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EDUCATION—NON-TEACHING EMPLOYEES—INCREASE OF COMPENSATION, EXISTING CONTRACT, NOT PERMITTED—§3319.081 R.C.—RECISSION AND ENTER INTO NEW CONTRACT—COMPENSATION MUST BE SET FORTH IN CONTRACTS.

SYLLABUS:

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.

2. A board of education is without authority, in making a contract of employment for a term of five years, pursuant to Section 3319.081, Revised Code, to omit any provision as to the compensation to be paid the employee, with a proviso that the compensation will be fixed by the board each July 1st.

Columbus, Ohio, February 27, 1959

Hon. Donovan Lowe, Prosecuting Attorney
Morgan County, McConnellsville, Ohio

Dear Sir:

In your request for my opinion you present the following questions:

“1. Under date of August 1, 1957, the Malta-McConnellsville Exempted Village Board of Education executed two year contracts with non-teaching employees pursuant to Section 3319.081 R.C. and such contracts set the compensation per year at a fixed amount. May the Board of Education increase the compensation of the non-teaching employees for the last year of the contract without the imposition of additional duties?”

“2. May a Board of Education execute a contract pursuant to Section 3319.081 R.C. for a period of five years and *not* make the amount of the compensation a part of the contract with a proviso that the compensation will be fixed by the Board each July 1st?”

Section 3319.081, Revised Code, which became effective September 1, 1955, reads as follows:

“In all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code do not apply the

following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:

“(A) Employees, with at least one year of service in the school district, provided their employment is continued, shall be employed for a period of not less than one year nor more than five years.

“(B) After the termination of the contract provided in division (A), and thereafter provided their employment is continued, the contract shall be for not less than two years nor more than five years.

“(C) The contracts as provided for in this section may be terminated by a majority vote of the board of education. Such contracts may be terminated only for violation of regulations as set forth by the board of education. Any nonteaching school employee may terminate his contract of employment thirty days subsequent to the filing of a written notice of such termination with the clerk of the board.”

Sections 143.01 to 143.48, Revised Code, referred to in the above quoted statute, relate to civil service. Section 143.01, Revised Code, provides in part:

“As used in sections 143.01 to 143.48, inclusive, of the Revised Code:

“(A) ‘Civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities and *city school districts* thereof.”

The effect of that provision, so far as Section 3319.081, *supra*, is concerned, is to limit its application to employees of boards of education other than boards of city districts.

Coming then to the provision of Section 3319.081, *supra*, the first question which you present resolves itself into this: may a board of education which, acting under Section 3319.081, *supra*, has made contracts of employment with its non-teaching employees, increase the salaries fixed by such contract during the term thereof?

As to increase of the agreed rate of compensation during the term of the contract, the statute is silent. In this respect, the law differs sharply from the provisions as to hiring teachers. Under Section 3319.08, *et seq.*, Revised Code, teachers are to be employed for various terms, and that section provides that the board of education shall enter into con-

tracts for employment of teachers and "shall fix their salaries *which may be increased* but not diminished during the term for which the contract is made," unless such reduction is a part of a uniform plan affecting the entire district.

The General Assembly in enacting said Section 3319.081, *supra*, and placing it in the heart of the group of sections governing the employment of teachers, must certainly be assumed to have recognized the provision above noted as to increasing the salary of teachers during the term of their contracts, and I cannot resist the conclusion that it intended not to extend that privilege to the matter of employment of non-teaching employees. It would be idle to speculate on reasons for this discrimination, but it is well settled that a statute which is not ambiguous in its language must be interpreted and applied in accordance with its wording, and is not subject to extension, alteration or construction, even by the courts. *Slingsluff v. Weaver*, 66 Ohio St., 621.

We keep in mind also, the well established rule that boards of education, like other public bodies created by the legislature, have only such powers as the statutes confer upon them together with such implied powers as are essential to carry into effect the powers expressly granted, and that these powers must be exercised in the manner prescribed by the statute. 32 Ohio Jurisprudence, p. 934.

If a board of education finds it necessary or advisable to increase the compensation of an employee with whom a contract has been made pursuant to Section 3319.081, *supra*, it would appear that the only permissible process would be to terminate the existing contract by mutual agreement and enter into a new contract.

Your second question suggests an employment contract made pursuant to Section 3319.081, Revised Code, for a period of five years, without any agreement as to the amount of the compensation; such compensation to be fixed by the board each July 1.

Such an arrangement hardly amounts to a contract of employment, such as the law contemplates. It could hardly be called a contract for five years, for under the plan as you state it, the employee would start work without any agreed compensation, subject to the caprice of the board at the next ensuing July 1; and even if he was assured of a stated compensation up to the next July 1, the board would have the right, at that time to reduce his salary to an absurdly low sum, which would be merely

a device to escape the five year agreement and get rid of the employee. I believe that the statute contemplates a complete contract covering the term, the duties and the compensation.

Accordingly, in specific answer to your questions, it is my opinion and you are advised:

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.

2. A board of education is without authority, in making a contract of employment for a term of five years, pursuant to Section 3319.081, Revised Code, to omit any provision as to the compensation to be paid the employee, with a proviso that the compensation will be fixed by the board each July 1st.

Respectfully,
MARK MCELROY
Attorney General