

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-206 was overruled by
1978 Op. Att'y Gen. No. 78-018.

OPINION 65-206**Syllabus:**

Members of the Board of Education of a local school district, currently serving, are entitled to receive per diem allowances provided in Section 3313.12, Revised Code, as effective November 5, 1965.

To: John F. Marchal, Darke County Pros. Atty., Greenville, Ohio
By: William B. Saxbe, Attorney General, November 23, 1965

Your request for my opinion is as follows:

"Am. Sub. HB #258 passed by the General Assembly during this year provides that the maximum compensation that may be paid to members of Boards of Education, other than County Boards, be raised from \$3.00 to \$20.00 per meeting and that there be an allowance for mileage at the rate of 10¢ per mile to and from meetings of the Board, not to exceed twelve (12) meetings in any one year. The effective date of this bill is November 5, 1965.

"Will members of the Board of Education of a local school district who are currently serving their terms be entitled to receive the additional compensation provided for by Am. Sub. HB #258 after November 5, 1965 or will the bill apply only to the members of Boards of Education who are elected and begin to serve their term after November 5, 1965."

Amended Substitute House Bill No. 258 altered Sections 3311.19 and 3313.12, Revised Code, relative to the compensation of members of a board of education. The pertinent portions of the respective code sections, with the additions by amendment underlined, are as follows:

Section 3311.19, Revised Code

"* * * * * * * * * * * * * * *"

"Each member of a joint vocational school district board of education shall be paid such compensation as the board may provide by resolution, provided that such compensation shall not exceed twenty dollars a meeting and mileage at the rate of ten cents a mile to and from meetings of the board not exceeding twelve meetings in any one year."

Section 3313.12, Revised Code

"Each member of the county board of education shall be paid * * * such compensation as the board may provide by resolution, provided that such compensation shall not exceed twenty dollars a day and mileage at the rate of twelve cents a mile one way to cover the actual and necessary expenses incurred during his attendance upon any meeting of the board not exceeding twelve meetings in any one year. Such expenses and the expenses of the county superintendent, itemized and verified, shall be paid from the county board of education fund upon vouchers signed by the president of the board.

"The board of any school district other than a county school district may provide by resolution for the compensation of its members, provided that such compensation shall be paid out of current operating funds derived from a local tax which is in excess of the tax levy required for participation in additional aid from the state public school fund and that such compensation shall not exceed * * * twenty dollars per member for regular meetings attended not exceeding twelve meetings in any one year."

A per diem allowance for each meeting day is the stipend provided for local school board members by the legislation. There is no salary provided for the school board members.

Changes in per diem allowances to public officers

during their terms of office were the subject of two earlier opinions of the Attorney General of Ohio. Those two opinions construed and interpreted Article II, Section 20, Ohio Constitution; which is as follows:

"The general assembly, in cases not provided for in this 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."

Both the opinions found that the increases were to be enjoyed by the incumbents.

In Opinion No. 978, Opinions of the Attorney General for 1951, page 825, the question presented was whether the currently serving members of the State Dental Board were entitled to an increased per diem allowance for the remainder of their terms of office. The Opinion held that the increased per diem allowances immediately inured to the benefit of those currently serving. The second syllabus is as follows:

"2. Under the provisions of Article II, Section 20 of the Constitution of Ohio, the Legislature may change the per diem compensation of any officer whose total compensation is based upon such per diem payment and who receives no 'salary' in the sense of an annual or periodical payment for services dependent upon the time and not on the amount of service rendered. (Opinion No. 387, Opinion of the Attorney General for 1945, page 473, distinguished.)"

The second opinion dealing with the subject of per diem increases was Opinion No. 1115, Opinions of the Attorney General for 1960, page 63. Said Opinion was in response to an inquiry as to whether currently serving members of the State Board of Registration for professional engineers and surveyors were entitled to receive an increase in per diem payments voted during their terms of service. Syllabus one of that Opinion is as follows:

"1. The provisions of Section 20 of Article II, Ohio Constitution, do not preclude a change in the compensation of an officer during his existing term where such compensation is based on per diem payments. (Opinion No. 978, Opinions of the Attorney General for 1951, page 825, approved and followed.)"

It is my opinion and you are advised that members of

the Board of Education of a local school district, currently serving, are entitled to receive per diem allowances provided in Section 3313.12, Revised Code, as effective November 5, 1965.