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WHEN A BOARD OF EDUCATION HAS MADE A CONTRACT WITH A LOCAL EXECUTIVE, IT IS WITHOUT AUTHORITY TO INCREASE THE PAY OF THAT EXECUTIVE DURING THE TERM THEREOF; HOWEVER BY MUTUAL AGREEMENT THEY MAY RESCIND SUCH CONTRACT AND EXECUTE ANOTHER—OPINION 3124, OAG, 1962, § 3319.01, REVISED CODE, §3319.02, R.C., OPINION 156, OAG, 1959.

SYLLABUS:

When a board of education has made a contract for the employment of a local executive, pursuant to Section 3319.02, Revised Code, such board is without authority to increase the compensation of such employee, as fixed by such contract, during the term thereof; the parties to such contract may, however, by mutual agreement rescind such a contract at any time and execute another in its stead.

Columbus, Ohio, August 10, 1962

Hon. Forrest H. Bacon, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In your Opinion No. 3124, your office made a ruling in connection with the avoiding of contracts with school superintendents and renegotiation of such contract by a school board with a possible increase or change in salary. In this opinion, you held that such a procedure is void and a Board of Education cannot do this.

“The question has been raised with this office as to whether or not in your Opinion No. 3124 you would go so far as to in-

clude what is known in the county school system as a local executive. A local executive of course, is not a superintendent nor is he a principal but is somewhere in between.

"I would appreciate it if you could inform the undersigned as to this question."

Paragraph two of the syllabus in Opinion No. 3124, Opinions of the Attorney General for 1962, issued July 10, 1962, reads as follows:

"2. Under Section 3319.01, Revised Code, a board of education cannot, during the superintendent's term, void the existing contract with the superintendent and immediately enter into a new contract with him to reappoint him to the office of superintendent of schools."

Section 3319.01, Revised Code, referred to in Opinion No. 3124, *supra*, provides, in part, as follows:

"* * * If the vacancy occurs 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 following the next general election of members of such board. * * *"

After quoting the above language from Section 3319.01, *supra*, I stated in Opinion No. 3124, *supra*, as follows:

"Thus, a board of education has no authority to appoint a person as superintendent during a term unless a vacancy occurs. Under the facts in the instant case where is the vacancy? In order to accept a new contract the superintendent would have to resign his present appointment to create a vacancy. If he resigns, however, he 'shall be ineligible for reappointment to such office until after the reorganization of the board following the next general election of members of such board.' Section 3319.01, *supra*.

"In answer to the second question, therefore, it is my opinion that a board of education cannot during a superintendent's term void the existing contract with the superintendent and immediately enter into a new contract with him to reappoint him to the office of superintendent of schools."

The appointment of a local executive, however, is not governed by Section 3319.01, *supra*, but is governed by Section 3319.02, Revised Code, which reads, in part, as follows:

"* * * Upon recommendation of the county superintendent, a local board may employ a person of proper certification or a

person holding or qualified to hold the position of executive head of a local school district on the effective date of this act, as executive head for a period not to exceed five years beginning with the first day of August and ending on the thirty-first day of July. A board of education by a three-fourths vote of its full membership may, after considering two nominations for the position of executive head made by the county superintendent of schools, employ or re-employ a person not so nominated for such position.”

Unlike the prohibition in Section 3319.01, *supra*, regarding superintendents, there is no prohibition in Section 3319.02, *supra*, against a local executive being immediately reappointed to the office of local executive after his resignation. By the same token, there is no prohibition in Section 3319.081, Revised Code, dealing with contracts for non-teaching employees, against other non-teaching employees being immediately reappointed after resignation. In this regard, I held in paragraph one of the syllabus in Opinion No. 156, Opinions of the Attorney General for 1959, page 70, as follows :

“1. When a board of education has made a contract for the employment of a non-teaching employee, pursuant to Section 3319.081, Revised Code, such board is without authority to increase the compensation of such employee, as fixed by such contract, during the term thereof; the parties to such contract may, however, by mutual agreement rescind such a contract at any time and execute another in its stead.”

A local executive, therefore, would appear to fall under the rule announced in Opinion No. 156, *supra*, rather than under the rule in Opinion No. 3124, *supra*.

Accordingly, it is my opinion and you are advised that when a board of education has made a contract for the employment of a local executive, pursuant to Section 3319.02, Revised Code, such board is without authority to increase the compensation of such employee, as fixed by such contract, during the term thereof; the parties to such contract may, however, by mutual agreement rescind such a contract at any time and execute another in its stead.

Respectfully,

MARK McELROY

Attorney General