

OPINION NO. 74-082

Syllabus:

1. Where a board of education adopts a policy of supplemental compensation to teachers who complete graduate courses in their fields of certification, and when a teacher accepts employment under that policy and complies with its terms, a formal supplemental written contract is unnecessary under R.C. 3319.08;

2. Such an agreement between the board of education and the teacher may include graduate courses taken and completed during the summer vacation;

3. The board of education may properly specify that the teacher remain an employee of the board during the year following completion of the graduate courses in order to be eligible to receive the supplemental compensation.

To: John J. Malik, Jr., Belmont County Pros. Atty., St. Clairsville, Ohio
By: William J. Brown, Attorney General, October 2, 1974

Your request for my opinion states the facts and poses the questions as follows:

"The Board of Education of the Martins Ferry City School District adopted the following policy at one of their regular meetings prior to September 1, 1972:

"STIPEND FOR GRADUATE HOURS

"Each certified employee shall be paid \$30.00 per semester hour taken on the graduate level. The work taken shall be in the teaching field of certification of the employee or in other work approved by the superintendent of school. This payment shall be paid to the teacher on the school year following the receiving of credit for courses taken and shall be paid for one year only. A teacher must teach in the Martins Ferry City Schools the year following receiving this credit to be eligible to be paid under this provision. The teacher must present proof of earned credits no later than November 1 to be paid that school year.

"Maximum number of hours to be included under this policy shall be 9 semester hours from September 1 to September 1.

"This policy goes into effect September 1, 1972. All graduate studies taken by certified employees who are reimbursed by another agency will not be eligible for this stipend for those same hours credit."

"Subsequent to the adoption of the above-stated policy, however, no supplemental contracts were entered into with teachers during the course of the 1972-1973 school year and the summer of 1973, and certain teachers did in fact take graduate level college work, and that the question of legality of payment to these teachers for the

graduate level college work now has presented itself. Questions presented are as follows:

"1. Can the Board of Education of the Martins Ferry City School District now enter into a supplemental contract with each teacher who performed additional duties, specifically additional graduate level college work, between September 1, 1972, and September 1, 1973, and pay them for the additional college work performed between those dates in accordance with the policy adopted by the Board of Education and set out above?

"2. Can the Board of Education legally pay teachers, assuming the supplemental written contract is entered into for additional work at the graduate level, which work is taken during the summer months while the teacher is on vacation from school session?

"3. In the aforementioned Board of Education policy, the following language appears:

'A teacher must teach in the Martins Ferry City Schools the year following receiving this credit to be eligible to be paid under this provision.'

"Is this a valid and enforceable provision?"

Your letter assumes that the Board had authority to enter into a supplemental contract to compensate teachers for additional graduate work. Although boards of education have considerable discretion in some respects, Greco v. Roper, 145 Ohio St. 243, 249 (1945), they are essentially creatures of statute and their authority is limited to such powers as are expressly granted to them, or are clearly implied and necessary for the execution of the powers expressly granted. Verberg v. Board of Education, 135 Ohio St. 246 (1936); Hudson v. Board of Education, 41 Ohio App. 402 (1931). Authority for the contractual arrangement herein described must, therefore, be found in some section of the Revised Code.

Prior to 1969, R.C. 3319.08, which authorizes boards of education to grant salary increases of limited duration to teachers who have assumed additional duties, read in part as follows (129 Ohio Laws 1206):

"* * *The board of education of each city, exempted village, and local school district may include in such contract duties beyond the regular duties and for such additional duties the salary of

the teacher may be supplemented. Such boards may discontinue at any time the assignments of special duties beyond the regular classroom teaching duties and the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties. * * *

In Opinion No. 3145, page 726, Opinions of the Attorney General for 1958, my predecessor interpreted the "additional duties" for which a teacher could receive supplemental compensation under the foregoing section to include activities such as graduate work, the publication of articles, and summer travel experience. The syllabus of that Opinion reads as follows:

"A board of education of any city, exempted village or local school district is authorized by Section 3319.08, Revised Code, to assign to teachers additional duties beyond their regular teaching duties and to compensate such teachers for the performance of the said assigned duties; therefore, it is within the sound discretion of a board of education to determine the nature and scope of the duties which may reasonably improve the schools within the district and to adopt rules and regulations providing for additional compensation from the funds of the school district for a limited, but fixed or determinable period of time, for teachers employed by the said board of education who take additional college work at the graduate level or who engage in certain well-defined cultural or professional activities, with the knowledge and approval of the said board of education."

In reaching such a conclusion, the Attorney General reasoned as follows (at p. 729):

"The facts which you have presented show that the board of education has adopted rules and regulations establishing the increased salary schedule described in your inquiry. This being true, it seems quite apparent that the said board looks upon the educational, professional and cultural activities included in the merit provisions as enhancing the value of teachers to the school district and, in turn, improving, from an educational point of view, the schools in the district. It is beyond the scope of my office to rule as a matter of law that these pursuits have no reasonable relationship to the management and operation of the schools in the district and that the board may not determine that they are additional duties which may properly be assigned to a teacher and taken into consideration when fixing the salary for such teacher for a fixed or determinable period of time."

(Emphasis added.)

In effect, this interpretation of R.C. 3319.08 left it largely within the discretion of the various boards of education to determine the purposes for which a supplemental salary schedule for additional duties might be adopted.

