

OPINION NO. 72-112**Syllabus:**

A school bus driver, who is under contract for a full school year, is a regular nonteaching school employee under Section 3319.087, Revised Code, and is entitled to the paid holidays provided in that Section.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William J. Brown, Attorney General, November 30, 1972

I have before me your request for an opinion, which reads as follows:

"Would you please favor us with your opinion as

to the interpretation of Section 3319.087 of the Revised Code of the State of Ohio as it applies to both hourly rate and yearly salary basis bus drivers whose normal work week consists of only those days of the week which school is open for instructions to the school students."

Section 3319.087, Revised Code, to which you refer in your request, reads, in part, as follows:

"* * * [A]ll 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. * * *"
(Emphasis added.)

To be entitled to paid holidays under this Section, employees must be "regular non-teaching school employees." Since school bus drivers obviously qualify as nonteaching school employees, their rights under Section 3319.087 depend on an interpretation of the word "regular." My predecessor interpreted that Section in Opinion No. 70-006, Opinions of the Attorney General for 1970, the syllabus of which reads as follows:

"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."

The reasoning of that Opinion, which is pertinent to your question, reads, in part, as follows:

"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." (Emphasis added.)

It is clear that my predecessor held that a "regular" non-teaching school employee is one employed for not less than a full school year as defined by statute. It is true that Section 3313.48, Revised Code, has been amended since it was cited in Opinion No. 72-006, supra, and that it now provides that 182 instruction days shall comprise the minimum school year. But this does not change the fact that, under my predecessor's definition, a school bus driver under contract for a full school year would be a "regular" nonteaching school employee. Therefore I conclude that a school bus driver, who is under contract for a full school year, is a regular nonteaching school employee under Section 3319.087 and is entitled to the paid holidays provided by that Section.

An argument has been made that school bus drivers, being only part-time employees, do not qualify for holiday pay under Section 3319.087. However, while Sections 325.19 and 511.10, Revised Code, provide that only full-time county and township employees, respectively, are eligible for holiday pay, Sections 143.12 and 3319.087, Revised Code, which provide for holiday pay for state employees and nonteaching school employees, have no such requirement. It will be noted that Section 3319.087 provides that such nonteaching school employees may be paid only their regular salary for holidays, and only for those holidays which fall during the normal workweek of the employee. It is clear, therefore, that the General Assembly intended that a school bus driver, even though he works only part time, should receive holiday pay for those hours which he would have worked had the day been a normal workday.

In specific answer to your question it is my opinion, and you are so advised, that a school bus driver, who is under contract for a full school year, is a regular nonteaching school employee under Section 3319.087, Revised Code, and is entitled to the paid holidays provided in that Section.