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TEACHERS' CONTRACT—SALARY SCHEDULE—MEASURE TO USE TO DETERMINE IF SCHOOL DISTRICT IS UNDER EIGHT HUNDRED PUPILS—HIGHEST ENROLLMENT OF DISTRICT AT ANY TIME DURING SCHOOL YEAR PRECEDING YEAR FOR WHICH CONTRACTS WITH TEACHERS ARE TO BE MADE—SECTION 4842-8 G. C.

SYLLABUS:

In determining whether a school district is one of under eight hundred pupils as mentioned in Section 4842-8, General Code, the measure to be used for such determination is the highest enrollment of such district at any time during the school year preceding the year for which contracts with teachers are to be made.

Columbus, Ohio, July 11, 1951

Hon. H. K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

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

“Attorney General’s Opinion No. 754 in 1949 is as follows:

‘The measure to be used for determining whether or not a school district is under eight hundred pupils, as the expression is used in G. C. 4842-8, should be school enrollment for the current year wherein contracts for teachers are made for the ensuing year.’

“In the school year 1945 and 1946, Chardon Community School had the following enrollment:

"1. Total boy and girl enrollment, 816. Of those 32 were re-enrollments, making a net enrollment of 784.

"2. Pupils actually enrolled in each grade at the end of the school year were 762.

"3. Pupils actually enrolled at the beginning of the school year were 763.

"4. The average daily attendance was 50.7 kindergarten, 429.2 other elementary, 227.3 on regular 4 year high school, totaling 707.2.

"The Board requests your opinion as to what figure to use to determine whether or not the said school district is over or under 800 pupils. In other words, using these figures, what in your opinion was the 'school enrollment' for that year?"

Section 4842-8, General Code, relates to contracts between board of education and teachers. This section, after providing for continuing contracts under certain circumstances, and also for limited contracts in certain cases, contains the following language:

"Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June, and a contract for the succeeding school year shall be executed accordingly. Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:

"a. Beginning teachers, who have not previously been employed as a teacher in any school, shall be hired for one year.

"b. New teachers, who have had at least one year's experience as teachers in other schools, shall be employed for a period of time commensurate with their past experience at the discretion of the hiring board of education, provided that no such contract shall be for more than five years.

"c. Upon re-employment after the termination of the first contract, the new contract shall be for not less than two years nor more than five years provided that the teacher's educational qualifications have been fulfilled and the teacher's work has been satisfactory.

“d. Upon re-employment after the termination of the second contract, the teacher’s contract shall be for five years and subsequent renewal thereof shall be for five-year periods, or the board of education may at any time grant a continuing contract.”

In an opinion No. 4204, found in 1941 Opinions of the Attorney General, page 749, the provisions of Section 7690-2, General Code, which were practically identical with the portion of Section 4842-8 above quoted, were under consideration. It was held :

“The measure to be used for determining whether or not a school district is under eight hundred pupils, as the expression is used in the proviso or exception relating to contract systems in districts of under eight hundred pupils as contained in Section 7690-2, General Code, should be school enrollment for the current year wherein contracts for teachers are made for the ensuing year.”

The then Attorney General recognized that the proviso above quoted, relative to school districts of under eight hundred pupils is far from clear. It was stated in the opinion :

“The legislative intent, which of course, controls in the interpretation of statutory enactments, as to what is meant by ‘school districts of under eight hundred pupils’ as the expression is used in the above proviso or exception is somewhat obscure, to say the least. There is nothing in the statute, itself, to indicate in any way what is determinative of whether or not a district is under eight hundred pupils, nor are there any related statutes that are at all helpful as there exists nowhere in the statutory law of Ohio any classification of school districts on the basis of number of pupils unless the provision with respect to the distribution of the state public school fund on the basis of average daily attendance may be regarded as a classification of school districts on the basis of number of pupils.”

After considering and rejecting *school enumeration* in a district and also *average daily attendance* as standards for determining whether a school district fell within the class under consideration, the conclusion was arrived at that *enrollment* was the only proper measure to be applied. The opinion on this subject concluded with this statement :

“This leaves ‘enrollment’ which I believe is the proper measure to be applied to determine whether or not a school district is under eight hundred pupils. Of course, there is no way of determining enrollment for an ensuing school year for which teachers

are to be employed. The current enrollment for the year within which the teachers are employed for the ensuing school year should control.”