In 1969, the General Assembly amended R.C. 3319.08 in order to require a board of education to enter into a sup-

plemental written contract with each teacher who is to perform duties covered by the regular teaching contract. 133 Ohio Laws, 2307. In addition, the language of the amendment seems to limit such additional duties to teaching duties only. In its present form the Section provides in part as follows:

"The board of education of each city, exempted village, local, and joint vocational school district, which authorizes the compensation in addition to the base salary stated in the teachers' salary schedule, for the performance of duties by a teacher which are in addition to the teacher's regular teaching duties, shall enter into a supplemental written contract with each teacher who is to perform additional duties. Such supplemental written contracts shall be limited contracts. Such written contracts and supplemental written contracts shall set forth the teacher's duties and shall specify the salaries and compensation to be paid for regular teaching duties and additional teaching duties, respectively, either or both of which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code."
(Emphasis added.)

While I have some doubt as to the original correctness of my predecessor's interpretation of R.C. 3319.08, I am informed that those who are charged with the administration of the school laws have consistently followed Opinion No. 3145 since it was issued in 1958, and that the 1969 amendments of R.C. 3319.08 were not regarded as a repudiation of my predecessor's holding. Great deference must, of course, be accorded such an administrative interpretation. Jones Metal Products Co. v. Walker, 29 Ohio St. 2d 173, 181 (1972); State, ex rel. Johnson & Higgins Co. v. Safford, 117 Ohio St. 576, 582 (1927); State, ex rel. Crabbe v. Middletown Hydraulic Co., 114 Ohio St. 437, 452-457 (1926). The last of these three cases makes it clear that, where an administrative interpretation of a statute has been long unchallenged, and where numerous rights have become vested in reliance thereon, the Supreme Court will hesitate to overturn it if there is any ambiguity in the statute. I think that case is controlling here. My predecessor's interpretation of R.C. 3319.08 has been followed since 1958; numerous contracts have been consummated in reliance on it; and I am uncertain whether the use in the 1969 amendment of a single word, "teaching", which was buried in a quite lengthy revision of the school laws (133 Ohio Laws, 2288-2320, see specifically p. 2308), was intended by the General Assembly to change the holding of Opinion No. 3145. I will, therefore, turn to your specific questions.

1. You state that the Board's policy, allowing payments for completed graduate courses in a teacher's field of certification, took effect on September 1, 1972, but that no supplemental contracts were entered into with those

teachers who did take such courses in the school year of 1972-1973 and in the summer of 1973. You ask whether the Board may now enter into a supplemental contract to pay such teachers for the additional work performed.

The statutory procedure prescribed for such supplemental contracts must, of course, be observed, and I do not think that any defect in the original agreement can be cured by a post factum supplemental contract. The language of R.C. 3319.08 contemplates that the supplemental contract be entered into before performance of the additional duties:

" * * * The board of education * * * shall enter into a supplemental written contract with each teacher who is to perform additional duties. * * * " (Emphasis added.)

However, I do not think that the original agreement was defective when considered in the light of a further paragraph of R.C. 3319.08 which provides as follows:

"If a board of education adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract."

Under elementary principles of contract law the policy adopted by the Board on September 1, 1972, was a firm offer of a supplemental contract to all teachers who accepted. In the statutory language quoted just above, the policy was a "resolution to employ a teacher under a limited * * * contract * * *." All teachers who accepted the offer and complied with its terms should be paid accordingly. Under these circumstances there was no defect in the original agreement, and there is no need for the formality of a supplemental contract at this stage. Opinion No. 70-129, Opinions of the Attorney General for 1970; and cf. Gates v. Board of Education, 11 Ohio St. 2d 83 (1967), which deals with a somewhat similar situation involving non-teaching employees of a board of education.

2. I see no reason why a supplemental contract under R.C. 3319.08 cannot include graduate studies during the summer months. My predecessor so interpreted that Section in Opinion No. 3145.

3. You ask finally whether the provision in the Board's policy statement, which requires a teacher to remain in the district system for the year after receipt of graduate credits in order to be eligible for the supplemental compensation, is valid and enforceable.

As pointed out above, in carrying out its statutory functions, a board of education has broad discretion to adopt the necessary regulations. In Opinion No. 71-026, Opinions of the Attorney General for 1971, I said:

"The Supreme Court has held that the authority conferred upon a board of education to adopt rules and regulations to carry out its statutory functions vests in the board a wide discretion, Greco v. Roper 145 Ohio St. 243, 249 (1945); provided, of course, that specific statutory limitations on the board's

authority are not exceeded, Verberg v. Board of Education, 135 Ohio St. 246 (1939). "The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933).

See also Opinion No. 71-024, Opinions of the Attorney General for 1971, and Opinion No. 72-032, Opinions of the Attorney General for 1972. I find no section of the Revised Code prescribing the time for payment of teacher's salaries; consequently, a board of education is free to adopt any reasonable regulations it deems advisable on the subject. In my view the rule announced by the Board here is a reasonable one, particularly in view of the fact that, under R.C. 3319.131, a teacher, who has been granted a year's leave of absence with part pay for further professional studies, may be required to return to the district for at least one year.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Where a board of education adopts a policy of supplemental compensation to teachers who complete graduate courses in their fields of certification, and when a teacher accepts employment under that policy and complies with its terms, a formal supplemental written contract is unnecessary under R.C. 3319.08;
2. Such an agreement between the board of education and the teacher may include graduate courses taken and completed during the summer vacation;
3. The board of education may properly specify that the teacher remain an employee of the board during the year following completion of the graduate courses in order to be eligible to receive the supplemental compensation.