

3648.

SCHOOLS—ASSISTANT COUNTY SUPERINTENDENT—SALARY MAY NOT BE INCREASED DURING TERM FOR WHICH HE IS ELECTED.

SYLLABUS:

The salary of an assistant county superintendent of schools may not be increased by the county board of education during the term for which he is elected.

COLUMBUS, OHIO, September 23, 1926.

HON. A. B. PECKINPAUGH, *Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of yours of recent date in which you submit the following:

“Under the provisions of section 4739 and section 4743 of the General Code, assistant county superintendents are elected for a term not to exceed three years and their compensation is fixed at the time of their appointment by the county board of education which appoints them.

Question: May the salary of an assistant superintendent be increased by the county board of education during the term for which he is elected?”

Sections 4739 and 4743 of the General Code to which you refer read as follows:

Sec. 4739 G. C.—“One or more assistant county superintendents, as may be determined by the county board of education, may be elected for a term of not to exceed three years in each county school district by the county board of education on the nomination of the county superintendent. Provided, however, that no assistant county superintendent shall be elected in 1921 for a longer term than one year. A person other than one nominated by the county superintendent may be elected by a majority vote of the county board of education.”

Sec. 4743 G. C.—“The compensation of the assistant county superintendent shall be fixed at the same time that the appointment is made and by the same authority which appoints him. Such compensation shall be paid out of the county board of education fund on vouchers signed by the president of the county board. The salary of any assistant county superintendent shall in no case be less than one thousand dollars per annum, half of which salary not to exceed seven hundred and fifty dollars, shall be paid by the state and the remainder by the county school district. The part paid by the county school district shall be pro-rated among the village and rural school districts in such county school district in proportion to the number of teachers employed in each district.”

Section 4739 G. C. *supra*, authorizes the employment by the county board of education of one or more assistant county superintendents for a term of not to exceed three years.

Section 4743 G. C. *supra*, provides that their compensation “shall be fixed at the same time that the appointment is made and by the same authority which appoints them.”

It would therefore appear in view of the provisions of these sections that assistant county superintendents may be elected for a term of not to exceed three

years and at the same time the county board elects the assistant county superintendents such board must fix their compensation, and it is believed that when a county board of education has once taken action in this respect and such compensation has been fixed, they would have no further authority or power in that respect.

Further, in this connection, your attention is directed to the case of *State ex rel Clark vs. Cook*, 103 O. S., 465, wherein a similar question with reference to a county superintendent was considered and where, in the opinion by Wannamaker, Judge, there appears the following statement:

"The express power to fix a salary does not grant by implication the power to unfix such salary. The exercise of the power for the full three-year term agreeable to the statute, exhausts the power conferred by the statute. The power to change after once having fixed the term and salary, to employ the language of the *Locher case, supra*, must be 'clear and distinctly granted.' The power not being so granted to the board of education cannot be exercised by the board of education, and its attempted exercise thereof is *ultra vires*. The action of the board in attempting to change the salary of the county superintendent, after once fixed, is illegal and void under the statute."

Therefore, I am of the opinion, and you are advised that the salary of an assistant county superintendent of schools may not be increased by the county board of education during the term for which he is elected.

Respectfully,

C. C. CRABBE,
Attorney General.

3649.

FEEES OF PSYCHOLOGIST OR PSYCHIATRIST MAY BE PAID FROM COUNTY TREASURY.

SYLLABUS:

When the fees of psychologist or psychiatrist are fixed by the court in a proceeding under section 13696, as last amended, they may be paid out of the county treasury the same as other witness fees mentioned in section 3014 G. C.

COLUMBUS, OHIO, September 23, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request my opinion on the following:

"Section 13696 of the General Code (111 O. L., 427), provides that courts may appoint psychologists or psychiatrists and further provides that they shall receive a fee fixed by the court and taxed in the costs of the case.

"*Question.*" May such fees be paid out of the county treasury and when the costs are collected the county treasury be reimbursed, or must such persons await the collection of the costs and receive their fees from the clerk of the courts?"

Section 13696, as amended, 111 O. L., 427, provides in substance that when a person is convicted of an offense punishable either in whole or in part by a fine, the