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SCHOOL FOUNDATION FUND—ALLOTMENT—TO DETERMINE FOURTH QUARTER OF YEAR 1956—CERTIFICATE REQUIRED BY SECTION 3317.061 RC SHOULD STATE ANNUAL SALARY OF EACH CERTIFICATED EMPLOYEE OF EACH BOARD OF EDUCATION—AMOUNT HE WOULD HAVE EARNED 1955-1956 SCHOOL YEAR—IF SALARY RATE FIRST TWO WEEKS IN APRIL, 1956, HAD BEEN IN EFFECT DURING ALL OF SCHOOL YEAR—STATUS EMPLOYMENT STARTED FROM BEGINNING OF SCHOOL YEAR OR ANY SUBSEQUENT TIME PRIOR TO APRIL 1, 1956—SECTIONS 3317.02, 3317.061 RC, SUB. SB 321, 101 GA.

SYLLABUS:

For the purpose of determining for the fourth quarter of the year 1956, the allotment of the school foundation fund, according to the provisions of Section 3317.02, Revised Code, being a part of Substitute Senate Bill No. 321 of the 101st General Assembly, the certificate required by Section 3317.061, Revised Code, should state the annual salary of each certificated employee of each board of education as being the amount he would have earned during the 1955-1956 school year, if the salary rate that governed his salary for the first two weeks in April, 1956, had been in effect during all of the said school year, whether his employment started from the beginning of such school year or at any subsequent time, prior to April 1, 1956, as required by Section 4 of said act.

Columbus, Ohio, March 9, 1956

Hon. R. M. Eyman, Director of Education
and Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“In order that this department may be able to advise school administrators and boards of education relative to the method of calculating the amount of state support for school districts for the last quarter of 1956, under the provisions of Amended Substitute Senate Bill No. 321, 101st General Assembly, it is important that certain provisions of that act be interpreted at this time.

“The State Board of Education through its Finance Committee has requested me to secure from you an opinion as to whether the following interpretations are within the scope of the statutes:

“1. For the purpose of determining, for the fourth quarterly distribution of the calendar year 1956, the total of the salaries for certificated employees, for use as provided in division (A) of Section 3317.02 of the Revised Code, the following procedure shall be followed:

“(a) The annual salary of each certificated employee employed on an annual salary for the 1955-56 school year shall be deemed to be the amount of salary such employe would have earned during the 1955-56 school year for the months he was employed if the salary rate that governed his salary for the first two weeks of April, 1956, had been in effect during all of the months he was employed.

“(b) Where a teacher has been employed for a permanent teaching position created subsequent to the beginning of the 1955-56 school year but on or before April 1, 1956, the amount to be included as the salary for such employee, in the total of the salaries for certificated employees, shall be the amount such employee would have earned, at the rate of pay for the first two weeks of April, 1956, if such employee had been employed for the entire 1955-56 school year.

“2. For the last quarter of 1956 the calculation under division (E) of Section 3317.02 shall be based upon the same tax duplicate figure used in calculating the amount of state support for the first half of the calendar year 1956 under the

provisions of the Foundation Program law that is now in effect.”

The questions which you raise grow out of the changes in the statutes relative to the allocation and administration of the school foundation funds. By the provisions of Amended Senate Bill No. 321, passed by the 101st General Assembly, the basis for the distribution of that fund was substantially changed. Whereas under the former law the distribution was based on the number of pupils of school age in average daily membership in the several districts, it is now based largely upon the number of approved teacher units credited to each district.

Section 3317.02 as enacted in said bill reads in pertinent part as follows:

“There shall be paid, in the last quarter of the calendar year 1956 and in each calendar year thereafter, to each local, exempted village and city school district, which has a tax levy for current school operation for the current calendar year of at least ten mills, the total sum of the following factors:

“(A) The total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, or the total of the salaries for certificated employees for the current school year, whichever amount is the lesser;

“(B) plus fourteen hundred and twenty-five dollars multiplied by the total number of approved teacher units credited to such district under section 3317.05 of the Revised Code, for other current expenses;

“(C) plus the total approved transportation costs allocated to such district under section 3317.051 of the Revised Code;

“(D) plus ten per cent of the total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, for the employer’s contribution to the teachers’ retirement fund and the cost of the certificated employees’ sick leave;

“(E) minus an amount equal to ten mills multiplied by the total value of the tax duplicate of such district as certified by the department of taxation under section 3317.10 of the Revised Code.

