

OPINION NO. 70-006**Syllabus:**

A non-certified school employee employed under a contract to work 180 school days as an elementary school secretary or as a teacher's aid is entitled to the paid holidays provided in Section 3319.087, Revised Code.

To: J. Richard McMannis, Median County Pros. Atty., Median, Ohio
By: Paul W. Brown, Attorney General, January 22, 1970

I have your request for my opinion concerning the allowance of paid holidays to non-certified or non-teaching school personnel in your county. You state that the written contract of such personnel with the board of education provides a beginning effective date of September 2, 1969, and for termination of the contract at the close of the 1969-1970 school year, covering a total of 180 days, compensation being payable at a stipulated amount per diem.

Your question first makes references to Section 3319.087, Revised Code, and then reads as follows:

"Is a noncertified school employee employed under a contract to work 180 school days as an elementary school secretary or a teachers' aid, entitled to paid holidays?" (Emphasis added)

You quote Section 3319.087, supra, reading in part as follows:

"* * * All regular non-teaching school employees, whether salaried or compensated on an hourly or per diem basis, are entitled to a minimum of the following holidays for which they shall be paid their regular salary or their regular rate of pay provided such holidays fall during the normal work week of the employee: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, and Christmas day of each year. * * *"

First, it is to be noted that a teacher's aid is, under the provisions of recently enacted Section 3319.088, Revised Code, termed an educational aid and is defined as a non-teaching employee. Thus, both the elementary school secretary and the teacher's aid referred to in your question are non-teaching employees as the term is used in Section 3319.087, supra.

I interpret the underlining of the figures and words "180 school days" in the context of your question to indicate your concern as to whether the employment contract covers a sufficient portion of the calendar year to entitle the described non-teaching employees to be deemed "regular" non-teaching school employees and thus fall within the holiday provisions of Section 3319.087, supra. Section 3313.48, Revised Code, provides that one hundred and seventy-six instruction days shall comprise the minimum school year. It follows that a school contract encompassing 180 days provides for employment for a full school year as defined by statute. A non-teaching employee working under such a contract is in the full sense a regular non-teaching school employee as that term is used in Section 3319.087, supra, and is entitled to the allowance of the paid holidays provided in that section. Section 3319.087, supra, must be distinguished from the purposes of Section 3319.084, Revised Code, wherein a two weeks' vacation leave with pay is provided for full-time non-teaching school employees. In such case, the employee must be in service for not less than eleven months in each calendar year.

It is my opinion, therefore, and you are so advised that a non-certified school employee employed under a contract to work 180 days as an elementary school secretary or as a teacher's aid is entitled to the paid holidays provided in Section 3319.087, Revised Code.