

OPINION NO. 72-072**Syllabus:**

1. The superintendent of a city school district has sole power to assign or reassign principals to schools within the district, under Section 3319.01, Revised Code. (Opinion No. 2457, Opinions of the Attorney General for 1958, approved and followed.)

2. The board of education of a city school district does not have authority under Section 3313.20, Revised Code, to adopt rules and regulations governing the assignment or re-assignment of principals.

To: Lee C. Falke, Pros. Atty., Montgomery County, Dayton, Ohio
By: William J. Brown, Attorney General, August 23, 1972

I am in receipt of your request for my opinion, which may be stated as follows:

Does the superintendent of a city school district have the sole power to assign or reassign principals to schools within the district, and if so, does the board of education of a city school district have the authority to adopt rules and regulations governing such assignment or reassignment?

Section 3319.01, Revised Code, sets out the powers and duties of the superintendent of a city school district and reads, in part, as follows:

"Such superintendent shall be the executive officer for the board, direct and assign teachers and other employees of the schools under his supervision, except as provided in section 3319.04 of the Revised Code, assign the pupils of the schools under his supervision to the proper schools and grades, provided that the assignment of a pupil to a school outside of his district of residence is approved by the board of the district of

residence of such pupil, and perform such other duties as the board determines."
(Emphasis added.)

This Section provides that the superintendent of a city school district is the executive officer of the district and has the power to "direct and assign" teachers and other employees of the schools under his supervision. The exception as to Section 3319.04, Revised Code, relates to the optional appointment of a business manager, who is given control of all "noneducational employees." "Assign", as used in this Section, means to order or prescribe to a post or duty. Such meaning is readily apparent from the second usage of the word in Section 3319.01, which gives the superintendent the power to "assign" pupils to the proper schools and grades. Applying this definition to the assignment of employees in the same Section, the superintendent has the power to order or prescribe a certain post or duty for teachers and other employees of the schools under his supervision.

Since your first question involves the assignment or re-assignment of principals, it is necessary to determine whether Section 3319.01 applies to principals. In order for this Section to apply to principals, they must be included under either "teachers" or "other employees." There is some question as to whether principals are considered "teachers", because "teacher" has been defined to include principals only in certain instances. See Sections 3319.09 (A) and 3307.01, Revised Code. However, it is not necessary to consider that question here because principals certainly fall within "other employees" under the supervision of the superintendent under Section 3319.01, as do all other administrative personnel in the school district. One of my predecessors, in Opinion No. 2457, Opinions of the Attorney General for 1958, held that the superintendent of a school district has the sole authority under Section 3319.01 in the assignment of teachers. The first branch of the Syllabus of that Opinion reads as follows:

"Under the provision of Section 3319.01, Revised Code, the superintendent of a school district has the sole authority in the assignment of teachers, and a board of education is without authority in the matter of such assignment either by provision in the contract of employment or otherwise."

Since Section 3319.01 also applies to principals, I must conclude that the superintendent has the sole power under such Section to assign or reassign principals to schools within the district.

The argument has been made that the board of education of a city school district also has the power to assign or reassign principals under Section 3319.02, Revised Code, which reads, in part, as follows:

"The board of each city, exemoted village, and local school district shall appoint principals for all high schools and for such other schools as the board designates. * * *"
(Emphasis added.)

Such an interpretation hinges on the definition of the word "appoint" as used in this Section. A reading of Chapter 3319, Revised Code, shows that in many instances "appoint" is used

interchangeably with the word "employ." See Sections 3319.01, 3319.02, and 3319.07, Revised Code. The rules of statutory construction mandate that two statutes be construed so as not to conflict with each other if at all possible. See 50 O. Jur. 2d, Statutes, Section 230, and cases cited therein. If "appoint" were defined to mean "assign", this would create a conflict between Sections 3319.01 and 3319.02 as to whether the superintendent or the board of education has the power to assign principals. However, since the legislature is presumed not to intend to pass conflicting statutes, these Sections must be construed in pari materia. Thus the board of education of a city school district has the power under Section 3319.02 to "appoint" or "employ" as many principals as are necessary, and the superintendent of a city school district has the power under Section 3319.01 to "assign" the principals so employed to the individual schools. The superintendent is hired by the board of education to be its executive officer because of his professional and managerial skills and knowledge, works closely with his employees and has final responsibility for the efficient operation of the school system. It would be inconsistent with Section 3319.01 for the superintendent to be overruled in such matters by the board of education, a group not trained for the administration of school personnel.

Your second question asks whether the board of education of a city school district has the authority to adopt rules and regulations governing the assignment or reassignment of principals. Section 3313.20, Revised Code, provides that "the board of education shall make such rules and regulations as are necessary for its government and the government of its employees", and Section 3313.47, Revised Code, provides that "each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district." However, even though the board of education of a city school district has wide discretion in adopting rules and regulations, this power does not extend so far as to allow the board to regulate those areas specifically regulated elsewhere by the state legislature. Section 3319.01 sets out three definite powers of the superintendent, and then provides that he shall "perform such other duties as the board determines." As discussed above, the assignment of principals is one of the powers reserved to the superintendent by the legislature. Admittedly the board can specify "other duties" for the superintendent, but I conclude that any rules or regulations adopted by the board of education of a city school district governing the assignment or reassignment of principals would be invalid as contrary to Section 3319.01, which specifically places this responsibility on the superintendent.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The superintendent of a city school district has sole power to assign or reassign principals to schools within the district, under Section 3319.01, Revised Code. (Opinion No. 2457, Opinions of the Attorney General for 1958, approved and followed.)

2. The board of education of a city school district does not have authority under Section 3313.20, Revised Code, to adopt rules and regulations governing the assignment or reassignment of principals.