

OPINION NO. 73-084

Syllabus:

Under R.C. 3313.21, a board of education may grant personal leave to its employees other than those employed at hourly rates, for purposes set out in its regulations. However, the specificity of such purposes is a matter for the board's discretion.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, August 23, 1973

I have before me your request for my opinion which asks

1. May a board of education, under authority found in Sections 3313.20 and/or 3313.21, Revised Code, grant personal leave to its employees other than those employed at hourly rates, for specific purposes, as would be included in the approved board policies?

2. May a board of education grant personal leave to its employees for an unidentified and/or unrestricted purpose?

R.C. 3313.20 provides

The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. Any employee may receive compensation and expenses for days on which he is excused by such board for the purpose of attending professional meetings, and the board may provide and pay the salary of a substitute for such days. The expenses thus incurred by an employee shall be paid by the board from the general fund of the school district or the county board fund. (Emphasis added.)

Although the authority of the board of education is limited strictly to such powers as are expressly granted to them, or are clearly implied and necessary for the execution of its express powers, R.C. 3313.20 has been interpreted by the Ohio Supreme Court to vest wide discretion in school boards to adopt rules and regulations necessary for the conduct of schools, as long as they do not exceed specific statutory limitations on the

board's authority. Verberg v. Bd. of Education, 135 Ohio St. 246, 20 N.E. 2d 368 (1939). See also Opinion No. 71-024, Opinions of the Attorney General for 1971, and Opinion No. 72-032, Opinions of the Attorney General for 1972. Also State ex rel. Baker v. Stevenson, 180 N.W. 2d 181 (1962) and LaFleur v. Cleveland Bd. of Ed., 59 Ohio Op. 2d 90 (1971).

R.C. 3313.20 expressly grants the board of education power to make rules necessary for the government of its employees. The rules and regulations which the board may adopt under the general grant of authority in R.C. 3313.20 may not conflict with other Sections which specifically direct the board to grant leave. R.C. 1.51. For example, a rule may not conflict with R.C. 3319.141 which authorizes 15 days sick leave, with pay, for each year.

The guidelines for granting leaves of absence are found in R.C. 3319.13 which provides in part:

Upon the written request of a teacher or a regular nonteaching school employee, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational or professional or other purposes, and shall grant such leave where illness or other disability is the reason for the request.

While a board of education is given power pursuant to R.C. 3319.13 to grant a leave of absence for up to two years, that Section confers no authority to grant such leave with pay. See Opinion No. 440, Opinions of the Attorney General for 1945, in which my predecessor held at p. 552 that a board was without authority to pay its superintendent his salary while on leave under R.C. 3319.13. Part pay may be received by teachers on leave for professional improvement, however, as provided by R.C. 3319.131.

A public school teacher who has completed five years of service may, with the permission of the board of education and the superintendent of schools, be entitled to take a leave of absence with part pay, * * *.

Thus, although R.C. 3319.13 gives the board the power to grant leave, power to grant leave with pay must be found in a specific section.

R.C. 3313.21 provides as follows

All full-time employees of a board of education, except those employed on hourly rates, must be paid regular compensation for time lost, due to illness or otherwise, for not less than five days annually as authorized by regulations which each board shall adopt. (Emphasis added.)

My predecessor in Opinion No. 1057, Opinions of the Attorney General for 1964, interpreted the italicized words to allow a regulation for time off with pay for religious observance. Note, however, that R.C. 3313.21 can be used only in the situation of a full-time employee not on an hourly rate. In addition, by its own language, R.C. 3313.21 should be construed as establishing a minimum standard for the exercise of the board's discretion and not conflicting with R.C. 3319.141 and other sections which authorize leave for specified reasons.

In R.C. 3313.21 there is a requirement for regulations providing the extent to which leaves with pay may be granted. Identical language is found in R.C. 3319.08 which has been interpreted as requiring the board to adopt such guidelines. Willis v. Seely, 33 Ohio Op. 287 (1946); Opinion No. 72-032, Opinions of the Attorney General for 1972.

In Opinion No. 71-024, *supra*, I relied on Willis v. Seely, *supra*, in concluding that, prior to the enactment of R.C. 3319.141, specifying the amount of sick leave with pay that may be granted, the board of education was directed to provide for this limit by regulations adopted pursuant to R.C. 3319.08. Unlike R.C. 3319.141, there is no specified amount of leave with pay which may be granted under R.C. 3319.08 or R.C. 3319.21. It necessarily follows that a board of education is still required to adopt regulations providing for the amount of leave with pay that may be granted. Beyond such provisions, I find nothing to indicate that the board, in its regulations, must identify every occasion or purpose for which such leave may in the future be granted. Rather, it is within the board's discretion to determine to what extent it wishes to specify the other purposes for which leave with pay may be granted under R.C. 3313.21. Thus, in the absence of abuse, determination of the specificity of the regulations is within the wide discretion vested in a board of education pursuant to R.C. 3313.20 and R.C. 3313.21. Verberg v. Bd. of Education, *supra*; Board of Education v. State ex rel. Goldman, 47 Ohio App. 417 (1934); Opinion No. 71-046, Opinions of the Attorney General for 1971. The board could then provide that leave may be taken for any personal reasons up to the specified number of days. It should be noted that the board may by amendment tighten or expand the regulations as necessary to deal with unanticipated situations which may arise in the future.

In specific answer to your question, it is my opinion and you are so advised, that under R.C. 3313.21, a board of education may grant personal leave to its employees other than those employed at hourly rates, for purposes set out in its regulations. However, the specificity of such purposes is a matter for the board's discretion.