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EDUCATION, BOARD OF—REQUIRED TO PAY TEACHERS MINIMUM SALARY PRESCRIBED BY SECTION 4848-4a G. C.— UNDER SECTION 4848-4b G. C. NO SCHOOL DISTRICT WHICH FAILS OR REFUSES TO PAY MINIMUM SALARY TO TEACHERS SHALL PARTICIPATE IN SCHOOL FOUNDATION FUNDS—SECTIONS 4848-1, 4848-3 G.C.

SYLLABUS:

Every board of education is required by Section 4848-4a, General Code, to pay its teachers the minimum salary prescribed by that section, and under the provisions of Section 4848-4b, General Code, no school district which fails or refuses to pay such minimum salary to its teachers, shall be entitled to participate in the school foundation funds authorized to be paid pursuant to Sections 4848-1 and 4848-3, of the General Code.

Columbus, Ohio, June 9, 1952

Hon. James R. Goslee, Prosecuting Attorney  
Logan County, Bellefontaine, Ohio

Dear Sir:

I have your request for my opinion, reading as follows:

“A board of education of one of the school districts of this county employs a teacher who by virtue of General Code Section 4848-4a, is entitled to a minimum salary of \$3,200.00, she having a master's degree and more than five years of service in public school systems. This teacher is not eligible for a continuing service contract, as provided by Section 4842-8, because she has not been employed sufficiently long by this board of education to qualify. The board does not feel that it can afford to pay the minimum salary as fixed by statute and will not employ her again after the end of the current school year if compelled to pay her that amount. Both the board of education and the teacher involved are agreeable to entering into a contract whereby the teacher would receive an annual salary less than that fixed by the minimum salary schedule.

“The board of education consulted with me some weeks ago requesting my opinion as to the advisability of entering into such contract. I called the board's attention to General Code Section 4848-4b providing that the superintendent of public instruction shall be without authority to pay money under the terms of section 4848-1 and 4848-3 of the General Code to any district

which fails or refuses to pay the teachers in its employ the amounts required by the provisions of Section 4848-4a, and further providing that no such school district shall be entitled to participate in the distribution of funds authorized by Section 4848-1 and 4848-3 and advised them against entering into any contract which violated the statute fixing the minimum salary scale for teachers. The board does not wish to jeopardize its rights to state aid. \* \* \*

“May a teacher voluntarily waive his rights under the minimum salary statute and accept a contract with a board of education calling for a salary below the minimum as fixed by law without jeopardizing the board’s rights to state aid as provided by General Code Sections 4848-1 and 4848-3?”

Sections 4848-4a and 4848-4b, General Code, were enacted by the 99th General Assembly, and became effective June 29, 1951. These sections are supplementary to and form a part of the school foundation program law contained in Sections 4848-1 to 4848-10, inclusive, of the General Code.

Section 4848-4a, General Code, so far as pertinent, reads as follows:

“There is hereby established a minimum salary schedule for teaching personnel employed in the public schools of this state as follows:

“\* \* \* (5) Teachers with a master’s degree from a recognized college shall receive a beginning annual salary of \$2,600 and an annual increase of \$120 for each of the first five years of service.

“‘Beginning annual salary’ shall mean the annual salary received by the teacher during the first year of employment as a teacher.

“In computing years of service, credit shall be given for each school year such teacher was in service as a regular teacher in any public school system; \* \* \*”

Section 4848-4b, General Code, reads as follows:

“The superintendent of public instruction *shall be without authority* to pay money under the terms of sections 4848-1 and 4848-3 of the General Code, to any district which fails or refuses to pay the teachers in its employ the respective amounts required by the provisions of the state beginning salary schedule as provided in section 4848-4a of the General Code, and *no school dis-*

*strict which fails or refuses to pay such amounts shall be entitled to participate in the distribution of funds authorized by sections 4848-1 and 4848-3 of the General Code.” (Emphasis added.)*

These provisions of the law are quite clear and peremptory. They impose upon boards of education a definite minimum salary schedule for teachers based on training and experience. They leave no discretion in boards of education to compromise or diminish any of the requirements as to minimum salaries to be paid to teachers, and they impose a definite penalty on any board which fails to meet their requirements. Nor do they give the superintendent of public instruction, who is charged with the administration of the foundation program fund, any discretion to waive compliance with the law.

Section 4848-4b supra, expressly denies to a board which “fails or refuses” to pay the minimum salaries fixed by statute the right to participate in the foundation funds provided by Sections 4848-1 and 4848-3, General Code, and expressly forbids the superintendent of public instruction paying such funds to any district which so fails or refuses.

