

"Where different provisions of an act are in irreconcilable conflict, that provision which is most in harmony with the fundamental purpose of the statute must prevail."

In specific answer to your inquiry, you are advised that under the provisions of Section 5541-8, General Code, as amended by the 89th General Assembly, in House Bill No. 7, the funds distributed thereunder, to townships, may be used for the purpose of maintaining, as well as constructing, widening and reconstructing the public roads and highways within such township, irrespective of whether said work is done by force account or by contract.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3300.

BOARD OF EDUCATION—UNAUTHORIZED TO CONTRACT WITH TEACHERS FOR DEFINITE SALARIES WITH PROVISION FOR REDUCTION ON HAPPENING OF CONTINGENCY—AUTHORIZED TO PAY SALARIES DUE IN PREVIOUS YEARS FROM CURRENT FUNDS.

*SYLLABUS:*

1. *A board of education is not authorized to employ teachers for the schools of its district and fix a definite salary for those teachers, with the proviso that those salaries will be reduced if the income from taxation is insufficient to meet the obligation.*

2. *A board of education may lawfully employ teachers for the ensuing school year on a monthly basis without specifying the number of months the schools of the district will be in session during the school year.*

3. *A board of education may lawfully pay from current revenues, any balances due for salaries to teachers in its schools whether such amounts were earned during the current fiscal year or during previous years.*

COLUMBUS, OHIO, June 5, 1931.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Many complications have arisen relative to school finance since the passage of the Constitutional Amendment of 1929. Future revenues for the maintenance of the schools are uncertain at this time.

It has been the common practice of boards of education to employ teachers during the months of May and June, for the year beginning sometime between July 1st and September 1st.

The Director of Education asks to be advised on the following questions:

1. Is it legal for a board of education to make contracts with teachers

for definite salaries, with the proviso that the amounts may be reduced if the income from taxation is insufficient to meet the obligation?

2. Is it legal for a board of education to make contracts on a monthly basis without specifying the number of months in the school year?

3. Is it legal for a board of education to pay any reductions made from the salaries in one year, from income derived in another calendar year?"

Section 7690-1, General Code, reads in part, 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. \* \*"

The word "fix" is defined by Webster's Dictionary to mean:

"To make firm, stable or fast; to secure from displacement; to fasten; hence to make steadfast or constant; to secure from wandering or vacillation; to give a permanent form to; to make definite and settled."

The word imports stability, permanence, constancy, definiteness.

The Supreme Court, in the case of *State ex rel. Clark v. Cook, Auditor*, 103 O. S. 465, held that "the express power to fix a salary does not grant by implication the power to unfix such salary." The statute quoted above authorizes a board of education to fix the salary of teachers and to unfix that salary to the extent that it may be increased but not diminished during the term. This power does not, in my opinion, authorize the board to make the salary of a teacher so indefinite as to be dependent, with respect to the amount of salary, upon contingencies that may or may not happen. To do so would not be the fixing of a definite amount or even the fixing of a rule by which a definite salary might be determined.

While you do not submit the definite terms of a contract which the board of education in question proposes to enter into with its teachers, I am of the opinion that no contract for the employment of a teacher would be legal which fixed a definite salary to be paid with the proviso that it be reduced if the income from taxation is insufficient to meet the obligation. A contract could lawfully be made with the teachers fixing for them a definite compensation, with the understanding that if the income from taxation warranted it, the salary would be increased and that increase might accordingly be made; however, it is questionable whether or not the teacher could enforce the promise on the part of the board to increase the salary in the event that the income from taxation warranted such an increase. I am of the opinion that all the board would be obligated to pay even in that case, would be the amount which had previously been fixed as a definite and certain amount which would be paid.

The direction to a board of education to employ teachers and fix their salaries does not require that the salary be fixed on a yearly basis or that at the time of fixing the salary the entire amount that will be paid during a school year must be stated. These salaries may no doubt be fixed on a monthly basis or even a weekly basis if the board so determines, and it is not necessary, in my opinion, that the board determine at the beginning of a school year the number of months of school that the school shall continue during the year. Section 7691, General Code, provides that no person shall be appointed as a teacher for a term longer

than four years nor for less than one year, except to fill an unexpired term. The statutes do not, however, require the conducting of schools for any definite number of months or weeks during the year for which the teacher is employed, other than the provision of Section 7644, General Code, with reference to elementary schools. It is there provided that every elementary day school shall continue not less than thirty-two nor more than forty weeks in each school year. Any school other than an elementary day school may be conducted for as long a time during a school year as the board may determine, and this determination need not be made in my opinion before the beginning of the school year or before the sessions of school start; neither does the law require that a board of education determine before the beginning of a school year whether its elementary schools shall continue for thirty-two weeks or forty weeks or any period of time between thirty-two and forty weeks. That determination may be made at any time during the school year.

