

Districts desiring to participate in state aid would be required to fix the salary for part time teachers in accordance with the uniform tentative schedule fixed by the director of education for districts participating in the state educational equalization fund, which schedule is fixed on the basis of full time service.

County normal schools and state normal schools are, by virtue of Sections 7654-4 and 7654-7, General Code, authorized to co-operate with different boards of education in furtherance of teachers training, but these provisions of law are limited to the schools named and have no reference whatever to private institutions.

Coming now to a consideration of your specific questions in the light of the facts submitted by you in your inquiry, and the laws applicable thereto, I am of the opinion that:

First, school districts are not permitted to participate in the state educational equalization fund provided for by Section 7595, General Code, unless the revenue resources of the district, with the addition of receipts from any county educational equalization levy and after the exhaustion of all sources of revenue, are insufficient to enable the district to conduct its schools in accordance with law without such participation. The determination of that question is for the Director of Education, who shall conduct his investigation and base his determination thereof in accordance with Sections 7595-1, 7595-2, 7596, 7596-1, 7596-2 and 7597, General Code.

Second, there is no authority for the appointment of superintendents and teachers in the public schools by any one other than the board of education of the district for which schools the superintendents and teachers are employed.

Third, teachers and superintendents in the public schools may be employed for part time only, and if so employed, they may devote their remaining time to other activities.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1246.

SCHOOL EXAMINERS—NOT ENTITLED TO COMPENSATION FOR SERVICES AT SPECIAL EXAMINATIONS AFTER AUGUST 1ST ANY CALENDAR YEAR, EXCEPT AS PART OF THEIR COMPENSATION FOR REGULAR EXAMINATIONS—SECTION 7834, GENERAL CODE, DISCUSSED.

**SYLLABUS:**

*As provided by Section 7834, General Code, members of a county board of school examiners are not entitled to compensation for services rendered in connection with the holding of special examinations after September 1st of any calendar year, except as the holding of such examinations may affect the compensation they are to receive for the holding of the regular examination in the following April as provided by Section 7834, General Code.*

COLUMBUS, OHIO, November 9, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 7817 of the General Code provides for holding public meetings for an examination of applicants for county teachers' certificates on the first Saturday of April, May and June and on the last Friday of August of each year. It further provides that special examinations may be held after September 1st for persons who otherwise could not be certificated at the regular examination. Such applicants shall be counted in the April examination following in reporting and computing fees.

Question: May county school examiners receive compensation under the provisions of 7634 G. C., for such special examinations held after September 1st, except as a part of their compensation for the examination held in the following April?"

Sections 7817 and 7834, General Code, read as follows:

Sec. 7817. "Each board shall hold public meetings for the examination of applicants for county teachers' certificates on the first Saturday of April, May, and June and on the last Friday of August of each year unless any such day falls on a legal holiday, in which case it shall be held on the corresponding day of the succeeding week, at such place within the county as, in the opinion of the board, best will accommodate the greatest number of applicants. In no case shall the board hold any private examinations or antedate any certificate, *except that with the consent of the director of education as to the particular individuals, special examinations may be held after September 1, for persons who were employed late or whose work was modified or who otherwise could not be certificated at the regular examinations. Such applicants shall be counted in the April examination following in reporting and computing fees.*" (Italics the writer's.)

Sec. 7834. "Each member of the county board of school examiners, except the clerk thereof, shall receive ten dollars for each examination of fifty applicants or less, fourteen dollars for each examination of more than fifty applicants and less than one hundred, eighteen dollars for each examination of one hundred applicants and less than one hundred and fifty, twenty-two dollars for each examination of one hundred and fifty applicants and less than two hundred, and four dollars for each additional fifty applicants, or fraction thereof, to be paid out of the county treasury on the order of the county auditor. Books, blanks and stationery required by the board of examiners shall be furnished by the county board of education."

Section 7834, General Code, was enacted in its present form in 1914. The portion of Section 7817, supra, which is italicized, was inserted in said section by amendment in 1923. At the time of said amendment of Section 7817, supra, no provision was made by the legislature for compensating the members of the county board of education for holding special examinations, as therein authorized, except as the holding of such examinations might affect the compensation which they would receive for the holding of the regular examination in the following April.

It will be noted that in accordance with the provisions of Section 7834, supra, the compensation to which members of a county board of school examiners are entitled is dependent on the number of applicants who take the examination, this compensation being based on a sliding scale of units consisting of fifty applicants or fraction thereof. It will be readily seen that the number of applicants to whom a

special examination is given might affect the number of units of fifty upon which the compensation for the regular April examination is based. There being no provision for compensating members of the county board of school examiners other than as stated above, it follows that they can receive no compensation other than has thus been provided for them.

In Ruling Case Law, Vol. 22, page 216, wherein the compensation of public officers is discussed, it is stated:

"In all cases, the right to compensation is such only as may be given by law. \* \* \* Even the measure of compensation is arbitrary with the legislature and is not necessarily determined by the value of the officer's services."

In *Debolt vs. Trustees*, 7 O. S. 237, it was held that:

"An officer whose fees are regulated by statute can charge fees for those services only to which compensation is by law affixed."

This view of the subject has been consistently adhered to in numerous cases including *Richardson vs. State, ex rel.*, 66 O. S. 108, in which it was stated on page 113:

"It is well settled that the compensation of public officers cannot be enlarged, by implication, beyond the terms of the statute."

In the case of *Thorniley vs. State*, 81 O. S. 117, Judge Shauck, said as follows:

"From all the cases relating to the subject it appears that all duties imposed upon a public officer without provision for compensation are presumed to be performed in consideration of the general emoluments of his office."

In the case of *The Somerset Bank vs. Edmund*, 76 O. S. 396, it was stated:

"Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty, any other or further remuneration or reward than that prescribed and allowed by law."

In the case of *State vs. Klienholder*, 92 O. S. 166, it was said:

"It is well settled that the compensation of a public officer must be fixed by statute."

I am, therefore, of the opinion that members of a county board of school examiners are not entitled to compensation for services rendered in connection with the holding of special examinations after September 1, of any calendar year, as provided by Section 7834, General Code, except as the holding of such examinations may affect the compensation they are to receive for the holding of the regular examination in the following April as provided by Section 7834, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*