In the specific case presented by your letter, there may seem to be good reason to relax the severity of the law. Its literal enforcement may work a hardship on the teacher and a distinct loss to the school. It may be argued that the teacher could lawfully waive the benefit of the salary schedule. The case of *Ford v. Board of Education*, 141 Ohio St., page 124, is cited as authority for that proposition. The court in that case had before it a situation where a teacher who was entitled to a continuing contract agreed to waive that right and accept a limited contract, and gave the board of education her resignation, to take effect at the end of the school year, which resignation was duly accepted. Having reconsidered, she undertook to withdraw her resignation and brought an action in mandamus to compel the board to give her a continuing contract. The court refused the writ, saying, in the course of the opinion:

“The principle of law is well established that one is free to waive the rights and privileges which are due him, whether secured by contract, conferred by statute, or guaranteed by the Constitution, so long as there is no violation of public policy. 40 Ohio Jurisprudence, 1235, Section 3.”

In that case the waiver by the teacher could not possibly concern anyone but the teacher, and there was no statute which restricted the

right of the board to accept her resignation. Therefore, there could be no possible question of violation of public policy. What constitutes public policy appears to have been a matter that is difficult for the courts to define with certainty. However, it is said in 12 American Jurisprudence, at page 664:

“For example, it has been said that agreements are against public policy when they tend to injustice or oppression, restraint of liberty and natural or legal right, or to the obstruction of justice, or to the violation of a statute.”

The same author, at page 668, uses this language:

“Where there are constitutional or statutory provisions, they govern as to what is the public policy. Where the lawmaking power speaks on a particular subject over which it has constitutional power to legislate, *public policy in such a case is what the statute enacts.*” (Emphasis added.)

Applied to the situation presented in your letter, it would seem that this definition would clearly prohibit the board of education from entering into the contract proposed, even though as against the teacher herself, her agreement to waive her right might be binding on her. However, it would seem certain that nothing that she could do by way of waiving her rights could possibly have the effect of enlarging the authority of the board of education or of exempting it from a penalty which the law prescribes.

A case which bears some resemblance to the present situation is Board of Education v. Burton, 11 Ohio C. C., N. S., page 103, where it was held:

“In a contract between the B. of E. and C.D.B., under which C.D.B., was to teach an eight months term of school at \$45 per month, was included a stipulation that such teacher would not exact, demand or accept pay for attending the teachers institute. Held: Such stipulation is against public policy and void, and in an action for the purpose the teacher can recover the sum fixed by statute for such attendance.”

This case arose under a statute which provided that teachers should have the right to dismiss their schools for one week, for the purpose of attending a county institute, and further provided that “boards of education of all school districts are required to pay the teachers of their re-

spective districts their regular salary for the week they attend the institute". Referring to this statutory provision the court said at page 105, of the opinion :

"It was doubtless the policy of the Legislature to encourage teachers to avail themselves of the opportunities afforded by the institutes and to better fit themselves to instruct the youths committed to their charge. This is a policy commendable in itself, and likely to be a public benefit, and any act or agreement in contravention of it should receive little favor at the hands of the courts."

The case presented by your letter appears to me to be an even stronger example of the controlling effect of public policy as against the waiver of an individual right, since the statute very plainly compels a board of education to pay the salary schedule provided, and denies it the right to receive any of the school foundation fund if it fails to do so.

Section 4848-1, General Code, provides for a subsidy given by the State to every school district, based upon a stated amount for each pupil in average daily membership in the school. Section 4848-3, General Code, provides for an additional allowance to those schools which meet the requirement therein contained, as to the amount of tax levy for school purposes.

In the light of the foregoing, the conclusion appears to be irresistible that the waiver by a teacher of her right to receive the minimum salary prescribed by the statute could not be accepted and acted upon by the board of education without jeopardizing its rights to state aid as provided by Section 4848-1 and 4848-3, General Code.

While it may be, as already suggested, that in an individual case such as you present, no harm could come from the action proposed, yet it seems obvious that a board of education might abuse such discretion if allowed, to the extent of practically nullifying the minimum salary law referred to.

Specifically answering your question, it is my opinion and you are advised :

Every board of education is required by Section 4848-4a, General Code, to pay its teachers the minimum salary, prescribed by that section,

and under the provisions of Section 4848-4b, General Code, no school district which fails or refuses to pay such minimum salary to its teachers, shall be entitled to participate in the school foundation funds authorized to be paid pursuant to Section 4848-1 and 4848-3 of the General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General