

**OPINION NO. 68-085****Syllabus:**

1. A board of education is not required to place a teacher on the salary schedule which would include one year of teaching credit when the teaching service consists of less than 120 days.

2. A school board may give credit this year for a full year's teaching service of less than 120 days so long as there is no retroactive pay, even if there is no written policy to that effect.

3. If a teacher under contract has been given credit for a fraction of a year's military service, it is not mandatory that he be given the same credit under the new salary schedule, if the new salary schedule provides an increase over the contract salary.

4. A board of education may this year give credit for less than eight months military service even if there is no written policy to that effect.

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**To: Frank P. Anzellotti, Jr., Mahoning County Pros. Atty., Youngstown, Ohio**  
**By: William B. Saxbe, Attorney General, May 31, 1968**

I have before me your request for my opinion on the following questions:

"1. A teacher has a signed contract prior to September 1, 1967, which placed him in a salary bracket that gave him credit for a full year's teaching service for less than 120 days. Must the Board now place him on the new salary schedule which would include the one-year teaching credit even though he had less than 120 days teaching service?

"2. May the School Board this year give credit for a full year's teaching service for less than 120 days under a teacher's contract, if there is no written policy to that effect?

"3. If a teacher under contract has been given credit for a fraction of a year's military service, is it mandatory that he be given the same credit under the new salary schedule if the new salary provides an increase over the contract salary?

"4. May the School Board this year give credit for a fraction of a year's military ser-

vice if there is no written policy to that effect."

The question calls for an interpretation of Section 3317.13, Revised Code, which provides:

"Section 3317.13 (A): As used in this section, 'years of service' includes the following:

"(1) All years of teaching service in the same school district, regardless of training level, with each year consisting of at least one hundred twenty days under a teacher's contract;

"(2) All years of teaching service in another public school, regardless of training level, with each year consisting of at least one hundred twenty days under a teacher's contract; and

"(3) All years of active military service in the armed forces of the United States, as defined in section 3307.02 of the Revised Code, to a maximum of five years. For purposes of this calculation, a partial year of active military service of eight continuous months or more in the armed forces shall be counted as a full year."

A board of education is permitted to establish its own service requirements by Section 3317.14, Revised Code, which provides:

"Any board of education participating in funds distributed under Chapter 3317. of the Revised Code shall annually adopt a teachers' salary schedule with provision for increments based upon training and years of service. Notwithstanding section 3317.13 of the Revised Code, the board may establish its own service requirements provided no teacher receives less than the amount required to be paid pursuant to section 3317.13 of the Revised Code and provided full credit for a minimum of five years of actual teaching and military experience as defined in division (A) of section 3317.13 of the Revised Code is given to each teacher."

Additional facts indicate that the board of education has adopted a salary schedule on October 11, 1967 whereby a

teacher with no years experience is paid \$4550.00 and with one year experience is paid \$4730.00. The minimum salary schedule established by Section 3317.13 (C), provides for a salary of \$4300.00 for no years experience, and \$4480.00 for one year's experience.

There has been considerable confusion caused by these dual salary schedules. The salaries established by Section 3317.13 (C), are the minimum that shall be paid. There is no legal impairment to a board of education adopting a schedule which provides for larger salaries than the statutory minimum.

Under the provisions of Section 3317.13 (A), a year of teaching service consists of 120 days. Therefore, under the statute, the Board is not required to credit the teacher in question with a year of service and is only required to pay the teacher a salary of \$4300.00.

In answer to your first question, it is my opinion that the Jackson-Milton Board of Education is not required by law to place a teacher who has signed a contract prior to September 1, 1967, which placed him in a salary bracket that gave him credit for a full year's teaching service for less than 120 days, on the new salary schedule which would include the one-year teaching credit, inasmuch as he had less than 120 days teaching service. Section 3317.13, Revised Code, sets a minimum standard. To comply with the minimum requirements for increments based in years of service for teaching, Section 3317.13 (A), (1), and (2), Revised Code, must be followed.

Since the year of service for teaching is not required by the above provisions of the code, I am of the opinion that this credit for one year of teaching service does not have to be given under the new salary schedule adopted at the October 11, 1967 meeting of the school board.

I am of the opinion that the school board may give credit this year for a full year's teaching service for less than 120 days under a teacher's contract, even though there is no written policy to that effect. The manifest intent of Chapter 3317, is to guarantee a minimum salary based upon experience and training. There is no suggestion in the code that a teacher shall not receive credit for training or experience above what has been guaranteed. Although the credit for teaching service posed by your question is not pursuant to a requirement established by the local board of education or the Revised Code, it is my opinion that the granting of this credit is clearly allowable under any relevant code provision.

A limitation on this authority of the school board to grant a salary increase is stated in Opinion No. 748, Opinions of the Attorney General for 1937, page 1354, which, in summary, holds that such an increase cannot be retroactive. This is the only limitation on the authority of the school board to grant increases in the situation posed by your question.

The minimum "years of service" requirement given on the basis of military service is set out in Section 3317.13 (A), (3), Revised Code, which provides as follows:

"All years of active military service in the armed forces of the United States, as defined in section 3307.02 of the Revised Code, to a maximum of five years. For purposes of this calculation, a partial year of active military service of eight continuous months or more in the armed forces shall be counted as a full year."

I am of the opinion that if a year's credit for military service has been given when not required by Section 3317.13, Revised Code, this credit is not required to be carried over and given under the adopted teaching schedule. The reasons for this are the same as those given in answer to the first question of your inquiry.

I am of the opinion that the school board this year may give credit for a fraction of a year's military service even if there is no written policy to that effect.

It is therefore my opinion and you are accordingly advised that:

1. A board of education is not required to place a teacher on the salary schedule which would include one year of teaching credit when the teaching service consists of less than 120 days.
2. A school board may give credit this year for a full year's teaching service of less than 120 days so long as there is no retroactive pay, even if there is no written policy to that effect.
3. If a teacher under contract has been given credit for a fraction of a year's military service, it is not mandatory that he be given the same credit under the new salary schedule, if the new salary schedule provides an increase over the contract salary.
4. A board of education may this year give credit for less than eight months military service even if there is no written policy to that effect.