachers who are not paid at least \$800.00 per year are not to be counted. It is clear that it is to the advantage of a school district to pay its teachers at least \$800.00 per year, in so far as the distribution of the county educational equalization levy is concerned.

The manifest purpose of requiring the teachers to agree to return a portion of their salaries, as was done in the case referred to by you, was to deceive the county board of education whose duty it is under Section 7600, General Code, to apportion the county educational equalization fund, and the agreement as made is, for that reason if for no other, contrary to public policy and void. It is stated in Corpus Juris, Volume 13, page 433, that:

"A contract, the object of which is to deceive a public officer in the performance of his duties is contrary to public policy and void."

There are other reasons, which, in my opinion, render the agreement of these teachers to return \$30.00 per month of their salaries to the district, void and of no effect whatever. The carrying out of such an agreement would in effect, diminish the salaries of the teachers, after they had been fixed at \$800.00 per year, which is positively forbidden by the terms of Section 7690-1, General Code. The statute provides in clear and explicit language which cannot be misunderstood, that a teacher's salary, when fixed, may be increased but not diminished during the term for which the teacher is appointed.

It was probably thought that to require a teacher to sign such an agreement before his appointment, by which act the signing of the agreement was made a condition of his appointment, thus having it appear that the agreement of the teacher was made voluntarily, when in fact it was not, would not amount to a reduction of his salary contrary to the statute.

I gather from your statement that the teachers did not sign this collateral agreement voluntarily. They were virtually forced to sign it in order to get the appointment. Assuming this to be a fact, it is my opinion that the agreement in

question is illegal and void, not only because it is against public policy to permit such conditions to be imposed upon the making of appointments to public positions and that it was made ostensibly to deceive other public officers, but also because the carrying out of such an agreement, by accepting involuntary payments made in pursuance thereof, would amount to a reduction of the teacher's salary contrary to law.

It was held in Opinion No. 3962, rendered under date of January 18, 1932, and addressed to the Prosecuting Attorney of Stark County, that:

"A public officer may, lawfully, if he sees fit, draw his salary or compensation and donate a portion or all of it to the political sub-division from which it is drawn. A previous agreement to do so however, is not enforceable as it is contrary to public policy and therefore void."

I believe the same rule would apply to a previous agreement made by a public employe as would to that of a public officer, even though the salary of the employe is not fixed by statute, when the employe is compelled to sign the agreement as a condition of his receiving an appointment or of being employed.

In the case here under consideration, if the salaries of the teachers were fixed at \$800.00 per year, the school district is bound to pay that amount and the teachers are not required to return any portion of it to the district, as the agreement to do so is illegal and absolutely void. In that case the teachers in question should be counted in making allotments of the county educational equalization fund to the district by virtue of Section 7600, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4615.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 15, 1932.

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

4616.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENT IN STARK, WILLIAMS AND MAHONING COUNTIES, OHIO.

COLUMBUS, OHIO, September 15, 1932.

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