

OPINION NO. 76-078**Syllabus:**

The board of education of a local school district may pay a higher percentage of the health insurance premiums for its superintendent, assistant superintendent, and principals than it pays for other "teaching employees" under R.C. 3319.202.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William J. Brown, Attorney General, November 26, 1976

Your request for my opinion reads as follows:

"We have been requested by one of the local boards of education as to whether or not said Board, under provisions of Section 3313.202 of the Ohio Revised Code, would be permitted to pay a greater percentage of the Health Insurance premium for principals, assistant superintendents and superintendents than the percentage of the teachers' health insurance premium."

R.C. 3313.202, to which you refer, provides:

"The board of education of a school district may procure and pay all or part of the cost of group term life, hospitalization, surgical, or major medical insurance,

or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company or a hospital service association duly licensed by this state, covering the teaching or nonteaching employees of the school district, or a combination of both, or in the case of hospitalization, surgical, or major medical insurance, the dependent children and spouses of such employees; provided if such coverage affects only the teaching employees of the district such coverage shall be with the consent of a majority of such employees of the school district, or if such coverage affects only the non-teaching employees of the district such coverage shall be with the consent of a majority of such employees. If such coverage is proposed to cover all of the employees of a school district, both teaching and non-teaching employees, such coverage shall be with the consent of a majority of all the employees of a school district. A board of education shall continue to carry, on payroll records, all school employees whose sick leave accumulation has expired, or who are on a disability leave of absence or an approved leave of absence, for the purpose of group term life, hospitalization, surgical, or major medical insurance. A board of education may pay all or part of such coverage except when such employees are on an approved leave of absence, or on a disability leave of absence for that period exceeding two years. As used in this section 'teaching employees' means any person employed in the public schools of the state in a position for which he is required to have a certificate pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code. 'Non-teaching employees' as used in this section means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code."

(Emphasis added.)

For purposes of this section, superintendents, assistant superintendents, and principals are included within the definition of "teaching employees" since such positions are ones for which a certificate is required pursuant to R.C. 3319.22. With respect to your question, however, it should first be noted that R.C. 3319.202 in authorizing the payment of insurance premiums does not expressly prohibit the adoption of a schedule by which a higher percentage of the cost of insurance would be paid for certain employees than for other employees. To the contrary the language of that statute appears to leave this determination to the discretion of the board, so that the amount of insurance premium borne by the employer may vary with the position.

It is well settled that the payment of insurance premiums for public officers and employees is a form of compensation. State, ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253 (1968); State, ex rel. Boyd v. Tracey, 128 Ohio St. 242 (1934); 1976 Op. Att'y Gen. No. 76-058; 1975 Op. Att'y Gen. Nos. 75-061 and 75-014; and 1972 Op. Att'y Gen. No. 72-059. Furthermore, the characterization of insurance premium payments as compensation

has been for various purposes. In Op. No. 72-059, supra, I relied on the above cited Supreme Court cases to conclude that an in-term increase in payments of insurance costs was an increase in compensation prohibited by Article II, Section 20, Constitution of Ohio. Similarly in Op. No. 75-014, supra, I concluded that in the absence of express statutory authority to pay insurance premiums such authority could be inferred from a general grant of power to "fix compensation" for employees.

It is, therefore, necessary to also consider the statutes relating to the compensation of officers and employees of a board of education to determine whether there exists any provision, which would preclude the payment of a higher percentage of the cost of insurance for persons in the positions you describe than for other "teaching employees" under R.C. 3319.202.

The appointment of a superintendent of a local school district is provided for in R.C. 3319.01, which reads in pertinent part:

"No person shall be appointed to the office of local superintendent who is not possessed of a superintendent's certificate as defined in division (H) of section 3319.02 of the Revised Code, or of a local superintendent as defined in division (L) of section 3319.22 of the Revised Code, unless such person held or was qualified to hold the position of executive head of a local school district on September 16, 1957. At the time of making such appointment or designation of term, such board shall fix the compensation of the superintendent, which may be increased or decreased during such term, provided such decrease is a part of a uniform plan affecting salaries of all employees of the district, and shall execute a written contract of employment with such superintendent." (Emphasis added.)

Similarly R.C. 3319.02 provides as follows for the employment and compensation of assistant superintendents and principals in a local school district:

". . . In the case of assistant superintendents, principals, and assistant principals in local school districts employment shall be, and in the case of all other administrative personnel in local school districts may be, in accordance with nominations of the superintendent of schools of the county districts of which the local district is a part. Such employees shall be employed under written contracts of employment. Except by mutual agreement of the parties thereto, no employee shall be transferred during the life of his contract to a position of lesser responsibility. No contract may be terminated or suspended by a board of education except pursuant to section 3319.16 or 3319.17 of the Revised Code. The salaries and compensation prescribed by such contracts shall not be reduced by a board of education

unless such reduction is a part of a uniform plan affecting the entire district."
(Emphasis added.)

It is significant that while both of the foregoing sections provide that any reduction in compensation be part of a uniform plan for all employees of the school district, there is no requirement of uniformity in the establishment of levels and forms of compensation. To the contrary such determination appears clearly to have been committed by the General Assembly, pursuant to R.C. 3319.01 and R.C. 3319.02, to the discretion of the board of education. This view is consistent with R.C. 3319.202 which, as discussed above, poses no such restrictions on the payment of insurance premiums for employees once a majority of "teaching employees" has consented to have a program of insurance coverage instituted. See also R.C. 3313.20 and R.C. 3313.47, which have been construed generally to give boards of education broad discretion in providing for the operation of schools. See Dayton Teachers Assn. v. Dayton Bd. of Edn., 41 Ohio St. 2d 127, 131, (1975); Greco v. Roper, 145 Ohio St. 243, 249 (1945); 1974 Op. Att'y Gen. Nos. 74-063 and 74-095.

I must, therefore, conclude that a board of education does possess authority to determine the level of compensation to be paid to superintendents, assistant superintendents, and principals, including the payment of insurance premiums pursuant to R.C. 3319.202, and may in the exercise of that authority pay a higher percentage of insurance premiums for persons holding such positions than for other "teaching employees" under R.C. 3319.202.

In specific answer to your question it is, therefore, my opinion and you are advised that the board of education of a local school district may pay a higher percentage of the health insurance premiums for its superintendent, assistant superintendent, and principals than it pays for other "teaching employees" under R.C. 3319.202.