

OPINION NO. 81-070**Syllabus:**

A school district may attach the certificate required by R.C. 5705.412 to a collective bargaining agreement that sets forth alternative teacher salary schedules that are expressly made contingent upon the passage of an operating levy or the receipt of some other contingent revenue.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Williem J. Brown, Attorney General, November 17, 1981

I have before me your request for my opinion as to whether a school district is precluded by R.C. 5705.412 from entering into a collective bargaining agreement with a teachers' association, that provides that the present salary schedule will remain in effect during the period of the agreement but that sets forth an alternative increased salary schedule contingent upon the district's receipt of additional operating revenues, resulting from the passage of an operating levy, an increase in the state subsidy or some other contingent revenue source.

Your specific question is as follows:

May a school district attach the certificate required by R.C. 5705.412 to a collective bargaining agreement that sets forth alternative teacher salary schedules that are expressly made contingent upon the passage of an operating levy or the receipt of some other contingent revenue?

R.C. 5705.412 provides, in part, that:

Notwithstanding section 5705.41 of the Revised Code, no school district shall adopt any appropriation measure, make any contract, give any order involving the expenditure of money, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes including the renewal of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to operate an adequate educational program for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in the succeeding fiscal year equal to the number of days instruction was held or is scheduled for the current fiscal year. . . . 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. . . .

In your request you direct my attention to Bureau of Inspection and Supervision of Public Offices Circular 78-7. The Bureau concludes therein that in the event that a board of education enters into a contract with a teachers' association that includes regular increases in salary schedules to take effect on the first day of each fiscal year covered by the contract, the contract must be

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certified pursuant to R.C. 5705.412 as well as R.C. 5705.41.¹ The Circular draws no conclusion with respect to a collective bargaining contract that provides for increases in the teacher salary schedule only in the event that specified additional operating revenues are received. It would appear, however, that R.C. 5705.412 is applicable in this latter situation as well. R.C. 5705.412 is applicable any time a school district enters into a contract. The statute does not distinguish between contracts that increase the district's financial liabilities and contracts that merely continue an existing liability and provide for a contingent liability.

Your specific question is whether a school district is legally precluded from attaching the type of certificate required by R.C. 5705.412 to a collective bargaining contract that provides for an increase in the current salary schedule contingent upon the receipt of additional revenue. In my opinion there is no legal impediment to attaching the type of certificate required by R.C. 5705.412 to such contracts, provided, of course, that the responsible officials can make the necessary factual findings. In such situations two such factual findings are necessary. First, the responsible officials must determine that in the absence of the contingent revenue, the school district will be able to operate an adequate educational program during the current and subsequent fiscal years while paying teachers in accordance with the current salary schedule. Second, the responsible officials must determine that, if the contingent revenue is in fact received, the school district can enact the increased salary schedules and still operate an adequate educational program.

Accordingly, and in specific response to your question, it is my opinion that a school district may attach the certificate required by R.C. 5705.412 to a collective bargaining agreement that sets forth alternative teacher salary schedules that are expressly made contingent upon the passage of an operating levy or the receipt of some other contingent revenue.

¹Because you have not specifically inquired about the attachment of a certificate pursuant to R.C. 5705.41 in the situation you describe, I am not addressing the requirements for such a certificate. However, any alternative teacher salary schedules should commence no earlier than the next fiscal year for such a certificate to issue since R.C. 5705.41(D) requires certification that the amount required to meet the contract in the fiscal year in which it is made has been "lawfully appropriated" at the time the certificate issues.