

However, further consideration discloses that said section 13247 was classified by the codifying commission under the subdivision of "local option," which is a part of chapter 17, the heading of which is "Offenses Relating to Intoxicating Liquors." The codifying commissions further carried into this section the language "fines and forfeited bonds collected under this subdivision of this chapter." The action of the codifying commission definitely defines the subdivision of the act to which said section is to apply and there can be no room for doubt in the interpretation thereof.

The sections of the General Code classified under said subdivision "local option" are 13225 to 13249, inclusive. It therefore follows that section 13247 will not control in the disposition of fines assessed under the provisions of sections 13194 to 13224-3 G. C.

In said opinion No. 1845 heretofore referred to it was pointed out that the distribution of fines collected under section 13195 would not be controlled by the provisions of the Crabbe act. What was said in reference to this section would be true of the other statutes to which you refer, which are a part of the same subdivision. However, in the opinion to which you are referred it was held that the fines collected under section 13195 were payable in the municipal treasury of the city of Massillon because the act creating the municipal court of Massillon specifically required, without qualification, that all fees, costs, fines, etc., should be paid into the said treasury, and it was held that under such circumstances the provisions of section 4599 G. C. were amended by implication.

However, unless there is an exception growing out of the municipal court acts as referred to in this opinion, fines and forfeited bonds collected under the provisions of the General Code to which you refer are payable into the county treasury, and the Crabbe act does not disturb this rule, unless, of course, by implication it should repeal some of the sections referred to.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2352.

BOARD OF EDUCATION—WHERE PRINCIPAL OF BUILDING RECEIVES SALARY AND IN ADDITION THE SUM OF FIVE DOLLARS FOR EACH THOUSAND AGGREGATE DAYS OF ATTENDANCE OF PUPILS OF SUCH BUILDING BY RESOLUTION OF BOARD—HELD SUCH RESOLUTION LEGAL.

Where a board of education by resolution provides that in addition to the salary schedule adopted there shall be paid the sum of \$5.00 to the principal of each building for each and every thousand aggregate days of attendance of the pupils of such building, such additional amount earned by the principal under the resolution of the board of education is a portion of the aggregate salary set by the board of education for the principal, and may be legally paid by the board of education.

COLUMBUS, OHIO, August 20, 1921.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following statement of facts:

"A board of education of a city school district after fixing the salaries of the teachers and principals placed in their records the following:

'The principal of each building shall receive pay as a regular teacher as provided by this schedule, and in addition thereto shall be paid at the close of each semester \$5.00 for each and every thousand (1,000) aggregate days of attendance of the pupils of such building.'

Question: Can a board of education legally pay such principal in addition to his pay as a regular teacher \$5.00 for each thousand aggregate days of attendance of the pupils of such building?"

Pertinent sections of the law, in part, are as follows:

"Sec. 7690. Each board of education shall have the management and control of all the public schools of whatever name or character in the district. It may appoint a superintendent of the public schools, * * * and such other employes as it deems necessary, and pay their salaries; * * *. Each board shall pay the salaries of all teachers, which may be increased but not diminished during the term for which the appointment is made. * * *." (107 O. L. 47.)

"Sec. 7620. The board of education of a district may * * *, and make all other necessary provisions for the schools under its control. It also shall * * * make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts." (108 O. L. 187.)

"Sec. 4750. The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools. * * *"

(97 O. L. 356.)

In your question you desire to know whether the board of education may legally pay a teacher designated by the board of education as a principal, in addition to his pay as a regular teacher, the sum of \$5.00 for each thousand aggregate days of attendance of the pupils attending school in the building over which he has charge.

The question before us is whether this \$5.00 added for each and every thousand aggregate days of attendance of the pupils is in addition to his salary as set by the board of education, or whether this additional amount earned by the teacher as a principal is a part of his salary intended for him by the board of education.

It appears that what the board of education had in mind was to create a stimulus toward more regular attendance on the part of pupils, and in order to bring this about, provided in its minutes, setting the amount to be received by principals of school buildings, that for each and every thousand aggregate days of attendance of pupils in the building under the charge of the principal there should be allowed to the teacher detailed as principal an additional \$5.00 as part of his salary. What the board of education evidently intended to say was that "as his salary, the principal of each building shall receive the sum as a regular teacher as provided by this schedule, and in addition thereto shall be paid at the close of each semester \$5.00 for each and every thousand (1,000) aggregate days of attendance of the pupils of such building."

Bearing upon the question of the authority and discretion vested in a board of education in the exercise of its judgment on matters legally com-

ing under the control of the board, attention is invited to the second and third branches of the syllabus of the decision in the case of Brannon, et al. vs. Board of Education, 99 O. S. 369, reading as follows:

"2. A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board upon any question it is authorized by law to determine.

3. A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud, or collusion on the part of such board in the exercise of its statutory authority."

In the case which you submit, it would appear that under the sections of the statutes above quoted the board of education was not exceeding its authority in providing that the salaries of principals in school buildings should be paid in the manner indicated, that is, that a certain fraction of such salary should be shown to be earned by the principal upon the facts shown in the attendance record for the particular school building before this additional portion of the salary should be paid. Evidently the board in its own judgment considered this to be a move for the betterment of the schools in the district, and there does not appear to be any abuse of discretion on the part of the board in providing that the salary of the principal should be paid in this manner rather than an outright flat increase which would apply to all principals in charge of buildings regardless of the attendance shown. This additional \$5.00 as described in the resolution of the board of education must be held to be a portion of the salary to be received in the aggregate by the principal, and you are therefore advised that where a board of education by resolution provides that in addition to the salary schedule adopted there shall be paid the sum of \$5.00 to the principal of each building for each and every thousand aggregate days of attendance of the pupils of such building, such additional amount earned by the principal under the resolution of the board of education is a portion of the aggregate salary set by the board of education for the principal, and may be legally paid by the board of education.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2353.

APPROPRIATIONS—ADDITIONS AND BETTERMENTS PROVIDED FOR IN SENATE BILL NO. 263 (EDUCATIONAL AND INSTITUTIONAL BUILDING ACT) CANNOT BE PURCHASED, INSTALLED OR ERECTED BY FORCE ACCOUNT—GENERAL LAWS APPLICABLE FOR BUILDING WORK COSTING OVER \$3,000—HOW TO PROCEED IF COST LESS THAN \$3,000.

1. *Neither the requirement of section 6 of the general appropriation bill of 1921 that competitive bidding be had in all cases where labor and materials are furnished or commodities are purchased, nor the special exception for "force account" work when sanctioned by the controlling board, applies to the expenditure of the appropriations made by amended Senate Bill No. 263 from the educational building fund.*