

Note from the Attorney General's Office:

1944 Op. Att'y Gen. No. 44-7316 was overruled by 1962 Op. Att'y Gen. No. 1962-3124.

7316

SCHOOL DISTRICTS, CITY — SALARIES OF SUPERINTENDENTS — SALARIES OF COUNTY SUPERINTENDENTS OF SCHOOLS — SERVING UNDER EITHER CONTINUING OR TERM CONTRACTS — PURSUANT TO FORMER SECTION 7690-1 ET SEQ., G. C. — SALARIES MAY LAWFULLY BE INCREASED DURING TERM FOR WHICH THEY WERE APPOINTED — OPINION 5168, OPINIONS OF ATTORNEY GENERAL, 1942, PAGE 374 OVERRULED.

SYLLABUS:

The salaries of superintendents of city school districts, serving under either continuing or term contracts pursuant to the provisions of former section 7690-1, et seq., General Code, and those of county superintendents of schools serving in like manner may lawfully be increased during the term for which they were appointed. (Opinion No. 5168, Opinions of the Attorney General for 1942, page 374 overruled).

Columbus, Ohio December 28, 1944

Hon. Kenneth C. Ray, Director of Education
Columbus, Ohio

Dear Sir:

You inquire relative to the following questions:

“1. In September 1941, the superintendent of schools in a city school district was given a continuing contract by the board of education by which he had been employed for the preceding five years. The board of education then gave said superintendent a term contract designating him as superintendent of schools for a five-year period. The board of education has granted salary increases to all teachers in its employ. May the board of education lawfully increase the salary of the superintendent of schools?

2. In September 1941, the superintendent of schools in a city school district was given a continuing contract by the board of education by which he had been employed for the preceding five years. The salary stipulated in the continuing contract is the same as that in a five-year term contract which began August 1, 1940 and which will terminate July 31, 1945. The board of education has granted salary increases to all

teachers in its employ. May the board of education lawfully increase the salary of the superintendent of schools?

3. A county superintendent of schools was granted a two-year limited contract in February 1942, five months after the effective date of the continuing contract law (House Bill 121, enacted by the 94th General Assembly). Section 7690-1 of the General Code defines the term 'teacher' as including superintendents of schools and Section 7690-3 provides that 'nothing herein shall prevent increases of salary after the board's annual notice has been given'. The county board of education has granted increases to all employees other than the county superintendent of schools. May the county board of education lawfully increase the salary of the county superintendent prior to the expiration of the two-year limited contract?"

Section 7690-1, General Code, as it existed on September 1, 1941, and which is now codified as section 4842-7, General Code, read in part:

"Each board of education shall enter into contracts for the employment of all 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 7690-3 of this act."

It further provided that:

"The term 'teacher' as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification."

The exception contained in former section 7690-3, General Code, now section 4842-9, General Code, is not involved in the immediate problem.

In view of the language of the foregoing statute, which in express terms provides that the salary of a "teacher" may be increased but not decreased during the term for which the contract is made, and which brings within the definition of "teacher" a superintendent, it would follow that unless some constitutional inhibition exists, the board of education is legally authorized to increase the salary of a superintendent, under the facts stated in your inquiry.

The question of his appointment or meeting the statutory requirements as to his qualifying for such position are not involved and therefore will not be considered.

Coming now to consider your third question, your attention is invited to the pertinent part of section 7690-1, General Code, (present section 4842, General Code) which read at the time of the execution of the contract as follows:

“Contracts for the employment of teachers shall be of two types: limited contracts and continuing contracts. A limited contract for a superintendent shall be a contract for such term as authorized by section 7702 of the General Code, and for all other teachers, as hereinafter defined, for such term as authorized by section 7691 of the General Code.”

Since your inquiry is not directed to the questions of the proper type of contract or its validity or whether or not the superintendent has met the qualifications as established by the Tenure Act, the only question to be considered here is whether or not the superintendent's salary may be increased.

Clearly, under the above quoted language of section 7690-1, General Code (now section 4842-7, General Code) relative to salaries, the board is authorized to effect an increase of a superintendent's salary.

So far, an interpretation of the statutes has been considered. The question of whether or not there is any inhibition in the Constitution of Ohio against such increase will now be examined.

Section 20 of Article II of the Ohio Constitution, prescribes:

“The General Assembly, in cases not provided for in the constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

The Supreme Court, in the case of *State, ex rel. Attorney General v. Vickers*, 58 O. S. 730, No. 5813, held as follows:

“Judgement for defendant on the ground that a superintendent of schools is not an officer.”

The first syllabus of the case of John I. Ward v. The Board of Education of the city of Toledo, 21 O. C. 699, states:

“A superintendent of public schools appointed by a board of education, under Rev. Stat. sec. 3982, is an employee of the board and not a public officer within the purview of the constitution forbidding a change in the salary of public officers during their term of office.”

On May 22, 1942, I rendered an opinion to the Industrial Commission (Opinions of the Attorney General for 1942, page 374) wherein it was held:

“A county superintendent of schools (appointed under the laws of Ohio) is an official and not an employee, workman, or operative within the terms of Section 1465-61, General Code, and is therefore excluded from the provisions of the Workmen's Compensation Law.”

Since the rendition of that opinion, the case of Anderson v. Industrial Commission, 74 O. App. 77, was decided on the 7th day of October, 1943 by the Court of Appeals of Henry County. In said case it was held as disclosed by the syllabus:

“A superintendent of schools of a county school district is not a public officer but an ‘employee’ of the board of education within the meaning of section 1465-61, General Code (114 Ohio Laws, 28) defining that term as used in the Workmen's Compensation Act.”

In light of this decision I now find myself constrained to the view that my former opinion should be overruled.

It would therefore appear that all of the questions contained in your letter should be answered in the affirmative.

Consequently, in specific answer to your question you are advised that in my opinion the salaries of superintendents of city school districts, serving under either continuing or term contracts pursuant to the provisions of former section 7690-1, et seq., General Code, and those of county superintendents of schools serving in like manner may lawfully be increased during the term for which they were appointed.

Respectfully,

THOMAS J. HERBERT
Attorney General