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EMPLOYEES, SCHOOL DISTRICTS—SECTION 3317.02 RC—CONTRIBUTION BY STATE TO SEVERAL SCHOOL DISTRICTS—WITH OTHER SOURCES OF INCOME FUNDS FURNISHED FOR PAYMENT OF TEACHERS AND OTHER EMPLOYEES OF BOARDS—THESE EMPLOYEES NOT EMPLOYEES OF STATE—NOT WITHIN PROVISIONS OF SECTION 121.16 RC PROVIDING FOR STANDARD WORK WEEK FOR EMPLOYEES WHOSE SALARY OR WAGE IS PAID IN WHOLE OR IN PART BY STATE.

## SYLLABUS:

Section 3317.02 of the Revised Code, providing for a contribution by the state to the several school districts of the state which, with other sources of income furnishes the funds for the payment of teachers and other employees of such boards does not make the employees of such board of education employees of the state and does not bring such employees within the provisions of Section 121.16 of the Revised Code, providing for a standard work week for employees whose salary or wage is paid in whole or in part by the state.

Columbus, Ohio, December 6, 1955

Hon. James A. Rhodes, Auditor of State  
Columbus, Ohio

Dear Sir:

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

“The Legislature enacted Amended House Bill No. 52 which amended Section 121.16 and which became effective October 11, 1955.

“Section 121.16 before the amendment set the hours of labor for employees in the several departments of State service. Amended House Bill No. 52 reads:

‘Forty hours shall be the standard work week for *all employees* whose salary or wage is *paid in whole or in part by the State.*’  
(Underscoring the writer’s.)

“The School Foundation Program (R.C. 3117.02) provides that there shall be paid for the current operation to each local, exempted village and city school district certain funds. It is significant to note that these funds are not allocated to the several

school districts by the County Budget Commission but that they are specific appropriations on a specific formula or basis.

“An opinion is requested whether or not the employees of a school district by reason of the payments made to such districts by the State under the School Foundation Program are subject to the provisions of R. C. 121.16 as that section has been amended by Amended House Bill No. 52.”

Section 121.16, Revised Code, to which you direct my attention, forms a part of Chapter 121 “State Departments. Chapter 121 is a portion of Title 1 “State Government.” Said Section 121.16 reads in part as follows:

“Forty hours shall be the standard work-week for all employees whose salary or wage is *paid* in whole or in part *by the state*. Such employees shall not be required to work on days declared by law to be holidays unless failure to work on such holidays would impair the public service. \* \* \*

“In the department of mental hygiene and correction, the director may fix the work-week for employees, but, on and after July 1, 1956, the standard work-week in such department shall not exceed forty-four hours.” \* \* \* (Emphasis added.)

As bearing on the intended scope of House Bill No. 52 by which the section in question was amended, I think it is worth while to call attention to the title of the bill, which reads as follows:

“(Amended House Bill No. 52)

#### AN ACT

“To amend section 121.16 of the Revised Code and to enact section 121.161 of the Revised Code, relative to the establishment of a *standard work week*, and vacation leave and payment for unused vacation leave upon death of *employees of the state*.” (Emphasis added.)

I deem the above facts as to the placing and the title of some importance as indicating that it was the intention of the legislature in making the provision above quoted, to deal with persons employed in the several state departments and none other.

The essence of your question is whether the employees of a school district are employees of the state and whether their salary or wage is paid in whole or in part by the state. It would appear that you draw on

the provisions of the school foundation program particularly Section 3317.02, Revised Code, as amended by the 101st General Assembly.

Senate Bill 321, embracing Sections 3317.01 to 3317.14, Revised Code, provided an entirely new basis of distribution of the "foundation fund" in aid of the school districts of the state. Section 3317.02 undertakes to set up the total amount of contribution or subsidy to be given by the state to the several local, exempted village and city school districts, and reads in part as follows:

"There shall be paid, in the last quarter of the calendar year 1956 and in each calendar year thereafter, to each local, exempted village and city school district, which has a tax levy for current school operation for the current calendar year of at least ten mills, the total sum of the following factors:

"(A) The total approved salary allowance allocated to such district under section 3317.052 (3317.05.2) of the Revised Code, or the total of the salaries for certificated employees for the current school year, whichever amount is the lesser;

