

1392.

STATE EDUCATIONAL EQUALIZATION FUND—TEACHER'S SALARY  
CANNOT BE REDUCED DURING TERM OF EMPLOYMENT—SEC-  
TIONS 7596-2 G. C. AND 7610-1 G. C. CONSTRUED.

*SYLLABUS:*

1. Sections 3806 and 3807, General Code of Ohio, are part of the chapter on taxation, appropriation and expenditure, under the title of Municipal Corporations, in the General Code of Ohio, and have no application to the board of education and, therefore, could not affect the validity of a teacher's contract with a board of education.

2. Section 7690-1, General Code, clearly prohibits the reduction of a teacher's salary during the term of his employment.

3. Under the provisions of section 7596-2, General Code, the State Director of Education is required, in the administration of the state educational equalization fund, to fix a tentative salary schedule, which schedule for districts participating in the state equalization fund shall be uniform and rigidly adhered to. The last sentence of the section provides that any district that exceeds the salary schedule from any public funds shall be disqualified for participation in the state educational equalization fund. Notwithstanding this provision, it is believed the mere acceptance by the teachers of a village school district of pay, in accordance with the salary schedule fixed by the Director of Education, will not invalidate their contracts. However, if the salary contracts of the teachers of a village school district call for a salary in excess of the schedule fixed by the Director of Education and are insisted upon by the teachers, this would disqualify the district for participation in the equalization fund. This situation might be overcome by an agreed abrogation of the teachers' contract and a new agreement for the year, in conformity to the schedule fixed by the director of education.

4. Contracts made with teachers in May, 1923, are subject to the provisions of sections 7596-1 and 7610-1, General Code, in so far as said sections would affect a teacher's contract. It is not believed section 7610-1 would in any wise abrogate or modify a teacher's contract.

Section 7596-1, General Code, provides in substance that in addition to the powers conferred by section 7610-1, the county board of education shall have power, under certain circumstances, to make an additional tax levy in a local school district. It is not believed this section would in anywise abrogate or modify a teacher's contract.

COLUMBUS, OHIO, April 22, 1924.

HON. ALBERT H. SCHARRE, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Yours of recent date received, in which you submit a statement and inquiry presented to you by A. A. Maysilles, of the Montgomery County Board of Education and which inquiry is, in substance, as follows:

"In order to share in the state educational equalization fund, the teachers of a school district will be required to accept the schedule of wages fixed by the state department of education, which means a reduction of wages to nearly all of the teachers."

Question:

1. In the making of teachers' contracts, does failure to comply with section 3806, General Code of Ohio, invalidate such contracts? Section 3807 should also be mentioned.

2. Will section 7690-1 interfere with such reduction of wages?

3. If the teachers of Brookville Village School District have valid contracts, will the acceptance of pay by the county board of education as per the schedule of the State Department of Education, invalidate their contracts with the local board of education? The reason for asking this question is the fear that, for some now unknown reason, the plan to take over the schools of the Brookville Village School District and operate them upon the salaries prescribed by the State Department of Education for participation in the State Equalization Fund will fail before the completion of the term, in which case the teachers fear that they will have given up their rights under their contracts with the local board and have no rights of any kind which they may enforce.

4. Are contracts made with teachers in May of 1923, or thereabouts, subject to the provisions of sections 7596-1 and 7610-1, General Code of Ohio, that is, are all teachers' contracts subject to the provisions of these sections when made and are the teachers having such contracts presumed to know of the existence of these sections and govern themselves accordingly?"

With reference to your first inquiry, you are advised that sections 3806 and 3807, General Code of Ohio, are part of the chapter on taxation, appropriation and expenditure, under the title of Municipal Corporations, in the General Code of Ohio, and have no application to the board of education and, therefore, could not affect the validity of a teacher's contract with a board of education.

Your attention is also directed to section 5661, General Code, which seems to specifically exempt teachers' contracts from the provisions of the Burns law, as set out in section 5660, General Code.

With reference to your second question, your attention is directed to section 7690-1, General Code, which reads 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."

This section clearly prohibits the reduction of a teacher's salary during the term of his employment.

