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1. ALL ADMINISTRATIVE OR SUPERVISORY EMPLOYEES, INCLUDING ELEMENTARY OR HIGH SCHOOL PRINCIPALS, ARE REQUIRED TO HAVE ISSUED A CERTIFICATE PURSUANT TO 3319.22, R.C. FOR THE DUTIES THEY ARE PERFORMING

2. ALL ABOVE EMPLOYEES ARE "CERTIFICATED" EMPLOYEES FOR PURPOSES OF CALCULATION OF SALARY ALLOWANCES PURSUANT TO 3317.052, R.C. EVEN THOUGH THEY MAY NOT POSSESS THE PROPER CERTIFICATE— §§3319.01, 3319.02, 3301.07, 3319.22, 3317.061, 3317.052, R.C.

SYLLABUS:

1. All administrative or supervisory employees, including elementary or high school principals, are required by either Sections 3319.01, 3319.02, Revised Code, or standards adopted by the State Board of Education pursuant to Section 3301.07, Revised Code, to have issued a certificate pursuant to Section 3319.22, Revised Code, for the duties which they are performing.

2. As all administrative or supervisory employees are in positions for which certificates issued pursuant to Section 3319.22, Revised Code, are required, such employees are certificated employees as that term is defined in Section 3317.061, Revised Code, for the purposes of the calculation of the salary allowance pursuant to Section 3317.052, Revised Code, even though such employees may not actually possess the proper certificate.

Columbus, Ohio, August 17, 1961

Hon. E. E. Holt, Superintendent of Public Instruction
State Department of Education, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

"There are a number of school districts in the State where a person who is serving in the capacity of an elementary or high school principal is properly certified as a teacher but has no principal's certificate.

"In view of these facts, I would appreciate your opinion on the question of whether the employing school district may receive credit in the district's Foundation Program calculation for

approved regular salary allowance in accordance with section 3317.052 of the Revised Code?"

As I understand the problem which confronts you, it involves an interpretation of Section 3317.052, Revised Code, the calculation formula for approved salary allowance under the school foundation program. This section reads, in pertinent part, as follows:

"The approved regular salary allowance for each city, exempted village, and local school district shall be calculated by the state board of education from information obtained from the certification of the superintendent of schools of such district under section 3317.061 (3317.06.1) of the Revised Code, in the following manner:

"(A) The total number of certificated employees employed in such district, with less than three years of recognized training, shall be multiplied by three thousand five hundred dollars;

"(B) The total number of certificated employees employed in such district, with three but less than four years of recognized college training, shall be multiplied by three thousand eight hundred dollars;

"(C) The total number of certificated employees employed in such district, with a bachelor's degree from a recognized college, shall be multiplied by four thousand three hundred dollars;

"(D) The total number of certificated employees employed in such district, with five or more years of recognized college training, without a master's degree from a recognized college, shall be multiplied by four thousand five hundred fifty dollars;

"(E) The total number of certificated employees employed in such district, with a master's degree from a recognized college, shall be multiplied by four thousand seven hundred fifty dollars.

"* * *

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"In addition to the approved regular salary allowance there shall be allocated to each district an approved additional salary allowance calculated in the following manner:

"(F) For each certificated employee whose term of service in any year is extended beyond the terms of service of regular classroom teachers an additional salary allowance proportional to the length of the extended term of service;

"(G) For each certificated employee devoting full time to administrative or supervisory duties an additional salary allowance of twenty-five per cent of the amount that would otherwise be allowed for such employee under divisions (A) to (F), inclusive, of this section.

“Calculations of extra salary allowance under divisions (F) and (G) of this section shall be made in accordance with regulations approved by the state board of education, and the sum of the figures derived from such calculations shall be the approved additional salary allowance for such school district.

“The total approved salary allowance for a school district shall be the sum of the approved regular salary allowance and the approved additional salary allowance as computed under this section.”

I have been further informed by your office that the question arises as to the meaning of the term “certificated employee” of a school district which term forms the basis of the salary allowance calculation for both paragraphs (A) through (E) for the approved regular salary allowance and paragraphs (F) and (G) for the approved additional salary allowance. It is my understanding that some school districts are employing certificated teachers as supervisory and administrative personnel in the capacity of either superintendents or school principals. The term “certificated employee” is defined in Section 3317.061, Revised Code, as amended by Amended House Bill No. 1 of the 104th General Assembly, as follows:

“ * * For the purposes of Sections 3317.01, 3317.02, 3317.021, 3317.03, 3317.05, 3317.051, 3317.052, 3317.06, 3317.061, 3317.07, 3317.08, 3317.10, 3317.11, 3317.13, 3317.14, 3327.05, and 3327.06 of the Revised Code, a certified employee is any employee 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.* (Emphasis added)

