

3145

## EDUCATION—TEACHERS, SALARY AND EXTRA ALLOWANCES—§3319.08 R.C.—RULES AND REGULATIONS—ADDITIONAL GRADUATE WORK, PROFESSIONAL ACTIVITY.

## SYLLABUS:

A board of education of any city, exempted village or local school district is authorized by Section 3319.08, Revised Code, to assign to teachers additional duties beyond their regular teaching duties and to compensate such teachers for the performance of the said assigned duties; therefore, it is within the sound discretion of a board of education to determine the nature and scope of the duties which may reasonably improve the schools within the district and to adopt rules and regulations providing for additional compensation from the funds of the school district for a limited, but fixed or determinable period of time, for teachers employed by the said board of education who take additional college work at the graduate level or who engage in certain well-defined cultural or professional activities, with the knowledge and approval of the said board of education.

Columbus, Ohio, December 10, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“One of our State Examiners has questioned the legality of certain salary increases provided for by the rules and regulations adopted by the M City School District. The Merit Provisions upon which increment salary increases are predicated are as follows:

- “1. A teacher with a Master's Degree, after completing three (3) years of service in M City Schools, shall receive \$100 for the first ten (10) additional hours of *graduate level* work and an additional \$100 for ten (10) more hours of *graduate level* work.
- “2. A \$35.00 increase for four years for every signed article published in a professional magazine, or a professional article published in a trade periodical.
- “3. \$60.00 to \$250.00 increase for one-year period for summer travel experience. Application to be made in advance to the Superintendent of Schools and the Chairman of the Board Education's Personnel Committee, who will make recommendations for approval to the Board of Education.

- “4. \$35.00 increase for one year for any one special professional meeting attended during the year. Application to be made to the Superintendent of schools for the Board of Education’s approval.
- “5. \$60.00 increase for any office held in a district, state or national professional organization. Increase to last for the duration that the office is held. Recommendation for qualification to rest with the Board of Education.

“Accordingly, it is respectfully requested that you give a formal opinion on whether or not the Merit Provisions established by the M City Board of Education, which provides for salary increases can lawfully be made from the funds of the Board of Education.”

At the outset it should be noted that the General Assembly has vested in the separate boards of education of the school districts of Ohio the power to fix the salary schedules, subject to a minimum prescribed by law, and to increase the salaries for the teachers in the schools in the district. Section 3317.06, Revised Code, by Divisions A to E, inclusive, establishes a minimum salary schedule, based upon educational qualifications, for teaching personnel employed in the public schools, and then concludes with this paragraph :

“Such salary schedule shall be considered a minimum pay scale for teachers in this state and board of education may establish salary schedules in excess of these pay ranges commensurate with local and state tax resources and teaching experience.”

The pertinent sections of Chapter 3319., Revised Code, grant broad authority to boards of education to provide for increases in teacher salaries. Section 3319.08, Revised Code, reads in part as follows :

“The board of education of each city, exempted village, and local school district shall enter into contracts for the employment of the teachers and *shall fix their salaries* which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code. Such boards may include in such contract duties beyond the regular duties and for such additional duties the salary of the teacher may be supplemented. *Such boards may discontinue at any time the assignments of special duties beyond the regular classroom teaching duties and the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties. In addition to supplemental salary payments as provided in this section, such boards of education may grant salary increases at any time without the imposition of additional duties. \* \* \**”  
(Emphasis added)

Section 4842-7, General Code, which was the predecessor to Section 3319.08, Revised Code, was amended by 97th General Assembly in 1947, 122 Ohio Laws, 787. It was by this admendment that boards of education were specifically empowered to increase teacher salaries at any time without the imposition of additional duties.

Section 3319.12, Revised Code, also manifests the legislative intention that boards of education may increase teacher salaries. That section provides in part:

“Each board of education shall cause notice to be given annually not later than the first day of July to each teacher who holds a contract valid for the succeeding school year, as to the salary to be paid such teacher during such year. Such salary shall not be lower than the salary paid during the preceding school year unless such reduction is a part of a uniform plan affecting the entire district. This section does not prevent increases of salary after the board’s annual notice has been given.”