Your third question involves section 7596-2 General Code, which reads as follows:

"The state director of education shall fix a tentative salary schedule, tentative contingent expense schedule, and tentative transportation expense schedule for districts which participate in the state equalization fund which schedules shall at no time be in excess of the corresponding average schedules in those village and rural districts within the state which do not participate in the state educational equalization fund. If it appears that the tentative schedules so fixed are so high that the appropriation for the state educational equalization fund for the current year will not meet all applications, then the director of education shall lower his schedules and shall order such other changes in the plans of the schools as will enable them to be operated the ensuing year within the limits of the appropriation for the equalization fund for that year."

"The salary schedule for districts participating in the equalization fund shall be uniform and shall be rigidly adhered to. Any district that exceeds

the salary schedule from any public funds shall be disqualified for participation in the state educational equalization fund.”

Under the provisions of this section the state director of education is required, in the administration of the state educational equalization fund, to fix a salary schedule, which schedule for districts participating in the state equalization fund shall be uniform and rigidly adhered to. The last sentence of the section provides that *any district that exceeds the salary schedule from any public funds shall be disqualified for participation* in the state educational equalization fund. Notwithstanding this provision, I am of the opinion that in the case you submit the mere acceptance by the teachers of the Brookville village school district of pay, in accordance with the salary schedule fixed by the Director of Education, will not invalidate their contracts. However, if the salary contracts of the teachers of the Brookville village school district call for salaries in excess of the schedule fixed by the Director of Education, as provided in section 7596-2 G. C., and are insisted upon by the teachers, this would disqualify the district for participation in the state educational equalization fund. This situation might be overcome by an agreed abrogation of the teachers' contracts and a new agreement for the year, in conformity with the schedule fixed by the Director of Education.

In answer to your fourth question as to whether or not contracts made with teachers in May, 1923, are subject to the provisions of sections 7596-1 and 7610-1 G. C., I am of the opinion such contracts would be subject to the provisions of said sections, in so far as said sections would affect a teacher's contract.

Section 7610-1 in substance requires that if a board of education in a district, under supervision of a county board of education, fails to carry on the schools of the district, the county board of education shall step in and perform such acts or duties necessary. It is not believed this section would in any wise abrogate or modify a teacher's contract.

Section 7596-1, General Code, reads as follows:

“In addition to the powers conferred in section 7510-1, the county board of education shall have the power, if necessary to maintain in operation the schools of any school district of the county school district, with the advice and consent of the director of education, to borrow money on the credit of that village or rural school district, with like powers in respect thereto to those conferred by section 5655 of the General Code, upon the village or rural board of education. In case the statements presented in accordance with section 7595-1 and the examinations directed by sections 7595-2 and 7595 prove that the board of education in question has failed to put to a vote the proposition to levy additional taxes above certain tax limitations in order that the levy may meet the requirements for the district to share in the state educational equalization fund, or that the district has voted upon such proposition and has failed to give it the necessary majority, the director of education upon ascertaining such action to be necessary to enable the district to receive the sum from the state educational equalization fund necessary to maintain the schools for eight months in the year shall direct the county board of education to levy the additional taxes on the property of the given village or rural school district necessary for such purpose and the county board of education shall be empowered to levy such additional taxes. The expression ‘maintain the schools’ shall mean to discharge the obligations incident thereto, provided no cost of transportation of high school pupils to schools outside of the district shall be included.”

This section in substance provides that in addition to the powers conferred by

section 7610-1, a county board of education shall have power, under certain circumstances, to make an additional tax levy in a local school district. It is not believed this section would in any wise abrogate or modify a teacher's contract.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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1393.

APPROVAL, BONDS OF BRIMFIELD TOWNSHIP RURAL SCHOOL DISTRICT, PORTAGE COUNTY, \$2,765.68, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, April 22, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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1394.

APPROVAL, BONDS OF PALMYRA TOWNSHIP RURAL SCHOOL DISTRICT, PORTAGE COUNTY, \$4,539.86, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, April 22, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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1395.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND JOSEPH H. SKELDON OF TOLEDO, OHIO, FOR CONSTRUCTION AND COMPLETION OF WATER SYSTEM FOR TOLEDO STATE HOSPITAL, AT COST OF \$17,965.00—SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, April 23, 1924.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Public Welfare, and Joseph L. Skeldon, of Toledo, Ohio. This contract covers the construction and completion of water system for the Toledo State Hospital and calls for an expenditure of \$17,965.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover