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## SYLLABUS:

1. To determine the hourly rate of a non-teaching school employee compensated on a salary under an existing contract for the purposes of Section 3319.086, Revised Code, a forty hour work week should be used.

2. A non-teaching school employee compensated at an hourly rate under an existing contract, shall, under Section 3319.086, Revised Code, be paid not less than such hourly rate for all hours worked in excess of forty in any seven day period and for all hours worked on days declared to be school holidays, or be granted compensatory time off.

3. Existing contracts of employment of non-teaching school employees cannot be recalculated on an hourly basis resulting in a reduction of the contract salary. Any doubt as to whether compensation under an existing contract is on a salary or is at an hourly rate should be resolved so as to avoid any possible conflict with Section 3319.082, Revised Code.

4. Existing contracts with non-teaching school employees may be rescinded by agreement of all parties thereto.

Columbus, Ohio, September 11, 1963

Hon. Roger W. Tracy  
Auditor of State  
State House  
Columbus, Ohio

Dear Sir:

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

“Several inquiries have been received by this office concerning the implementation of Amended House Bill No. 131 enacted by the 105th General Assembly and signed by the Governor of Ohio to be effective September 16, 1963. The bill enacts Section 3319.085 of the Ohio Revised Code and requires that non-teaching school employees working in excess of forty hours in any seven day period, or required to work on school holidays, be compensated for such time worked at not less than their regular rate of pay, or be granted compensatory time off.

“In city school districts the non-teaching employees are under civil service as provided by Sections 143.01 to 143.08, inclusive, Revised Code. In all other districts wherein the provisions of Sections 143.01 to 143.08, Revised Code, do not apply, the contract system provided in

Section 3319.081, Revised Code, controls the employment of employees whose contracts are not otherwise provided by law.

“Section 3319.082, Revised Code, requires the board of education of each exempted village and local school district to give notice annually not later than the first day of July to each non-teaching school employee, who holds a contract valid for the succeeding school year, as to the salary to be paid during such year. The salary shall not be lower than the salary paid during the preceding school year unless the reduction is a part of a uniform plan effecting the non-teaching employees of the entire district.

“In view of the statewide concern in regard to the method to be used in figuring the salaries of the non-teaching personnel under Amended House Bill No. 131, will you please give consideration to the above and issue your formal opinion on the following questions:

“1. May a board of education in accordance with Section 3319.085, R. C., (effective September 16, 1963) recalculate an existing contract of employment of a non-teaching employee working in excess of forty hours in a seven day period so as to arrive at a net hourly wage rate, including hours worked in excess of forty hours in a seven day period, and thereby establish an hourly wage rate to be paid the employee for the forty hour week as required by Section 3319.085, R.C.? May such be done even though it results in a deduction of the annual contract salary?

“For example: A janitor's annual contract salary is \$3,432.00 for 44 hours per week. If his annual salary was recalculated on a hourly basis, it would mean \$1.50 per hour, or \$66.00 per week ( $\$3,432.00 \div 52 \text{ weeks} \div 44$ ). At the rate of \$1.50 per hour the employee would work forty hours as required by Section 3319.085, R.C., and would receive \$60.00 per week ( $\$1.50 \times 40$ ) or \$3,120.00 per year.

“2. Does a present contract between a board of education and a non-teaching school employee in which a stated salary is to be paid in consideration for a specified number of hours to be worked by the employee comply with the provisions of Section 3319.085, R.C., (effective September 16, 1963) even though the hours so specified in the contract of employment exceed forty hours in any seven day period? In other words, if a present contract for employment provides for a fifty hour week at a salary of \$4,000.00 annually, is the board of education required, under the provisions of Section 3319.085, R.C., to calculate the standard work week as forty hours at a compensation of \$4,000.00 annually for such contract and then increase

such annual compensation for any extra hours of work required beyond the standard work week?

"3. May a contract with presently employed non-teaching personnel be voided by mutual agreement and new contracts executed at a different rate?

"May we have your opinion at the earliest date, to the end that information may be made available to all school districts in Ohio (except City School Districts) prior to the effective date of Amended House Bill No. 131." Section 3319.086, Revised Code, states:

"In all school districts, forty hours shall be the standard work week for all non-teaching school employees. Such employees shall not be required to work on days declared by the employing board of education as school holidays unless failure to work on such holidays would impair the public service. Where such employees are required by their responsible administrative superiors to work in excess of forty hours in any seven day period or to work on days declared by the employing board of education to be school holidays, they shall be compensated for such time worked at not less than their regular rate of pay, or be granted compensatory time off. As used in this section, 'non-teaching school employees' does not include any person employed in the public schools of the state in an administrative or supervisory capacity in connection with the services rendered by non-teaching school employees.

"Nothing in this section shall prevent the school district from establishing a work week of less than forty hours."

In my opinion, these existing contracts involve public welfare. As such, the terms thereof can be modified by action of the Legislature. In *City of Akron v. Public Utilities Commission of Ohio, et al.*, 149 Ohio St., 347, the Ohio Supreme Court stated:

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"3. All contracts are subject to the paramount rights of the public, and all contracts the subject matter of which involve the public welfare will have read into them with the same force and effect, as if expressed in clear and definite terms, all valid public regulations then existing or thereafter enacted, essential for the promotion of the health, safety and welfare of the people. The authority of the state to exercise its general police power must be recognized as an implied condition of any such contract.

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Section 3319.086, Revised Code, would not modify contracts for non-teaching employees based on hourly rates because the very nature of such contracts would provide for payment for hours worked.

The applicability of Section 3319.086, Revised Code, to annual contracts of employment would depend upon the provisions of each such contract. If the annual salary is based upon hours worked, such contract would comply with the provisions of Section 3319.086, Revised Code. The fact that a specific number of hours per week is mentioned in the contract would not necessarily indicate the compensation is based on that number of hours. Evidence as to the number of hours worked in past years or number of hours needed to perform the duties specified would not indicate compensation is based on an hourly rate.

Section 3319.082, Revised Code, states:

“In all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code do not apply, each board of education shall cause notice to be given annually not later than the first day of July to each non-teaching school employee, who holds a contract valid for the succeeding school year, as to the salary to be paid such school employee during such year. Such salary shall not be lower than the salary paid during the preceding school year unless such reduction is a part of a uniform plan affecting the non-teaching employees of the entire district. This section does not prevent increases of salary after the board’s annual notice has been given.”

A recalculation of annual salary on the basis of hours worked resulting in a reduction of annual salary would, in my opinion, be in violation of Section 3319.082, Revised Code.

Those contracts in which the number of hours were not stated or agreed upon by the parties would, in my opinion, be modified by Section 3319.086, Revised Code, to the extent that such employees could not be required to work in excess of forty hours per week without payment of additional compensation at not less than their regular rate of pay. The regular rate of pay would be computed by dividing the annual salary by forty hours per week and then dividing this figure by number of weeks per year to be worked. The

use of forty hours per week would avoid any possible conflict with Section 3319.082, Revised Code.

It is a well established principle of law that contracts may be rescinded by agreement of all parties thereto.

Accordingly, it is my opinion and you are so advised :

1. To determine the hourly rate of a non-teaching school employee compensated on a salary under an existing contract for the purposes of Section 3319.086, Revised Code, a forty hour work week should be used.

2. A non-teaching school employee compensated at an hourly rate under an existing contract shall, under Section 3319.086, Revised Code, be paid not less than such hourly rate for all hours worked in excess of forty in any seven day period and for all hours worked on days declared to be school holidays, or be granted compensatory time off.

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4. Existing contracts with non-teaching school employees may be rescinded by agreement of all parties thereto.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General