

2330.

APPROVAL, BONDS OF VILLAGE OF NEW BOSTON, SCIOTO COUNTY,
OHIO—\$92,000.00.

COLUMBUS, OHIO, September 12, 1930.

Retirement Board, State Teachers Retirement System, Columbus Ohio.

2331.

SALARY—EMPLOYEES OF BOARD OF EDUCATION—PRO-RATED OVER
TEN AND TWELVE-MONTH PERIOD BY RULE OF BOARD—
TWELVE-MONTH PLAN IS CHOSEN AND EMPLOYEE RESIGNS—
BASIS ON WHICH SAID EMPLOYEE MAY THEN BE PAID.

SYLLABUS:

Salaried employes of a board of education, which had in force a rule permitting those employes to choose whether or not their yearly salary should be spread over a twelve-month period or a ten-month period, who elect to be paid on the basis of a twelve-month year, may resign at any time during the year and lawfully be paid at that time the difference between what is then due them on the basis of a twelve-month year and what would be due them had they elected to be paid on the basis of a ten-month year.

COLUMBUS, OHIO, September 12, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Under the provisions of Section 7702 of the General Code, the board of education of a city school district employed a superintendent of schools for the period of five years, beginning on September 1st, at an annual salary of \$4,500.00. The superintendent received his salary on the regular teachers’ pay roll at the rate of \$187.50 on each semi-monthly pay roll. At the end of the school session, approximately June 1, 1927, the superintendent was paid the balance of the amount due up to September 1st; approximately, June 1, 1928, for the school year of 1928, he was paid in the same manner. He resigned as of January 15, 1929, having received \$187.50 on each teachers’ pay roll up to that time when he was paid \$720.39, the balance due him up to the date of his resignation, basing the amount upon the period in which the schools are in session rather than upon the year beginning September 1st.

Question: Was the superintendent entitled to be paid upon the basis of the number of months the schools were in session, or should he have been paid upon the basis of the year for which he was employed?

We are enclosing herewith a statement made by the clerk of the board of education of Chillicothe, showing the date, the number of the warrant, and the amount of each payment made to the superintendent during his entire employment, beginning in September, 1923, and continuing to January 15,

1929. Also a copy of the rule which the board established under date of August 19, 1920. Also a copy of the pay roll, showing that the superintendent was paid on the regular teachers' pay roll."

With your letter is enclosed a statement from the records of the board of education of the school district in question, showing the adoption of a rule to govern the payment of teachers' salaries by the board, which rule apparently has been followed by the board since its adoption. The statement reads:

"The superintendent reported that approximately a dozen teachers had asked that their salary for the regular ten months of school be distributed over the twelve months of the year, in twenty-four semi-monthly installments. He asked that authority be given by the board for such payment.

Mr. K. moved, that since some of the teachers wished to have their salary for the regular ten months of the school year, distributed over the regular twelve months of the calendar year, in semi-monthly installments, that arrangements be made for granting such wish.

Further, that in case the position of any one of such teachers be vacant during the school year, the Board shall pay to such teacher the part of his or her yearly salary as, up to the time of leave, has been put aside for the summer vacation salary. Mr. Hs. seconded the motion; on roll call Hn. yea, Hs. yea, V. yea, K. yea, four yeas—no nays."

There is also enclosed a sample payroll of the board, being a copy of the actual payroll for two weeks ending November 30, 1928. Other regular payrolls during the time the superintendent was employed by the board were similar I am informed, to the payroll enclosed.

From this enclosed payroll, it appears that all the teachers were employed on a yearly salary. A part of them were paid on the basis of a ten-month year, that is they were paid semi-monthly for ten months while school was in session, each payment being one-twentieth of their annual salary and no payments were made to them during the summer vacation period. Others, perhaps one-third of them, were paid on a twelve month-year basis. That is to say, the semi-monthly payments made to them during the part of the year while the school was in session amounted to one twenty-fourth of their annual salary and during the summer vacation period, when school was not in session, they were paid monthly, one-twelfth of their annual salary. I am advised the board permitted each teacher to choose by which of the methods he desired to be paid, and the board paid him accordingly.

The superintendent in question, was placed on the regular teachers' payroll and elected to be paid on the basis of a twelve-month year.

The board no doubt had ample authority to adopt the rule in question and to permit teachers to elect by which method their salaries should be paid. After adopting the rule and acting on it, contracts with teachers would be made in the light of the rule, and the rule as well as the method of its practical interpretation would be read into all such contracts whether it was specifically made a part of the contract or not, in the absence of any specific provision of the contract abrogating the rule as to that particular contract.

Contracts with teachers and other school employes should be construed as other contracts. The intention of the party in making any contract is the governing principle in its construction. It does not appear that any specific reference was made at the time the superintendent was employed to the manner of paying his salary. The only question is whether or not under all the circumstances, the rule in force at

that time with respect to the payment of teachers' salaries may be read into, and considered applicable to the payment of the superintendent's salary.

Strictly speaking of course, a superintendent is not a teacher. The rule in terms applies only to teachers. A similar rule might lawfully be adopted by a board of education specifically applying to the superintendent. It was not done in this case. He was placed, however, on the regular teachers' pay-roll and directed to elect by which method his salary should be paid and that procedure was followed for approximately four and one-half years, until he resigned and final payment was made to him without question, on the theory that the rule referred to above, was a part of his contract of hire.

The fact that the board approved this final pay-roll and authorized its payment without question is some evidence, at least, that the board considered the superintendent's contract to have been made in the light of the rule applied to teachers. I understand that the members of the board do not now question their right to lawfully make payments to the superintendent as was done.

Inasmuch as the intention of the parties in making the contract of employment with the superintendent in the first place, governs a proper construction of the contract, and both parties now contend that their intention at the time of making the contract was to place the superintendent in a class with the teachers, so far as paying the salary was concerned, and their attitude since that time has been consistent with such a possible intent, it will be impossible now for me to say that their intent when making the contract was otherwise than they now claim it to have been.

I am therefore of the opinion, in specific answer to your question, that the superintendent of schools in the district referred to might lawfully have been paid his salary upon the basis of a ten-month year or a twelve-month year as he might elect, and having elected to be paid upon the basis of a twelve-month year, he was entitled upon his resignation at any time during a school year, to be paid the accumulated surplus held in reserve for the payment of his summer vacation salary, in accordance with the rule of the board adopted for the payment of teachers' salaries on August 19, 1920.

I have not checked the exact amounts which were paid to the superintendent in question, and do not wish to be understood as vouching for the correct amounts of these several payments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2332.

SOLDIERS' RELIEF COMMISSIONS—MEETING AT COLUMBUS CALLED
BY GOVERNOR—COUNTY COMMISSIONERS MAY NOT REIMBURSE
MEMBERS FOR EXPENSES INCURRED THROUGH ATTENDANCE.

SYLLABUS:

County commissioners are not authorized by law to allow to the persons composing the several soldiers' relief commissions throughout the State their actual expenses incurred and a fair compensation for their services for attendance upon the meeting