

**Note from the Attorney General's Office:**

1975 Op. Att'y Gen. No. 75-048 was overruled in part by  
1981 Op. Att'y Gen. No. 81-011.

## OPINION NO. 75-048

## Syllabus:

Salary increases for teachers and for appropriate non-teaching school district employees may be effected for a brief period of time by increases pursuant to R.C. 3319.08 and R.C. 3319.081, followed by decreases pursuant to R.C. 3319.08 and 3319.081.

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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, July 7, 1975

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

"It has come to my attention that a number of school districts have sought to establish temporary salary increases for their teachers and contract employees. They would seek to accomplish this by rescission and novation of the compensation provisions of their employment contracts, granting a salary increase to be effective for a brief period of time, and finally providing a salary decrease at the end of such period. The end result is a temporary salary increase, serving as a bonus. In view of the foregoing, I respectfully ask your formal opinion on the following question:

"Must rescission and novation of a school teacher or school employee contract be supported by full and adequate consideration? If so, could such consideration be inferred from the fact situation outlined above, or instead must there be some intervening cause or factors to justify such rescission or novation?"

The questions you have posed first require consideration of whether school districts have the constitutional and statutory

power to increase and decrease salaries of teachers and contract employees already subject to an employment agreement.

In this respect it must be pointed out that, given the statutory authority to increase salaries, such authority is not properly exercisable in light of Article II, Section 29 of the Ohio Constitution, unless passed by two-thirds of the General Assembly. See State, ex rel. Gundelsperger v. Wright, 24 Ohio St. C.C.R. (n.s.) 400 (1915). Article II, Section 29 of the Ohio Constitution provides as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly."

With that limitation in mind it is next appropriate to consider the relevant statutory provisions. R.C. 3319.08 authorizes increases in teachers' salaries, providing in pertinent part:

"The board of education of each city, exempted village, local, and joint vocational school district shall enter into written contracts for the employment and reemployment of all teachers. The board of education of each city, exempted village, local, and joint vocational school district, which authorizes compensation in addition to the base salary stated in the teachers' salary schedule, for the performance of duties by a teacher which are in addition to the teacher's regular teaching duties, shall be limited contracts. Such written contracts and supplemental written contracts shall set forth the teacher's duties and shall specify the salaries and compensation to be paid for regular teaching duties and additional teaching duties, respectively, either or both of which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code." (Emphasis added.)

The above enactment was last considered by the 108th General Assembly and was passed as an emergency measure by a vote of 24 to 4 in the Senate and 93 to 1 in the House of Representatives. It is therefore not in conflict with Article II, Section 29, Ohio Constitution, in respect to extra compensation after a contract was entered into, having been passed by two-thirds of the members elected to each branch of the General Assembly.

R.C. 3319.081 authorizes increases in salary for certain contract employees, providing in pertinent part:

". . . .

"(B) After the termination of the two-year contract provided in division (A) of this section, if the contract of a nonteaching employee is renewed, the employee shall be continued in employment, and the salary provided

in the contract may be increased but not reduced, unless such reduction is a part of a uniform plan affecting the nonteaching employees of the entire district."

This provision was considered by the General Assembly as Senate Bill No. 70 which was passed by a vote of 30 to 0 by the Senate and 67 to 2 by the House. Accordingly, this section of the Revised Code, like R.C. 3319.08 is not in conflict with the constitutional prohibition against extra compensation because it too falls within the exception contained in Article II, Section 29 of the Ohio Constitution.

Decreases in salaries for teachers and contract employees are also provided for in R.C. 3319.08 and 3319.081 respectively. Pursuant to these provisions decreases for either teachers or contract employees are prohibited, unless they are part of a uniform plan affecting the teachers or contract employees in the entire school district. Your request makes it clear that any decreases to occur would in fact effect the teachers and/or the contract employees of the district as part of a uniform plan. Accordingly, they would not run afoul of any constitutional or statutory provision.

Having thus established that school districts do have the requisite power to change the compensation provisions of existing contracts, I now turn to consideration of whether those changes must be supported by what you characterize as "full and adequate consideration."

It must first be pointed out that the legislature has granted to school districts broad discretion in the area of employee compensation valuation pursuant to R.C. 3319.08 and 3319.081. Inasmuch as these statutory provisions do then charge school districts with the responsible exercise of discretion, the control of salary adjustments authorized by them is not based upon concepts of contract law but, rather, depends on whether there is an abuse of discretion. Accordingly, where a school district determines it necessary or advisable to increase or decrease employee salaries, it may do so pursuant to specific statutory authority, and that change in salary is in fact supported by the same consideration which supported the initial contract.

Were one to conclude that a school board may not make necessary and advisable salary adjustments without new or additional consideration, a school board would be forced to reduce employee duties in the case of uniform decreases in salaries, just as it would be required to increase duties in order to affect a raise. Such a conclusion is in direct conflict with the design of the salary adjustment language contained in R.C. 3319.08 and 3319.081. This can be demonstrated by reference to 1959 Op. Att'y Gen. No. 156, and the legislative action which followed.

In that opinion my predecessor addressed the question of whether nonteaching employees could be given an increase in the salary specified in the then current contract. Consideration of that question was made at a time when R.C. 3319.081 was silent as to salary adjustments. The conclusion reached was:

"If a board of education finds it necessary or advisable to increase the compensation of an employee with whom a contract has been made pursuant to Section 3319.081, supra, it would appear

that the only permissible process would be to terminate the existing contract by mutual agreement and enter into a new agreement."

R.C. 3319.081 was thereafter amended, and among the changes made was insertion of the existing language providing for salary increases and decreases. It therefore appears clear that the legislature intended to provide specific authority allowing school districts to adjust salaries upon their discretionary determination that adjustments are necessary or advisable.

My conclusions described above, that increases and decreases in salary are an exercisable power of school districts in order to effect a temporary increase, are completely consistent with the intent of the General Assembly in enacting Amended House Bill 81 (effective February 19, 1975). There the General Assembly appropriated \$91,282,330 as a School Foundation Basic Allowance, and Section 3 of that bill provides as follows:

"It is the intent of the General Assembly that for all school districts, including county and joint vocational school districts the monies herein appropriated shall be considered non-recurring and shall not be construed as applying toward the base data utilized in developing the school foundation formula for use during the 1975-77 biennium."

It is clear that the General Assembly intended that these monies be available to school districts for short-term increases in expenses and, while nothing in the bill reveals an intent to cause school districts to increase salaries, neither is there any prohibition against such use of the appropriated monies. Accordingly, the existing statutory power of school districts to increase and then decrease salaries to effect a temporary salary increase is properly exercisable.

It is therefore my opinion, and you are so advised, that salary increases for teachers and for appropriate nonteaching school district employees may be effected for a brief period of time by increases pursuant to R.C. 3319.08 and R.C. 3319.081, followed by decreases pursuant to R.C. 3319.08 and 3319.081.