

OPINION NO. 72-079**Syllabus:**

1. A board of education may grant more vacation leave than the minimum required by Section 3319.084, Revised Code.

2. A board of education's reduction of vacation leave to the minimum required by Section 3319.084, Revised Code, if part of a uniform plan affecting all nonteaching employees of the school district, is not prohibited by Section 3319.082, Revised Code.

To: Gene Henry, Pros. Atty., Geauga County, Chardon, Ohio
By: William J. Brown, Attorney General, August 30, 1972

I have before me your request for my opinion, which asks the following questions:

"1. May a school board grant more vacation leave than the minimum prescribed by Section 3319.084, Revised Code?

"2. If a school board is not permitted to grant additional vacation leave over the minimum provided by Section 3319.084, and has been doing so for several years, would the cessation of said practice amount to the violation of the statutory prohibition against reduction of non-certified, non-teaching employees' salaries as contained in Section 3319.082?"

Section 3319.084, Revised Code, which concerns vacation leave

for nonteaching employees of boards of education, reads in part as follows:

"In all school districts each full-time nonteaching school employee including full-time hourly-rate and per diem employees, after service of one calendar year with a board of education, shall be entitled, during each year thereafter, while continuing in the employ of such board of education, to vacation leave with full pay for a minimum of two calendar weeks, excluding legal holidays. Employees continuing in the employ of such board of education for fifteen or more years of service shall be entitled to vacation leave with full pay for a minimum of three calendar weeks, excluding legal holidays."

While this Section does not expressly state that boards of education may grant more than the amount of vacation time specified, the word "minimum" clearly implies that they may. It is well settled in Ohio that that which is clearly implied by a statute is as much a part of it as its express terms. See 50 O. Jur. 2d 164, Statutes, Section 186, and cases cited therein. See also, Opinion No. 72-061, Opinions of the Attorney General for 1972.

No other Section contradicts this construction of Section 3319.084. Boards of education have discretion to fix the compensation of their nonteaching employees within certain limits. Section 3317.12, Revised Code, reads in part as follows:

"Any board of education participating in funds distributed under Chapter 3317. of the Revised Code shall annually adopt a salary schedule for nonteaching school employees based upon training, experience, and qualifications with initial salaries no less than the salaries in effect on October 13, 1967.* * *The compensation of all employees working for a particular school board shall be uniform for like positions except as compensation would be affected by salary increments based upon length of service."

Paid vacation is clearly a part of employees' compensation, and as such, is fixed by the salary schedule. It may be argued that Section 3317.12 refers to salary, as opposed to compensation. It is true that "salary" can have two meanings, a general one which is equivalent to "compensation", and a restrictive one of an annual or periodic payment for services. Gobrecht v. Cincinnati, 51 Ohio St. 68, 72 (1894). It is also true that where both the terms "salary" and "compensation" are used in the same passage, a contrast between them may be intended. The court so held in Gobrecht, supra, which construed Article II, Section 20, Ohio Constitution. But Section 3317.12 appears to use the two terms interchangeably. Indeed, a board of education could not assure uniformity of compensation if it could not regulate compensation. I conclude that boards of education have power to set compensation for their nonteaching employees, subject to specific statutory requirements. Consequently, they can grant paid vacation time greater than the minimum required by Section 3319.084, Revised Code.

In response to your second question, a reduction of vacation time to the minimum required by Section 3319.084, if applied uniformly to all nonteaching employees of a school district, would apparently not run afoul of the requirements of Section 3319.082, Revised Code, which reads as follows:

"In all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code do not apply, each board of education shall cause notice to be given annually not later than the first day of July to each non-teaching school employee, who holds a contract valid for the succeeding school year, as to the salary to be paid such school employee 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 non-teaching employees of the entire district. This section does not prevent increases of salary after the board's annual notice has been given."
(Emphasis added.)

See Opinion No. 70-041, Opinions of the Attorney General for 1970, and Opinion No. 69-002, Opinions of the Attorney General for 1969.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. A board of education may grant more vacation leave than the minimum required by Section 3319.084, Revised Code.

2. A board of education's reduction of vacation leave to the minimum required by Section 3319.084, Revised Code, if part of a uniform plan affecting all nonteaching employees of the school district, is not prohibited by Section 3319.082, Revised Code.