“If the amount arrived at by the above formula is less than the total amount of state support such district received during the calendar year ending December 31, 1955, then there shall be paid to such school district an amount equal to that received during the calendar year ending December 31, 1955, under the provisions of sections 3317.02 and 3317.04 of the Revised Code,

including an amount equal to the amount of tuition paid for such district from state funds and the amount such district received for special education but exclusive of the amount such district received for the purchase of school buses and for the retirement of such bus notes." * * *

Two sections of the above act, to wit, Section 3317.01 and 3317.021, Revised Code, took effect on January 1, 1956, whereas the remainder of the act, including Section 3317.02 supra, are to take effect on October 1, 1956. The two sections which have already gone into effect do not in any way bear upon the problems raised by your letter. In order to arrive at a solution of your questions, we must consider along with the section quoted, Section 4 of the Act, which in addition to stating the times for its taking effect, reads as follows:

"It is the intent and purpose of this act that in distributing funds for the fourth quarter of the calendar year 1956 the average daily membership shall be the same as that used for the first half of 1956. *The certification of the name of each certificated employee, with the amount of training, the type of teaching certificate held, and the annual salary of each as required by section 3317.041, of the Revised Code, shall for the fourth quarterly distribution of the calendar year 1956 be used upon the school district's employment rolls for the first two full school weeks of the month of April, 1956, and such certification shall be made to the state board of education not later than April 30.*"

(Emphasis added.)

In paragraph (A), Section 3317.02, there is a reference to Section 3317.052, Revised Code, which defines what is meant by the "approved salary allowance." There it appears that the approved salary allowance for the purpose of the law is based upon a stated amount for each of several classes of teachers, somewhat in excess of the minimum teacher salary scale provided by Section 3317.06, Revised Code. I shall not quote the entire Section 3317.052, but as an example we may note:

* * * "(A) The total number of certified employees employed in such district with less than three years of recognized training shall be multiplied by \$3,000." * * *

A reference to Section 3317.06 shows that the minimum salary for teachers of this class is \$2,600. Manifestly, the result of a compliance with Section 3317.052 supra, and a certification of the amounts thereby called for will result in a total "approved salary allowance," which will be in excess of the minimum salary schedule, but might in some cases

be less than the actual salaries paid teachers. The required formula is arbitrary and for the purpose only of arriving at the allowance from the foundation fund. Inasmuch as your first question is directed only to the provisions of paragraph (A) of Section 3317.02, I am not undertaking to discuss, for the present, the other elements that enter into the allowance for distribution to the various districts.

Accordingly, it appears that the real question to be answered is whether under the procedure set forth in said Section 4, the salary rate for teachers that may be in effect during the first two weeks in April, 1956, may be spread theoretically, over the entire school year of 1955-1956, thus amplifying the salaries upon which the commutation is to be based beyond that which the teachers have actually been paid.

It is to be noted that under the provisions of Section 3319.08, Revised Code, a board of education has the right to increase but is forbidden to decrease the salaries of teachers at any time during the term of their contracts, and it would have a right now to increase the salaries of its teachers for the first two weeks in April or for the remainder of the school year, in any amount it sees fit to add. But would it have a right, for the purpose of amplifying the allowance from the foundation fund for the fourth quarter, to report a salary for the entire year 1955-1956, at a rate which is actual from April 1st to the end of the school year, but fictitious for the preceding portion of the school year?

