

or construction other than what its language plainly imports. Where there is anything doubtful in a statute it is the duty of a court, in expounding it, to give it such construction as will comport with what is supposed to have been the intention of the enacting power. Where the intention is manifest, but that intention is in part defeated by the use of some particular word or phrase, the court will look to the intention rather than the words. In the statute quoted above, however, there is nothing doubtful; nothing ambiguous; no words made use of which operate to defeat the manifest intention of the Legislature. There is nothing left for construction. We must apply it according to its literal meaning. Courts are unanimous in holding that where the language employed by the Legislature in a statute is clear and unambiguous, it is not the province of the court, under the guise of construction, to ignore the plain terms of the statute or to insert a provision not incorporated therein by the Legislature. *Maxfield vs. Brook*, 110 O. S. 566; *State ex rel. vs. Brown, Secretary of State*, 121 O. S. 329-331.

The Legislature having provided the time when members of the Retirement System may be retired for disability, to wit: upon the finding of the Retirement Board that a member is physically or mentally incapacitated for the performance of duty and ought to be retired after an application has been made to the Board for such retirement and a medical examination conducted, there is no power in the Board to retire the member at any other time or in any other manner.

I am therefore of the opinion, in specific answer to your question, that members of the State Teachers Retirement System may not be retired until after the medical examination, conducted by a competent disinterested physician or physicians selected by the Retirement Board, shows that the said member is physically or mentally incapacitated for the performance of duty and ought to be retired and there is no authority for the conducting of this examination until after an application for retirement has been made either by the employer, the member, or a person acting in his behalf. When the medical examination is made in pursuance of an application for retirement, and the report thereof shows affirmatively that the member should be retired, it is the duty of the Retirement Board to retire him forthwith. He may not be retired as of any other time.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1247.

BOARD OF EDUCATION—DUTY TO FIX SALARY OF TEACHERS—
ABROGATION OR CANCELLATION OF CONTRACT WITH TEACHERS PERMISSIBLE WHEN—HOW DEFICIENCY IN SALARY MET.

SYLLABUS:

1. *It is the duty of boards of education, upon the employment of teachers, to fix a definite salary for the teachers for the entire term for which they are employed, which salary, as so fixed, may be increased but not diminished during the term.*

2. *A contract made by a board of education with a teacher in the public schools of the district, may not be abrogated or cancelled before the expiration of the term for which the teacher is employed without the consent of the teacher to such cancellation, unless the teacher be dismissed for cause as provided by law or*

unless the particular school which the teacher had been employed or assigned to teach under the terms of the contract, be suspended for cause as provided by Section 7630, General Code.

3. If a local board of education, in a village or rural school district, fails for any reason to pay its teachers the full amount of the salaries which are due to them under the terms of their contract, and the county board of education is satisfied of that fact, it is the duty of the county board of education, by resolution, to direct its president to draw orders for the deficiency in those salaries upon the auditor of the county, which orders should be honored by the auditor and the amount thereof paid to the teachers from the general fund of the county and charged against the said school district as provided by Section 7610-1, General Code.

COLUMBUS, OHIO, July 31, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“Stoutsville School District, Fairfield County, Ohio, has been a state aid district for years. Last fall, the period of authorization of the extra levy expired, and it was necessary for Stoutsville to vote on continued participation in state aid. The board endorsed the measure unanimously and submitted the proposition to the electors at the November election. Just a few days before election three of the board members announced that they were against the levy, and advised patrons to vote against it, saying that they would curtail expenses and run their school without state aid. The levy lost and consequently Stoutsville ceased to be a state aid district, after January 1, 1933.

In order to meet the expenses of the school, the Board ordered the teachers to turn in their old contracts on January 1, and stated that new contracts would be made for the remainder of the year at reduced salaries. The teachers refused to do this, saying that same would be in violation of Section 7691, General Code of Ohio. The board then notified the teachers that if they continued to teach after January 1, it would be with the understanding that they were to receive the lower salary. The teachers continued to teach and the board paid them at the reduced schedule. The teachers accepted the checks as part pay. At the end of the year, the board dismissed all of the teachers except two.

The county board of education is willing to proceed under Section 7610-1, and pay the teachers the remainder of the salary at which they were originally employed.

Enclosed are copies of the original contract and other statements. I should be glad to have your opinion on the following:

1. Is the original contract binding for the full eight months, or can it be altered at the end of four months?
2. Of what effect, are the notices and other papers which were passed back and forth between the board and the teachers?
3. Is the board legally liable for the difference in the amount called for in the original contract and the amount which has been paid to the teachers at the present time?
4. If so, is the county board of education authorized to act under

Section 7610-1, General Code of Ohio, and pay these teachers the difference?