The 1949 opinion to which you refer followed the opinion from which I have just quoted very closely, and arrived at the same conclusion, to wit, that the enrollment for the current year wherein contracts for teachers are made should be the basis of determination. Both of these opinions leave us in the dark as to what is meant by “enrollment.” So far as I can discover, the statutes relating to the organization of schools and school districts do not define the word, although it is a matter of common knowledge that pupils who enter school are enrolled.

It is manifest that the number of pupils enrolled in a given school district is not a constant figure. Pupils may enroll at the beginning of the year and for some reason fail to attend, or drop out. New pupils may from time to time during the year come in. There may be times when the enrollment would be less than eight hundred pupils at the opening of the year, and the figure might rise on some particular date to eight hundred or more, and thereafter fall below that figure.

It seems obvious to me that the purpose of the legislature in providing a somewhat different procedure for employment of teachers in the larger and small districts is based on the theory that the larger the school the more responsibility and burden is thrown upon the teacher, and that the smaller school might properly be entrusted to teachers who had somewhat less experience.

In order to make this adjustment fairly, it appears to me that we should assume that in a school where eight hundred or more pupils are enrolled *at one time* during the current year, there will be at least as many enrolled and possibly in attendance during the coming year.

The provisions of those sections of the General Code which relate to the school foundation system will, I believe, throw some light on the problem. According to Sections 4848-1 and 4848-4, the amount contributed by the state to the several school districts in a given school year, is based on what is called the “average daily membership,” for the preceding year. The meaning of this term is indicated by Section 4848-2, which outlines the process by which it is to be determined. That section provides, in part:

“* * * For the purpose of determining average daily member-

ship, the membership of any school shall not include any pupils except those who are in attendance at a public school in the school district in which the school is located and those who are attending the school in the capacity of tuition pupils as fixed by law. The record of membership for each school shall be maintained in such manner that no pupil shall be counted as in membership prior to the actual date of his entry in the school and also in such manner that where for any cause a pupil permanently withdraws from the school he shall not be counted as in membership from and after the date of such withdrawal. Furthermore, there shall not be included in the membership of any school any pupil who has graduated from the twelfth grade of a public high school or any pupil who is not a resident of the state of Ohio or any pupil who has attained the age of twenty-one years, except veterans of the armed services, whose attendance was interrupted before completing the recognized 12 year course of the public schools, by reason of induction or enlistment in the armed forces and who apply for re-enrollment in the public school system of his or her residence not later than four years after termination of war or his or her honorable discharge; provided that, if any such veteran elects to enroll in special courses organized for veterans for whom tuition is paid under the provisions of Federal laws, or otherwise, he shall not be included in such membership. For each school year, the aggregate days of membership for any school shall be determined by adding the total number of days of attendance for the days in session of all pupils lawfully in membership to the total number of days of absence for such pupils. The average daily membership figure shall then be determined by dividing the figure representing the aggregate days of membership by the number of days in session. For the purpose of this section, number of days in session is defined as the total number of days the school was actually open for instruction."

Manifestly this average daily membership, which is based largely on actual attendance, will be somewhat lower than the enrollment, which may be characterized as the potential attendance. Furthermore, the one is an average, while the other presupposes a possible peak load, and in my opinion is the only fair basis for determining the size of a given district.

I agree with the two opinions above referred to, that the school enrollment of the current year wherein contracts with teachers are made for the ensuing year, is the time when this factor must be determined.

In view of the above discussion, it is my opinion that in determining whether a school district is one of under eight hundred pupils as mentioned in Section 4842-8, General Code, the measure to be used for such determina-

tion is the highest enrollment of such district at any time during the school year preceding the year for which contracts with teachers are to be made.

Applying this rule to your specific question, it is my opinion that the thirty-two re-enrollments to which you referred can not be considered, and that the Chardon Community School had an enrollment of 784 for the year in question.

Respectfully,

C. WILLIAM O'NEILL
Attorney General