With reference to your third question, your attention is directed to Opinion 2993 rendered under date of February 25, 1931, and addressed to the Prosecuting Attorney of Scioto County. The syllabus of this opinion reads as follows:

“A school board may borrow money in anticipation of taxes, by authority of Section 2293-4, General Code, and use the money to pay any valid and subsisting obligations of the board, whether those obligations are incurred within the fiscal year in which the money is borrowed or during previous fiscal years.”

In the course of the opinion it is said:

“Valid obligations of a school district may be incurred without the certificate of the fiscal officer, as required by Section 5625-33, General Code. For instance, obligations for teachers' salaries and for foreign tuition are often incurred although there are no present moneys available for their payment. A judgment might be had in some cases against a school district after the end of the fiscal year in which the obligations for which the judgment is rendered had been incurred, and clearly such claims may be paid from revenues derived from tax settlements had in the fiscal year in which such judgments are, or might be rendered.”

Although there is no specific authority for a board of education to pay from current revenues obligations which had been incurred in a previous calendar year, clearly, if those obligations are such that a judgment might be rendered against the board for the amount of the obligation and payment enforced, implied authority would exist for the board to pay a claim without waiting for a judgment to be rendered against it thereby avoiding additional costs attendant upon the securing of the judgment.

A contract with a teacher is a valid and subsisting obligation of the board of education which makes the contract, and if the services are rendered the board is obligated to pay the teacher in accordance with his contract. Such a contract does not require the certificate of the fiscal officer of the school district as provided by Section 5625-33, General Code, and it frequently happens that contracts are made with teachers although there is no money in the treasury of the district to meet the contract, and sufficient moneys do not come in during the fiscal year in which the services are rendered to pay the teacher. If the services are rendered, however, in accordance with the contract, the teacher has a right of action against the board for the amount of his salary as provided for by the contract and would

be entitled to a judgment therefor. Such an action may be brought in a fiscal year following the one in which the services are rendered. To meet this judgment, if one were rendered, the board would be required to use any available moneys in its treasury, and clearly the obligation may be paid without its being reduced to a judgment.

I am therefore of the opinion, in specific answer to your questions:

First, A board of education is not authorized to employ teachers for the schools of its district and fix a definite salary for those teachers, with the proviso that those salaries will be reduced if the income from taxation is insufficient to meet the obligation.

Second, a board of education may lawfully employ teachers for the ensuing school year on a monthly basis without specifying the number of months the schools of the district will be in session during the school year.

Third, a board of education may lawfully pay from current revenues, any balances due for salaries to teachers in its schools whether such amounts were earned during the current fiscal year or during previous years.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3301.

SCHOOL LIBRARY—BOARD OF TRUSTEES NOT AUTHORIZED TO  
ADOPT REGULATIONS GIVING LEAVES OF ABSENCE WITH PAY  
TO EMPLOYES FOR PURPOSE OF STUDY.

*SYLLABUS:*

1. *The board of trustees of a school district library is without authority to grant a leave of absence with pay, to the librarian or his assistants, for the purpose of study in a library school or college, or for any other purpose, during which time he renders no service whatever, even though such leave of absence is granted in the guise of compensation for services rendered.*

2. *In the employment of a librarian and assistants, by a school district library board, the law requires that their compensation be fixed prior to the entering upon such employment.*

COLUMBUS, OHIO, June 5, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The board of trustees of a certain city school district public library has adopted the following regulations with reference to leaves of absence for study upon the part of its employes:

‘After five full years of satisfactory service the Library may grant to members of the staff a leave of absence up to nine months, plus four weeks of vacation, all on half pay, for such further study, usually in library school, as in the judgment of the librarian will make the member of the staff of greater value to the institution.