The problem arises from the fact that Section 3319.22, Revised Code, provides for the issuance of teachers certificates of twelve different types. Although these certificates are generally entitled teachers certificates, six of the twelve are dual certificates which are valid for both teaching and supervision. Section 3319.30, Revised Code, requires the possession of a teacher’s certificate before payment of salaries may be made. This section reads as follows:

“No person shall receive any compensation for the performance of duties as teacher in any school supported wholly or in part by the state or by federal funds who has not obtained a certificate of qualification for the position as provided for by section 3319.22 of the Revised Code and which certificate shall further certify to the good moral character of the holder thereof. Any teacher so qualified may, at the discretion of the employing

board of education, receive compensation for days on which he is excused by such board for the purpose of attending professional meetings, and the board may provide and pay the salary of a substitute teacher for such days.”

While this statute provides that no teacher may be paid except if validly certificated, it does not expressly mention supervisory or administrative employees. I do not believe it can be said that a person who is performing, exclusively, supervisory or administrative duties is a teacher. I am aware, however, of the definition of teacher found in Section 3319.09, Revised Code. This reads as follows :

“As used in sections 3319.08 to 3319.18, inclusive, of the Revised Code :

“(A) Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.

“* * * * * * * * *”

This same problem was reviewed by one of my predecessors in Opinion No. 1281, Opinions of the Attorney General for 1949, page 897. On this point he reasoned as follows :

“While the word ‘teacher’ is defined by Section 4842-7 to include superintendents and supervisors, it is pointed out that that definition was to characterize the word as it was used in the provisions of law commonly known as the ‘Teachers Tenure Act’ (119 Ohio Laws, 451). Upon recodification and revision of the school laws this act was incorporated, with minor changes, in the recodification act, at which time the provisions of the statutes relating to the tenure of teachers were reenacted as Sections 4842-6 to 4842-12, inclusive, General Code. The generally accepted and common use of the word ‘teacher’ is distinguishable from ‘superintendent’ or ‘supervisor’ and is defined in Black’s Law Dictionary, Third Edition, at page 1707 as :

“ ‘One who teaches or instructs; especially one whose business or occupation is to teach others; an instructor; preceptor.’

whereas the word ‘superintendent’ is defined in the same volume at page 1680 as :

“ ‘One who superintends or has the oversight and charge of something with the power of direction ; a manager.’

“The distinction between the two words appears sufficiently clear * * *”

The next question to be considered then is whether a supervisor or administrator must be certificated as such before he may be employed in this capacity. Section 3319.01, Revised Code, provides, in part, as follows :

“* * * No person shall be appointed to the office of superintendent who is not possessed of a certificate of the superintendent type, as defined in section 3319.22 of the Revised Code, unless such person had been employed as a county, city, or exempted village superintendent prior to August 1, 1939. * * *

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No mention is made here of assistant superintendents, executive heads or other administrators. Executive heads are covered by Section 3319.02, Revised Code, which reads in part as follows :

“* * * Upon recommendation of the county superintendent, a local board may employ *a person of proper certification* or a person holding or qualified to hold the position of executive head of a local school district on the effective date of this act, as executive head for a period not to exceed five years beginning with the first day of August and ending on the thirty-first day of July. A board of education by a three-fourths vote of its full membership may, after considering two nominations for the position of executive head made by the county superintendent of schools, employ or reemploy a person not so nominated for such position.”

(Emphasis added)

This provision makes the holding of the proper certificate a prerequisite for assuming the position of executive head of a local school district. The only exception to this is in the nature of a “grandfather” clause which may be disregarded as far as the present problem is concerned.

While no other statutory provision requires the holding of a proper certificate as a condition of employment for administrative or supervisory personnel, this omission has been covered by the standards adopted by the State Board of Education. These standards are authorized by Section 3319.22, Revised Code, which reads, in part, as follows :

“Teachers’ certificates of state-wide validity shall be issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code, *or in accordance with standards*, rules, and regulations authorized by law. * * *”

(Emphasis added)

The State Board of Education is authorized by Section 3301.07 (D), Revised Code, to adopt standards governing the issuance of certificates. Standard VI, adopted by the State Board of Education for Ohio Elementary Schools reads, in part, as follows :

1. All administrative or supervisory employees, including elementary or high school principals, are required by either Sections 3319.01, 3319.02, Revised Code, or standards adopted by the State Board of Education pursuant to Section 3301.07, Revised Code, to have issued a certificate pursuant to Section 3319.22, Revised Code, for the duties which they are performing.

2. As all administrative or supervisory employees are in positions for which certificates issued pursuant to Section 3319.22, Revised Code, are required, such employees are certificated employees as that term is defined in Section 3317.061, Revised Code, for the purposes of the calculation of the salary allowance pursuant to Section 3317.052, Revised Code, even though such employees may not actually possess the proper certificate.

Respectfully,
MARK McELROY
Attorney General