In your inquiry you have asked whether the salary increases established by the merit provisions may lawfully be paid from funds of the board of education. I conclude that your question stems from the fact that these salary increases are not permanent or continuing in nature; in some instances it appears that only one additional payment is contemplated while in others the increase is to be in effect for a fixed or determinable period of time. A salary once fixed by contract between an employing board of education and a teacher may be reduced only as provided by law. As shown by the statutory provisions quoted hereinbefore, a salary may be less than that received by the teacher during the preceding year when such reduction is part of uniform plan affecting the entire district, or a salary reduction may be effected by the discontinuance of additional duties which have been assigned to an individual teacher and for which he has been compensated. It then becomes necessary to determine whether the merit provisions in question provide for additional duties for which supplemental salaries may be paid in accordance with Section 3319.08, Revised Code.

Section 3319.08, Revised Code, manifestly vests in the board of education of each city, exempted village, and local school district the power to assign teachers duties in addition to the ordinary classroom teaching duties and to compensate them for performing such additional duties. I find no statutory limitation upon the nature and scope of such additional duties, and I therefore conclude that a board of education must in the exercise of

its sound discretion determine what additional duties so properly further the basic educational purposes of the public schools in the district that teachers may be assigned to perform such duties and be compensated therefor. I concur with the following statement which appears at page 13, Opinion No. 1080, Opinions of the Attorney General for 1952, p. 11:

“As to the second question of whether the particular duties described are proper ones to be compensated, that question must be answered in the first instance by the board of education. The board’s decision on such a question can be upset only if it has abused its discretion by providing pay for an activity that has no reasonable connection with a proper school system. I do not believe that the activities of cheer leader coach, manager of athletics, dramatic coach, and advisor for a high school paper are so far removed from proper school activities that providing extra pay for them amounts to an abuse of the board’s discretion. Rather, I find that question to be well within the province of the board.”

The second paragraph of the syllabus, Opinion No. 1080, *supra*, reads:

“The determination of those extra-curricular student activities for whose supervision the salary of a teacher will be supplemented is within the discretion of the board of education employing said teacher.”

The facts which you have presented show that the board of education has adopted rules and regulations establishing the increased salary schedule described in your inquiry. This being true, it seems quite apparent that the said board looks upon the educational, professional and cultural activities included in the merit provisions as enhancing the value of teachers to the school district and, in turn, improving, from an educational point of view, the schools in the district. It is beyond the scope of my office to rule as a matter of law that these pursuits have no reasonable relationship to the management and operation of the schools in the district and that the board may not determine that they are additional duties which may properly be assigned to a teacher and taken into consideration when fixing the salary for such teacher for a fixed or determinable period of time.

Boards of education are, of course, creatures of statute and have only such power as the statutes have conferred, together with such implied powers as are necessary for carrying out the powers expressly granted. This language is found in 36 Ohio Jurisprudence, 188:

“The board of education has but limited corporate powers. Although it has been said that under the present school laws boards of education are given almost unlimited powers, their au-

thority is derived solely from statute, both duties and authority being clearly defined by legislation, and is limited strictly to such powers as are expressly granted or clearly implied."

A board of education is, however, expressly empowered by Section 3319.08, Revised Code, to compensate teachers for performing assigned duties in addition to the regular teaching duties and to discontinue the said additional compensation when teachers are relieved of such additional duties.

Thus, it is my opinion and you are advised that a board of education of any city, exempted village or local school district is authorized by Section 3319.08, Revised Code, to assign to teachers additional duties beyond their regular teaching duties and to compensate such teachers for the performance of the said assigned duties; therefore, it is within the sound discretion of a board of education to determine the nature and scope of the duties which may reasonably improve the schools within the district and to adopt rules and regulations providing for additional compensation from the funds of the school district for a limited, but fixed or determinable period of time, for teachers employed by the said board of education who take additional college work at the graduate level or who engage in certain well-defined cultural or professional activities, with the knowledge and approval of the said board of education.

Respectfully,  
WILLIAM SAXBE  
Attorney General