5. If so, what details of procedure should be followed?"

Inclosed with your inquiry is a copy of the contract entered into with the teachers of this district for the school year of 1932-33, made under date of September 3, 1932, and a copy of the monthly payroll upon which these teachers were paid for the months of September, October, November and December of 1932. Also a copy of the notice served by the Board of Education on each of the teachers on January 2, 1933, purporting to cancel the original contract and tendering a new contract to cover the remainder of the school year of 1932-33, and a copy of this new proposed contract and the reply of the teachers to the proposal is inclosed.

Material portions of the contract of September 3, 1932, are as follows:

"An agreement entered into between of Fairfield County, Ohio, and the Board of Education of Clearcreek Rural School District, Fairfield County, Ohio, the said hereby agrees to teach in the public schools of said School District, where assigned, for a term of 160 days to 180 days, if funds are available, and also agrees to abide by and maintain the rules and regulations adopted by said Board of Education for the proper government of the schools of said School District, as provided for in Section 4750 of the General Code of Ohio. * * * * In consideration of such services, properly rendered, the said Board of Education agrees to pay said the sum of dollars per month, payable monthly, as long as State Aid is available. * * * * Entered into this 3rd day of September, 1932. Signed Teacher; Ray Rife, President of the Board and Chas. H. Knecht, Clerk of the Board."

The payrolls upon which the teachers were paid until January 1, 1933, show that these contracts authorize the payment to one teacher, who was designated as Superintendent, the sum of \$220.22 per month; to one teacher \$165.22 per month; to one \$149.22 per month; to one \$160.56 per month; to another \$119.89 per month; to each of four teachers \$111.11 per month and to another \$101.00 per month. On January 2, 1933, each of the teachers was served with a written notice relative to their salaries during the remainder of the school year, and a new contract was tendered to each of them. The new contract provided for their teaching during the remainder of the school term. Otherwise its provisions were substantially the same as the contract of September 3, 1932, except that the teacher who was to receive \$220.22 per month under the original contract, was to receive \$80.00 per month under the new contract. The teacher who had been receiving \$165.22 per month was reduced to \$60.00 per month; the one receiving \$160.56 per month was reduced to \$65.00 per month; the one receiving \$149.22 per month was reduced to \$74.00 per month; the four teachers receiving \$111.11 per month were reduced to \$89.00 per month and the salary of the one teacher who had been receiving \$101.00 per month was not disturbed. The teachers, with the exception of the one who received \$101.00 per month, refused to sign the new proposed contract.

The notice served on the teachers on January 2, 1933, read as follows:

"To" :

If you continue to teach in your present position for the balance of

the school year of 1932-33, you will understand that you are to receive the sum of \$..... per month, payable monthly for such services, if funds are available that you may be paid monthly.

By order of the Clearcreek Township School Board, Fairfield County, Ohio.

By S. S. Stout, Pres.
Chas. H. Knecht, Clerk."

Upon receipt of the above notice, the teachers prepared and sent to the Board of Education a letter of which the following is a copy:

"We, the undersigned faculty members of the Clearcreek Rural School District cannot find in our respective contracts signed September 3, 1932, and which are for the school year 1932-1933, any statements similar to those in certain notices delivered to us January 2, 1933 by the President and Clerk of the above said Board of Education.

Furthermore, WE DO *NOT* UNDERSTAND that if we continue to teach in our present positions for the balance of the school year 1932-1933 that we are to receive the respective sums per month as stated on the respective notices delivered to us.

Also, let it be known, that we consider the notices in the same light as though they had never been written, and that in continuing to teach in our present positions for the balance of the school year 1932-1933, we are carrying out the provisions of our respective contracts signed September 3, 1932; and that our earnest desire is to faithfully perform our duties as we know and understand them."

This letter was signed by each of the teachers except the one whose salary had not been affected by the new order.

The teachers continued to teach during the remainder of the school year and were paid each month on payrolls which the Board ordered the Superintendent to prepare in accordance with the revised schedule of salaries. On each of the payrolls the Superintendent certified as follows:

"To the Board of Education:

Under protest by me and under the protest of the teachers, I, D. F. Stone, Superintendent of the Clearcreek Schools, do hereby draw up the following payroll under and according to the direction of the Clearcreek Board of Education. Further, it is understood by me that I am serving the Board of Education in this instance, in the same capacity as any clerk or secretary might serve it; and since the matter contained herein, may, more or less, be involved in legal decisions, I cannot, and do not, vouch for the correctness hereof."

Section 7705 of the General Code, provides that the board of education of each village and rural school district shall employ the teachers of the public schools of the district for a term not longer than three school years. Section 7690-1, General Code, provides that 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. Moreover, the Supreme Court of Ohio, in the

case of *State ex rel. Clark vs. Cook*, 103 O. S., page 465, held that the power to fix a salary does not impliedly include the power to unfix it. The clear import of these statutes is, in my opinion, that it is the positive duty of the Board of Education to fix the salaries of the teachers for the term for which they are appointed and that when that is done, those salaries can not be changed during the term, except to increase them, and that a board of education is not empowered to contract with teachers so that by the terms of the contract, the salary fixed shall automatically decrease, dependent upon conditions, unless the amount of the lesser salary to be paid upon the happening of some contingency, be fixed and made definite at the same time. To fix a salary means to make it definite. The contracts of September 3, 1932, contain the clause, after fixing a definite salary, "as long as State Aid is available," but did not assume to fix any salary to be paid if State Aid should become unavailable during the term of the contract. The proper interpretation and legal effect of this contract, in my opinion, in view of the statutory provisions referred to, which must be read into all such contracts, is that the salary mentioned is the salary fixed for the term. The Board can not reduce that salary during the term, nor can it abrogate or cancel the contract, unless it be done in accordance with the law, without the consent of the other contracting parties.