"(B) plus fourteen hundred and twenty-five dollars multiplied by the total number of approved teacher units credited to such district under section 3317.05 of the Revised Code, for other current expenses;

"(C) plus the total approved transportation costs allocated to such district under section 3317.051 (3317.05.1) of the Revised Code:

"(D) plus ten per cent of the total approved salary allowance allocated to such district under section 3317.052 (3317.05.2) of the Revised Code, for the employer's contribution to the teachers' retirement fund and the cost of the certificated employees' sick leave;

"(E) minus an amount equal to ten mills multiplied by the total value of the tax duplicate of such district as certified by the department of taxation under section 3317.10 of the Revised Code. \* \* \*

"In no event shall there be paid to each local, exempted village and city school district an amount less than nineteen hundred and twenty-five dollars multiplied by the number of approved teacher units credited to such district under section 3317.05 of the Revised Code." \* \* \*

It is to be noted in paragraph (A) that reference is made to the total approved salary allowance allocated to each district under Section 3317.052.

By reference to that section it appears that the approved regular salary allowance for each district is to be calculated by the state board of education on the basis of the total number of certificated employees employed in each district, of varying grades of educational preparation, multiplied by certain amounts, beginning with \$3,000 for certificated employees with less than three years of recognized training. A comparison of these amounts with the minimum teachers' salary schedule contained in Section 3317.06 which was also amended in said Senate Bill 321, shows that these amounts are different from and generally in excess of the minimum salaries.

Are we to infer, therefore, that merely because the legislature in fixing the total amount of the foundation fund to be paid by the state to each district, has provided that it is to be calculated in part, by reference to the salaries which the district pays its teachers, therefore, the salaries of the teachers and other employees of a board of education are to be considered as paid by the state? I find myself unable to draw any such conclusion from the statutory provisions above outlined.

It is true that the school system of the state is set up by statutes providing for their organization and management. So are other subdivisions of state government such as counties, townships and many other boards and commissions. But the school districts of the state are bodies corporate, organized under general laws, and the administrative body of every district, to wit the board of education, is made up of public officers elected by the people of the district. All school boards are authorized to hire their teachers and employ such other administrative and operative employees as the law permits. All of these are paid by the school districts employing them on the basis of salaries or wages fixed by the boards of education. While the minimum of the salaries to be paid to teachers is specified by the statute, no maximum is fixed and subject to such minimum the boards pay their teachers whatever amount they determine. The teachers and other employees receive their money on vouchers issued by the clerk of the board. No warrant is ever issued by the state auditor to a teacher or other school employee in payment of his salary or wage or any part thereof. The payments by the state are to the boards of education.

And let it be borne in mind that the schools do not live entirely on the foundation fund contributed by the state. That contribution only supplements their other sources of income, particularly the proceeds of general taxes.

No state board or state official is given by the law any authority whatsoever over the boards of education in the employment of their teachers or other employees or in fixing their compensation. In my opinion they are in no sense employees of the state, and the fact that a portion of the funds used for paying their salaries and wages comes by way of gift from the state does not make them "employees whose salary or wage is paid in whole or in part by the state."

In Opinion No. 2077, Opinions of the Attorney General for 1950, page 535, my immediate predecessor had the question whether employees of a school district library come within the provisions of Section 486-17c, General Code, providing for sick leave for employees of the board of education under which the library was organized. He held that they could not be entitled to sick leave benefits under that statute, pointing out that although the trustees of the library were appointed by the board of education, and the board of education furnished the funds for its operation by a levy of taxes, yet such board had no control whatsoever over the trustees of the library in appointing and fixing the compensation of their employees; that the library is a body corporate and entitled to hold its own property and to conduct its own affairs without any control from the board. Accordingly, in conclusion, he said:

"Accordingly, the employees of the board of library trustees are not employees of a board of education as that term is used in Section 486-17c, General Code."

It is accordingly my opinion and you are advised that Section 3317.02 of the Revised Code, providing for a contribution by the state to the several school districts of the state which, with other sources of income, furnishes the funds for the payment of teachers and other employees of such boards does not make the employees of such board of education employees of the state and does not bring such employees within the provisions of Section 121.16 of the Revised Code, providing for a standard work week for employees whose salary or wage is paid in whole or in part by the state.

Respectfully,

C. WILLIAM O'NEILL

Attorney General