

OPINION NO. 66-124**Syllabus:**

A teacher regularly employed by a board of education who holds a teacher's certificate issued pursuant to Sections 3319.22 to 3319.31, Revised Code, and who is an employee in the "Head Start" program of the Economic Opportunities Act is not a teacher in the latter employment for purposes of contributing membership in the State Teachers Retirement System.

To: L. D. Shuter, Executive Secretary, State Teachers Retirement System of Ohio, Columbus, Ohio

By: William B. Saxbe, Attorney General, July 18, 1966

Your request for my opinion presented the following question:

"Shall a teacher regularly employed by a board of education and holding a teachers' certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, Revised Code, who is assigned to a position under the 'Head Start' program of the Economic Opportunity Act, be defined as a 'teacher' by the State Teachers Retirement Board for the purpose of contributing membership in this system?"

Your letter requesting my opinion refers to Opinion No. 65-77, Opinions of the Attorney General for 1965, regarding the certification of employees of the "Head Start" program as teachers pursuant to Section 3319.30, Revised Code. That opinion merely advises that the issuance of a teaching certificate pursuant to the above section is not a condition of employment as a "leader" in the "Head Start" program.

Section 3307.01 (B), Revised Code, defines "teacher" as used in Chapter 3307, Revised Code, which governs the State Teachers Retirement System and reads as follows:

"As used in Chapter 3307. of the Revised Code:

"(B) 'Teacher' means any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which he is required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code; and any

other teacher or faculty member regularly employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part by the state or any subdivision thereof.* * *

The first phrase of the above section is inapplicable because it pertains only to teachers who are required to have a certificate under Section 3319.30, Revised Code, and employees of the "Head Start" program are not required to hold a certificate. Opinion No. 65-77, Opinions of the Attorney General for 1965.

Since the "Head Start" program is operated by and between the individual boards of education and the federal government, is supported solely by federal funds, and employees are employed under a special contract different than their teaching contract, the second phrase of the above quoted section is also inapplicable. It pertains only to teachers employed by an employer "wholly controlled and managed and supported in whole or in part by the state or any subdivision thereof."

Consequently, a teacher regularly employed by a board of education who holds a teacher's certificate and who is an employee in the "Head Start" program is not a teacher in that employment for purposes of contributing membership in the State Teachers Retirement System. This conclusion is further supported by Section 3309.01, Revised Code, which defines "employee" as used in Chapter 3309, Revised Code, governing the School Employees Retirement System. Paraphrasing Section 3309.01, Revised Code, pertinent hereto, it defines "employee" as a person not required to have a certificate issued pursuant to Sections 3319.22 to 3319.31, Revised Code, who is employed and paid by a board of education including boards of education using federal funds provided such funds are disbursed by the employing board of education. A teacher as described above does not come under the definitions found in Section 3307.01, Revised Code, but more clearly falls within the above definition.

Therefore, it is my opinion and you are so advised that a teacher regularly employed by a board of education who holds a teacher's certificate and who is an employee in the "Head Start" program is not a teacher in that employment for purposes of contributing membership in the State Teachers Retirement System.