Contracts between school boards and teachers stand on the same basis, so far as the obligations created thereby are concerned, as contracts between private individuals, subject, of course, to applicable statutory provisions with reference thereto. The manner of cancelling or abrogating such contracts is fixed by statute and they can not be cancelled or terminated in any other way. Section 7699, General Code, provides that upon the appointment of any person to any position under the control of the Board of Education, the Clerk promptly must notify such person verbally or in writing, of his appointment, the conditions thereof and request and secure from him, within a reasonable time, to be determined by the Board of Education, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined, shall constitute "a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause." It has been held that such a contract may be dissolved or modified by mutual consent of the parties (Opinions of the Attorney General, No. 1912, rendered under date of June 2, 1933) and Section 7630, General Code, provides that when a teacher has been employed to teach a certain school in a village or rural school district, his contract terminates if the board of education, by resolution, suspends the school because of disadvantageous location or "any other cause." In my opinion, such a teacher's contract terminates in the event the school is suspended because of a lack of funds to continue its operation. See *Board of Education vs. Waits*, 119 O. S., page 310.

In the case presented by your inquiry, the schools were not suspended, nor were the teachers dismissed for cause. The schools continued in operation and the teachers continued to perform their contracts, so far as it appears, in a satisfactory manner, and it is my opinion that they are entitled to receive the full amount of their salary as fixed by the contract of September 3, 1932, for the entire school year.

Section 7610-1 provides in part as follows:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or * * * to elect a superin-

tendent or teachers or to pay their salaries or to pay out any other school money needed in school administration * * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts in the same manner as the board of education by this title is authorized to perform them. * * *

All salaries and other money so paid by the county board of education * * * shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education * * * but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district at the time of making the semi-annual distribution of taxes."

The Supreme Court of Ohio, in the case of *State ex rel. vs. Beamer*, 109 O. S., 133, said, with reference to the above statute, on page 139:

"Under section 7610-1, the duty of the county board of education is measured by the duty of the board of education in the district. The county board is liable to provide 'sufficient school privileges' only if the district board is under a duty to render such services and has failed and if the county board is satisfied of such failure."

I am of the opinion that the local board, in the present instance, is under a duty to pay these teachers the full amount of their salaries as contracted for on September 3, 1932, and if they fail to pay the same and the county board is satisfied of such failure, it is the duty of the county board to pay them, as provided by Section 7610-1, General Code.

In specific answer to your questions, I am of the opinion that:

1. The original contract made with these teachers on September 3, 1932, is binding for the entire school year of 1932-33 and under the circumstances, the school board is liable to the teachers for the full amount of their salaries as fixed by this contract. It is not within the power of the Board of Education to abrogate or alter these contracts without the consent of the teachers, unless the teachers be dismissed for cause or the schools which they are hired to teach be suspended in accordance with Section 7730, General Code.

2. The answer to your first question renders it unnecessary to answer your second question.

3. The Board of Education is legally liable for the difference in the amount called for in the original contract and the amount which has been paid to the teachers at the present time.

4. If the county board of education is satisfied that the local board has failed to pay the teachers the full amount of their salaries in accordance with their contracts, it is the duty of the county board of education to pay those salaries in accordance with Section 7610-1, General Code.

5. In the payment of the balance of the salaries of these teachers by the county board of education, the president of the county board of education should draw an order for the amount to be paid, upon the county auditor, whose duty it is to honor this order and pay the amount thereof from the general fund of the county and charge it to the local school district. It then becomes the auditor's

duty to retain from the proper fund due to this school district, at the time of making the next semi-annual distribution of taxes, the amount charged to it on account of the orders of the president of the county board of election.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1248.

APPROVAL, BONDS OF WILLOUGHBY RURAL SCHOOL DISTRICT,
LAKE COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1249.

APPROVAL, NOTES OF CHESTER TOWNSHIP RURAL SCHOOL DISTRICT,
MEIGS COUNTY, OHIO—\$10,305.00.

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1250.

APPROVAL, NOTES OF TIFFIN RURAL SCHOOL DISTRICT, ADAMS
COUNTY, OHIO—\$3,176.00.

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1251.

APPROVAL, NOTES OF ROCK CAMP RURAL SCHOOL DISTRICT, LAWRENCE
COUNTY, OHIO—\$1,105.00.

COLUMBUS, OHIO, August 1, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.