

OPINION NO. 76-033**Syllabus:**

1. Pursuant to R.C. 5705.412, a board of education may not legally expend public funds to increase teachers' salaries without first obtaining a certification that there are sufficient funds available to cover such increases.

2. Where increases in teacher salaries are required by R.C. 3317.13(B) and (C), but where the certification required by R.C. 5705.412 is not made, school foundation fund subsidies to the involved school district may be terminated unless "good and sufficient reason" to continue subsidy payments is found.

3. Pursuant to R.C. 3317.01, the determination as to whether there is "good and sufficient reason" to continue school foundation fund payments to a school district - despite the fact that the district has not fully complied with the requirements of R.C. 3317.01 - is within the discretion of the State Board of Education and the State Controlling Board.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, May 6, 1976

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

Sections 3317.52 and 3317.53 of the Revised Code as enacted in Am. Sub. Senate Bill 170 in 1975 mandate increases in the minimum salary schedule for teachers. Section 5705.412 of the Revised Code requires the clerk, president of the board of education and superintendent of schools to sign a certificate that funds are available when increasing the salaries paid to employees.

Section 3317.01 and 3317.13 of the Revised Code require the Superintendent of Public Instruction and the State Board of Education to withhold state funds when a school district is found to be in noncompliance with the law.

A board of education has refused to provide the mandated increase for teachers in accordance with the state minimum

salary schedule on the basis that their financial situation does not permit the signing of the required certificate.

Your opinion is respectfully requested on the following questions:

1. When the clerk, superintendent and president of the board of education determine that funds are not available, is the board required to pay teachers in accordance with the state minimum salary schedule?
2. If the increases in no. 1 above are required, is the certificate in Section 5705.412 of the Revised Code necessary in order to pay the increases mandated by the state?
3. If the answer to no. 1 above is negative, is there good and sufficient reason for the State Board of Education to permit continued participation in school foundation funds?

Before responding to your questions, it should be noted that R.C. 3317.13 was amended and R.C. 3317.53 first enacted by Am. Sub. Senate Bill 170, passed on August 1, 1975, approved by the Governor and filed with the Secretary of State on August 20, 1975. However, the Governor took action to veto, as line items in an appropriation bill, certain portions of Am. Sub. Senate Bill 170, including R.C. 3317.13 and R.C. 3317.53. The validity of those purported line item vetoes is being tested in litigation pending as of this date. However, the validity or invalidity of the vetoes will not affect your opinion request nor this response, since the relevant portions of R.C. 3317.13 as contained in Am. Sub. Senate Bill No. 170 are identical to the portions of that section in effect prior to the passage of Am. Sub. Senate Bill No. 170. The ultimate validity of or invalidity of R.C. 3317.53 will not affect this opinion since that section deals only with certain figures to be used in designated calculations.

Your first two questions raise the issue of whether a board of education can legally increase teachers' salaries so as to comply with the minimum salary schedule set forth in R.C. 3317.13(C) without certification of the increased expenditure by the clerk, and the president of the board of education, and the superintendent of the school district, as required by R.C. 5705.412.

R.C. 5705.412 places a restriction upon a school district's ability to expend public funds. In essence, R.C. 5705.412 provides that a school district may not legally expend funds unless the clerk and president of the board of education, and the superintendent of the school district certify that there are sufficient funds available to meet the proposed expenditure. R.C. 5705.412 provides, in pertinent part:

"Every contract made, order given, or schedule adopted or put into effect without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon."

It further provides:

"Any officer, employee, or other per-

son who knowingly expends or authorizes the expenditure of any public funds . . . [without proper certification] . . . is liable to the school district for the full amount paid from the district's funds"

It is evident that a board of education may not legally expend school district funds to raise teachers salaries without first obtaining certification that there are sufficient funds available. Further, if any school district funds are expended by the board without the proper certification, the members of the school board may be personally liable to the school district for the amount of funds improperly expended.

It follows from the foregoing that a board of education may not expend school district funds to increase teachers' salaries, or for any other reason, when the clerk and president of the school board and the superintendent of the school district can not, in good faith, certify that sufficient funds are available to cover the increased expenditure.

On the other hand, the consequences of failure to increase teachers' salaries to the minimums established in R.C. 3317.13 (C) are potentially severe to the involved school district. In part, Section 3317.13(B) provides that:

"No teacher employed by any board of education shall be paid a salary less than that provided in the schedule set forth in division (C) [3317.13(C)] of this Section."

The penalty for failing to pay teachers in compliance with the minimum salary schedule is possible forfeiture of state school foundation funds for the duration of the period of noncompliance. R.C. 3317.13(B). Therefore, where the clerk and president of the board of education and the superintendent of the school district do not certify that there are sufficient funds available to cover an increase in teachers' salaries, and where an increase in salaries is necessary to comply with the state minimum salary schedules for teachers, the school district may expect to lose its state school foundation fund subsidy.

The third question you present is whether there is "good and sufficient reason" for the state board of education to continue to pay school foundation funds to a school district when that school district is not paying teachers in accordance with the minimum salary schedule set forth in R.C. 3317.13 (C). Let me begin by stating that the specific question you have asked is one to be determined only by the State Board of Education and the State Controlling Board.

R.C. 3317.01 contains the criteria that a school district must meet in order to qualify for the school foundation program. One of those criteria, found in paragraph (C) of Section 3317.01, is that the school district is paying its teachers in accordance with the teachers minimum salary schedule. No school foundation funds are to be paid to a school district which has not fully complied with the requirements of Section 3317.01 "except for good and sufficient reason established to the satisfaction of the state board of education and the state controlling board." R.C. 3317.01. This legislation has expressly placed the authority to determine what is a "good and sufficient reason" to continue school fund payments to a school district - despite its

failure to comply with the requirements of Section 3317.01 - within the discretion of the State Board of Education and Controlling Board.

It is therefore my opinion, and you are so advised that:

1. Pursuant to R.C. 5705.412, a board of education may not legally expend public funds to increase teachers' salaries without first obtaining a certification that there are sufficient funds available to cover such increases.
2. Where increases in teacher salaries are required by R.C. 3317.13(B) and (C), but where the certification required by R.C. 5705.412 is not made, school foundation fund subsidies to the involved school district may be terminated unless "good and sufficient reason" to continue subsidy payments is found.
3. Pursuant to R.C. 3317.01, the determination as to whether there is "good and sufficient reason" to continue school foundation fund payments to a school district - despite the fact that the district has not fully complied with the requirements of R.C. 3317.01 - is within the discretion of the State Board of Education and the State Controlling Board.