

OPINION NO. 77-077**Syllabus:**

R.C. 3313.483, which authorizes the Superintendent of Public Instruction to close the schools in a district due to lack of funds, does not expressly exempt the district from the payment of fringe benefits. A board of education must, therefore, pay a non-teaching employee for those holidays specified in R.C. 3319.087 that fall within a period during which the schools are closed.

To: Gary F. McKinley, Union County Pros. Atty., Marysville, Ohio
By: William J. Brown, Attorney General, November 21, 1977

Your request for my opinion poses the following question:

Where a school district has been ordered by the State Auditor to close due to a lack of funds and pursuant to law and the holidays of Thanksgiving, Christmas and New Year's Day fall within the period of closing, is the school board liable to non-teaching employees for payment of these holidays?

R.C. 3313.483, set forth below, provides that a school district may close its schools due to lack of funds. It is important to note, however, that while the statute clearly sets forth the procedures a school district must follow in order to close its schools, it does not address the consequences of a school closing.

A board of education, upon the adoption of a resolution stating that such board may be financially unable to open on the day or to remain open for instruction on all days set forth in its adopted school calendar and maintain minimum standards as may be required by the state board of education, shall request the auditor of state to determine whether such situation exists. If the auditor of state finds that the board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it . . . he shall certify that finding to the superintendent of public instruction and shall certify the date on which the district will have remaining only such moneys as are necessary for maintaining the district while the education program is suspended and the date on which the district . . . will have available sufficient moneys to open or reopen the instruction program meeting the required minimum standards.

Upon receipt of such certification, the superintendent of public instruction may authorize such school district to delay the opening of its schools or close schools . . .

No board of education may delay the opening of its schools or close its schools for financial reasons unless so authorized by the superintendent of public instruction.

Since R.C. 3313.483 does not specifically address the consequences of a school closing, your question must be analyzed in terms of the express statutory authorization for paid holidays for non-teaching school employees.

The General Assembly has expressly characterized paid holidays as a fringe benefit. See, R.C. 124.14. In 1974 Op. Att'y Gen. No. 74-096, I had occasion to consider whether a board of education was required to continue paying fringe benefits to its employees during the period in which the schools are closed, due to lack of funds. My conclusion, as set forth in the second syllabus, states as follows:

The board of education is not relieved of its duty to pay fringe benefits during a period when a public school is closed for lack of funds, simply because public school employees have applied for and are receiving unemployment compensation benefits.

Because of the importance of this issue and its applicability to the question you have raised, some additional clarification of my former opinion is necessary.

The fact that a school district has found it necessary to suspend its educational program due to lack of funds does not necessarily exempt the district from incurring residual liability to its employees. Certain fringe benefits, such as paid holidays, insurance and retirement benefits are statutorily mandated to be provided to public school employees. Other benefits may be required under the terms of an individual school employee's contract executed by a board of education pursuant to R.C. 3319.08 or R.C. 3319.081. R.C. 3313.483 does not expressly exempt a school district from the payment of such benefits and in absence of an express exemption, the specific language of the statute or contract authorizing the benefit is controlling. Thus, for example, where a particular benefit is conditioned upon the actual hours or days worked, the benefit would not accrue to the employee during the period for which the schools are closed. Where a particular benefit is not so conditioned, the benefit may continue to accrue.

R.C. 3319.087, which authorizes holiday pay for non-teaching school employees, provides in pertinent part as follows:

[A]ll regular non-teaching school employees employed on an eleven or twelve month basis, whether salaried or compensated on an hourly or per diem basis, are entitled to a minimum of the following holidays for which they shall be paid their regular salary or their regular rate of pay, provided each such employee accrued earnings on his next preceeding and his next following scheduled work days before and after such holiday or was properly excused from attendance at work on either or both of those days: New Year's Day . . . Thanksgiving Day, and Christmas Day of each year.

A non-teaching employee is thus entitled to be paid for holidays provided he worked the next preceeding and next following scheduled work days before and after such holiday or was properly excused from attendance at work on either or both of those days. Paid holidays are not expressly conditioned upon the number of days or hours worked.

When the Superintendent of Public Instruction closes the schools pursuant to R.C. 3313.483, it is impossible for school employees to perform their employment duties. If a non-teaching employee accrued earnings on the last scheduled work day prior to the school closing and the first scheduled work day after the school reopens he is, pursuant to R.C. 3319.087, to be paid for the holidays that fall within the period of the school closing.

Thus, it is my opinion and you are so advised that R.C. 3313.483, which authorizes the Superintendent of Public Instruction to close the schools in a district due to lack of funds, does not expressly exempt the district from the payment of fringe benefits, a board of education must, therefore, pay a non-teaching employee for those holidays specified in R.C. 3319.087 that fall within a period during which the schools are closed.