It would seem on first impression that such procedure would be indefensible unless authority for such action can be found in the law. This calls for a critical examination of Section 4 of the Act in question. That section declares the purpose of the legislature as to distributing funds for the fourth quarter of 1956. There is a reference to Section 3317.041, Revised Code, which would indicate that that section in some way governs the certification of employees and salaries requisite for the purpose of allocating the foundation fund. We find here a slight complication. The act purported to enact section 3317.041, but there was already in existence a section bearing that number, which is wholly irrelevant to the subject of Senate Bill No. 321. So the Legislative Service Commission changed the number of the new section to 3317.061, which reads in part:

“The superintendent of each county, city, and exempted village school district shall, on forms prescribed and furnished by the state board of education, certify to the state board of educa-

tion, on or before the twenty-fifth day of October of each year, the name of each certificated employee employed, on an annual salary, in each school under his supervision during the first two full school weeks of said month of October, the number of years of recognized college training such certificated employee has completed, the college degrees from a recognized college earned by such certificated employee, the type of teaching certificate held by such certificated employee, the number of months such certificated employee is employed in the school district, *the annual salary* of such certificated employee, and such other information as the state board of education may request. For the purposes of this act a certificated employee shall be any employee in a position for which he is required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code." * * *
(Emphasis added.)

As this section does not become effective until October 1, 1956, it is evident that the certificate required for the fourth quarter will not be made prior to that date.

It may be assumed, however, that each board will, as required by law, certify to the state department of education the data required for the ascertainment of its allotment from the foundation fund. Section 3317.061 supra provides that the certificate must contain among other things, a statement of the *annual salary of each certificated employee*, presumably so that comparison may be made with the "approved salary allowance," referred to in paragraph (A) of Section 3317.02 supra, and it may thereby be determined which is the lesser, that being the measure of that element of the allotment. If the provisions of Section 2 supra, are to have any effect we must conclude that the legislature intended to give boards of education the opportunity to better their situation by permitting an increase of their teachers' salaries for the remainder of the current year, and letting that increase appear retroactive for the sole purpose of building up the allotment from the foundation fund for the last quarter of 1956.

Endeavoring to ascertain the intention of the legislature in adding Section 4, above quoted, to the act and considering it as indicating a special plan for the fourth quarter of 1956, I am of the opinion that the conclusion which you expressed in your letter as to paragraph (a) of the first proposition is correct.

As to paragraph (b) of your first question it seems somewhat more difficult to bring such teacher and his salary within the conclusion which

I have indicated in reference to paragraph (a). Manifestly, if he is first employed, say on March 15, 1956, he can hardly be said to have been employed during the school year or on an "annual salary."

However, it is evident that the legislature was intending to provide for the growing needs of the schools and adequate compensation for the teachers. It was looking to the future, and the fact that new teachers have to be brought in late in the current school year would only strengthen the presumption that more adequate funds would be needed for the coming year. Accordingly, the general assembly has seen fit to set up a purely hypothetical plan as a basis for determining the allotment for the last quarter of 1956, and has made no stipulation as to the length of service of the teachers whose salary for the first two weeks of April is to furnish the measuring stick for the allotment. I can see no reason why the teacher who was employed sometime after the beginning of the current school year, should not be considered in precisely the same way as is a teacher who was employed at the beginning of such school year. Accordingly, it appears to me that the conclusion stated in your letter under paragraph (b) of your first question is sound.

You have advised me orally that while it is very important that you have my conclusion on the above propositions very speedily, you are not so immediately concerned with your second question as to the interpretation of paragraph (E) of Section 3317.02 Revised Code. Accordingly, I will reserve consideration of your second question until a later time.

It is accordingly my opinion, and you are advised that for the purpose of determining, for the fourth quarter of the year 1956, the allotment of the school foundation fund, according to the provisions of Section 3317.02, Revised Code, being a part of Substitute Senate Bill No. 321 of the 101st General Assembly, the certificate required by Section 3317.061, Revised Code, should state the annual salary of each certificated employee of each board of education as being the amount he would have earned during the 1955-1956 school year, if the salary rate that governed his salary for the first two weeks in April, 1956, had been in effect during all of the said school year, whether his employment started from the beginning of such school year or at any subsequent time, prior to April 1, 1956, as required by Section 4 of said act.

Respectfully,
C. WILLIAM O'NEILL
Attorney General