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TEACHER—SUBSTITUTE—EMPLOYED BY BOARD OF EDUCATION — AGREED COMPENSATION PER DIEM — BOARD MAY IN ITS DISCRETION, ALLOW AND PAY TEACHER FOR DAYS WITHIN PERIOD OF EMPLOYMENT WHEN SCHOOL WAS CLOSED—IMPASSABLE ROADS.

SYLLABUS:

Where a substitute teacher has been employed by a board of education, at an agreed compensation per diem, such board may in its discretion, allow and pay such teacher for days within his period of employment when the school was closed due to impassable roads.

Columbus, Ohio, March 6, 1952

Hon. Harry C. Johnson, Prosecuting Attorney  
Guernsey County, Cambridge, Ohio

Dear Sir:

I have before me your communication, requesting my opinion, and reading as follows:

“I have been asked by the Board of Education of M. Township of this county for your opinion on the following situation:

“The M. Consolidated Local School District employed one M. J. as a substitute teacher at \$11.00 per day from approximately the middle of November, 1951, to the middle of January, 1952. During this time, there were four days that no school was had for the reason that the roads were deemed impassable because of snow, by the Board of Education. M. J. was notified not to appear and she did not attend school on these days.

“Please give us your opinion whether or not it is legal for the Board to pay her for these four days.”

The statutes directly relating to the employment of teachers, are found in Section 4842-7 et seq., of the General Code. Section 4842-7 reads in part, as follows:

“The board of education of each city, exempted village and local school district 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 4842-9 of the General Code. \* \* \* Teachers must be paid for all time lost when the schools in which they are employed are closed owing to *an epidemic or other calamity*, and for time lost due to illness or otherwise for not less than five days annually as authorized by regulations which each board of education shall adopt. \* \* \*

(Emphasis added.)

Section 4842-7a, General Code, makes provision for the employment of substitute teachers. That section reads as follows:

“Teachers may be employed as substitute teachers for terms not to exceed one year for assignment as services are needed to take the place of regular teachers absent on account of illness or on leave of absence or to fill temporarily positions created by emergencies; such assignment to be subject to termination when such services no longer are needed.

“A teacher employed as a substitute with an assignment to one specific teaching position shall after sixty days of service be granted sick leave, visiting days and other local privileges granted to regular teachers including a salary not less than the minimum salary on the current adopted salary schedule.

“A teacher employed as a substitute for one hundred twenty days or more during a school year and re-employed for or assigned to a specific teaching position for the succeeding year shall receive a contract as a regular teacher if he meets the local educational requirements for the employment of regular teachers.

“Teachers employed as substitutes on a casual or day-to-day basis shall not be entitled to the notice of non-re-employment prescribed in section 4842-8 of the General Code, but boards of education may in their discretion grant such teachers sick leave and other local privileges and cumulate such service in determining seniority.”

It will be here noted that substitute teachers may be employed under two distinct classifications: (1) for a term not to exceed one year for assignment as services are needed, to take the place of regular teachers absent on account of leave of absence, such assignment to be subject to termination when such services are no longer needed, and (2) employment as substitutes on a casual or day-to-day basis.

A teacher employed under the first classification is manifestly to be entitled to some of the advantages and indulgences that are granted to a regular teacher. This is shown in the provision that a teacher employed as a substitute with an assignment to one specific teaching position, shall

after sixty days of service be granted sick leave, visiting days and other local privileges granted to regular teachers. There is no such favor granted to teachers employed on a day-to-day basis, except the provision that boards of education *may in their discretion* grant such teachers sick leave and other "local privileges" and cumulate such service in determining seniority. It will be observed that a substitute teacher of the first class above mentioned can only become entitled, as a matter of law, to sick leave, visiting days and other local privileges granted to regular teachers, after he has served for sixty days.

The meaning of the words, "other local privileges" is far from clear. The use of these words following "sick leave" and "visiting days" leads to the assumption that sick leave and visiting days are local privileges. On the principle of "ejusdem generis" it would seem that "other local privileges" must be of the same general character.

Coming back to Section 4842-7, *supra*, relating to contracts of employment with regular teachers, we note that such teachers are to be paid for time lost when the schools are closed "owing to an epidemic or other calamity" and are also to be paid for "time lost due to illness or otherwise for not less than five days annually *as authorized by regulations which each board shall adopt.*" The absence of any provision for the making of a rule regarding the payment of regular teachers when schools are closed owing to an epidemic or other calamity is probably due to the fact that the statute itself definitely provides for pay to regular teachers when they are prevented by these circumstances from teaching.

It may be proper to inquire whether a snow storm blocking the roads to a school house is a "calamity." This word has sometimes been construed by the courts. In a Texas case the court said that it means "a somewhat continuous state, produced by natural causes, such as fire, flood, tempests or disease." *Jones v. Williams (Tex.) 45 S.W., 130.*

No one could doubt that if an earthquake or great flood prevented access to a school house, that would be regarded as a calamity, within the meaning of the statute in question. It appears to me that if the same result should be produced by a great snow fall, it would be equally a "calamity," though perhaps of shorter continuation and productive of less general disaster.

It should be remembered, however, that the provisions of the law last referred to relate only to the employment of *regular teachers*. Section

4842-7a, supra, gives to a teacher who is employed "as a substitute with assignment to one teaching position" the right after sixty days service, to "sick leave, visiting days and other local privileges granted to regular teachers." The same section gives the boards of education the right in their discretion to allow teachers employed as substitutes on a casual or day to day basis, substantially the same indulgences, to wit, "sick leave and other local privileges."

From a survey of all of these statutes, I think we must conclude that the law intended to give boards of education a large measure of discretion in dealing with teachers, whether regularly employed or as substitutes. The express provision for pay of regular teachers, for time lost on account of an epidemic or other calamity, is a legislative declaration of policy and the authority given the board to grant to substitute teachers, even those employed on a day to day basis, sick leave and other local privileges would appear to indicate that the legislature intended to confer on the board a large measure of discretion in dealing with substitute teachers.

Accordingly, it is my opinion that where a substitute teacher has been employed by a board of education, at an agreed compensation per diem, such board may in its discretion, allow and pay such teacher for days within his period of employment when the school was closed due to impassable roads.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General