

**OPINION NO. 66-085****Syllabus:**

A notice of intent not to re-employ a county superintendent of schools executed by a majority of the members of a board of education, but not acted upon or executed at a properly scheduled regular or special meeting of such board, does not comply with the provisions of Section 3319.01, Revised Code, and is, therefore, a nullity.

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**To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio**  
**By: William B. Saxbe, Attorney General, May 4, 1966**

Your request for my opinion reads as follows:

"The contract of the County Superintendent of Schools expires the 31st day of July, 1966. Three of the County School Board members, the same being a majority of the board, executed a notice of intent not to reemploy the County Superintendent at the expiration of his present contract and served the same on him by registered mail prior to March 1, 1966. The execution of the notice and the action of these three members did not take place at a school board meeting.

"I would like your opinion as to whether or not the notice referred to is sufficient to comply with Section 3319.01 of the Revised Code and thus terminate the contract of the County Superintendent of Schools or whether in your opinion he would be deemed reemployed for a term of an additional year under this section."

Section 3319.01, Revised Code, to which you make reference in your letter of request, provides in pertinent part as follows:

"The board of education in each county, city, and exempted village school district shall, at the regular meeting held not later than the first day of May of the calendar year in which the term of the superintendent expires, appoint a person possessed of the qualifications provided in this section, to act as superintendent of the public schools of the district, for a term not longer than five years beginning the first day of August and ending on the thirty-first day of July. Such superintendent is, at the expiration of his current term of employment, deemed re-employed for a term of one year at the same salary plus any increments that may be authorized by the board of education, unless

such board, on or before the first day of March of the year in which his contract of employment expires, either re-employs the superintendent for a succeeding term or gives the superintendent written notice of its intention not to re-employ him \* \* \*

(Emphasis added)

Under the fact situation presented in your request, it appears as if a majority of the members of a county board of education have attempted to execute a notice of intent not to re-employ the county superintendent of schools, and it further appears that such action was taken without the benefit of either a regularly or specially scheduled meeting of the board.

Your attention is first directed to 48 O. Jur. 2d, 488, Section 81, wherein it is stated:

"The members composing the board of education have no power to act as a board except when in session together, and then only as a body or unit."

This proposition was recognized as accurately reflecting the law in this state as early as 1871, at which time the Supreme Court of Ohio stated in the third paragraph of its syllabus in State, ex rel., Steinbeck v. Liberty Twp., 22 Ohio St., 144, as follows:

"The board of education is made by the statute a body corporate, and the contracting of a debt by the board, and the directing the issuing of an order to pay it, are corporate acts which can not be performed by the individual members of the board acting separately."

In the body of its opinion per White, J., in the case cited, the Court stated at page 148 that:

"It is made the duty of the board to hold regular sessions, at certain specified times and places, for the transaction of any business which may be necessary in relation to the public schools of the township, as well as to hold such special meetings at other times and places within the township, as they may think desirable for the transaction of such business. \* \* \*

\* \* \* \* \* \* \* \*

"The question is, does the alleged agreement which was signed by a majority of the members of the board, and which was the only authority of the clerk for issuing the order, constitute a direction by the board. It seems clear to us it does not. The authorizing a debt to be contracted by the board of education, and the directing its payment out of the public funds, are corporate acts. No individual member of the

corporate body, nor any number of such individual members acting separately, can bind the corporation. \* \* \*"

Although I am of the opinion that the above cited authorities firmly establish that members of a board of education are powerless to act as a board except when in session, I further direct your attention to State, ex rel., Rutherford v. Barberton Board of Education, 148 Ohio St., 242, in which case the question before our Supreme Court was quite similar to that which you have presented in your letter of request.

The Rutherford case; supra, called for an interpretation of Section 4842-8, General Code (now Section 3319.11, Revised Code) which section of the General Code provided in part as follows:

"Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June \* \* \*"

In commenting upon this section of the General Code, the provisions of which bear a marked resemblance to Section 3319.01, supra, the Court stated at pages 245-246:

"Since, under the statute, a teacher holding a limited contract is automatically deemed re-employed unless the 'employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him,' it would seem to follow that the determination not to re-employ must be reached by the same formality and solemnity as was required to effect his original employment. In other words, it would require board action at a regular meeting, or a special meeting for that purpose, followed by written notice to the teacher of the action so taken to prevent the automatic renewal of his contract. See McCortle v. Bates, 29 Ohio St., 419, 422, 23 AM. REP., 758 \* \* \*"

It is my opinion that the Court's interpretation of Section 4842-8, General Code, in the Rutherford case, supra, is equally applicable to Section 3319.01, Revised Code, and the fact situation presented in your request.

Therefore, it is my opinion and you are hereby advised that a notice of intent not to re-employ a county superintendent of schools executed by a majority of the members of a board of education, but not acted upon or executed at a

properly scheduled regular or special meeting of such board, does not comply with the provisions of Section 3319.01, Revised Code, and is, therefore, a nullity.