

3650.

SCHOOLS—BOARD OF EDUCATION—NO AUTHORITY TO PERMIT
TEACHERS LEAVE OF ABSENCE FOR SEMESTER UPON HALF
SALARY.

SYLLABUS:

A board of education of a city school district has no authority to establish a rule permitting teachers leave of absence for a semester upon half salary where during such period said teachers render no services whatsoever.

COLUMBUS, OHIO, September 23, 1926.

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

GENTLEMEN:—This will acknowledge receipt of yours of recent date in which you submit in substance the following inquiry:

Has a city school district legal authority to establish a rule permitting teachers leave of absence for a semester for the purposes indicated in said rule, and upon half pay?

The pertinent parts of the rule as passed by the board of education are as follows:

“A leave of absence with half pay for one semester may be granted to teachers by the superintendent subject to the approval of the Board of Education under the following conditions:

(1) A teacher must have taught in the Cleveland schools for at least seven years and shall not have had more than 33 years teaching experience.

(2) Pertains to the filing of an application.

(3) Only one per cent of the teaching force may be on semester leave at any one time and so far as possible this one percent shall be pro-rated between senior high, junior high and elementary teachers on a basis of the number of teachers in each division. Should the number requesting such leave exceed one per cent, the selection of the required number shall be left to the superintendent of schools, the assistant superintendent in charge of senior high schools, the assistant superintendent in charge of junior high schools, the assistant superintendent in charge of elementary schools, and the president of the Board of Education.

(4) Leave may be granted for study in approved courses to be taken in approved institutions of higher learning.

(5) Leave may be granted for travel in foreign countries, or for restoration to health on the recommendation of a physician acceptable to the Superintendent of Schools and the Board of Education.”

Examination of the above rule clearly reveals that under certain conditions therein outlined, a teacher may receive half salary during a full semester without rendering any service whatsoever.

It is a general rule of law that money cannot be expended from the public treasury without proper authorization of statute; that is to say, a board of education in expending any of the public funds in its treasury should make such expenditures in compliance with some specific statute covering same, or wherein such expenditure is clearly implied.

"Boards of education are limited in the exercise of their power to such as are clearly and distinctly granted."

Clark vs. Cook, 103 O. S., 465.

"The authority of boards of education like that of municipal councils, is strictly limited. This board has only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising powers vested in them are resolved against them."

Board of Education vs. Best. 52 O. S., 152.

Examination of the school code of Ohio reveals the following principal "power and authority" sections:

Section 4749 G. C. reads as follows:

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

This section, among other things, grants authority to boards of education to enter into contracts and to exercise such other powers and privileges as are conferred by this title, and the laws relating to the public schools of this state, but does not in any way afford authority to do the things set forth in your inquiry.

Section 7620, G. C., reads as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provision necessary for the conveniences and prosperity of the schools within the subdistricts."

It will be noted in the above section that after specifically setting forth the powers of a board of education, the section further provides:

"And provide the necessary apparatus and make all other necessary provisions for the schools under its control. * * * It also shall * * * make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts."

It has been urged in numerous cases that the above provisions of section 7620 is sufficient to justify various and sundry expenditures by a board of education, but it is not believed that this section is sufficient justification for a board of education to expend the public moneys in the manner suggested in your inquiry.

Section 7690 G. C. provides in part-as follows:

"Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries."

The above section together with section 7620 supra, may be said to be the two principal sections of the Ohio school laws which give boards of education wide latitude in school affairs; but in considering section 7690 it can hardly be said that the "management and control" of the public schools of the district is sufficient authority to cover the proposition of granting a teacher half salary during the full semester without rendering any service whatsoever.

Attention is also directed to the provisions of section 7666 G. C., which reads as follows:

"Such board of education shall build, repair, add to and furnish the necessary schoolhouses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as may be deemed proper."

While the above quoted section includes the language "and make all other necessary provision relative to such schools as may be deemed proper", it is not believed that this is broad enough to include the proposition submitted in your inquiry.

Section 7690-1 G. C. provides as follows:

"Each board of education shall fix the salaries of all teachers which may be increased but not diminished during the term for which the appointment is made. Teachers must be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity."

The above section bestows upon boards of education power and authority to fix the salaries of all teachers; and further provides that such salaries may be increased but not diminished during the term for which the appointment is made. This section must be interpreted with the provisions of section 7690 quoted above, which authorizes the employment of teachers "to serve under proper rules and regulations" and clearly contemplates the employment of teachers for service in the schools, and certainly cannot be interpreted as authority for granting compensation during the full semester where the teacher renders no service whatsoever.

In none of the above sections does there appear authority, either express or implied, for an expenditure of the public funds in such a manner as indicated in your inquiry.

Attention is also directed to a former opinion of this department rendered by my predecessor, and found in Opinions of the Attorney General for 1917, volume 1, page 862, wherein it was held, among other things, that:

"A board of education has no right to grant teachers permission to attend an educational convention or conference, and cannot pay a substitute in his absence."

Therefore, I am of the opinion, and you are advised, that a board of education of a city school district is without legal authority to establish a rule permitting teachers leave of absence for a semester upon half salary where during such period said teachers render no service whatsoever.

Respectfully,
C. C. CRABBE,
Attorney-General.