

school building bonds in the aggregate amount of \$375,000.00, dated January 12, 1921, bearing interest at the rate of  $5\frac{1}{2}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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647.

COUNTY SCHOOL INSTITUTE—ATTENDANCE—PAYMENT  
OF TEACHERS.

*SYLLABUS:*

*Where an authorized county institute is held on Saturday after the opening of the schools such teacher or superintendents attending shall be paid two dollars a day for actual daily attendance as certified by the county superintendent. If such authorized county institute is held after school hours on regular school days the board of education is only authorized to pay the teachers and superintendents attending their regular salary for the day and cannot pay extra compensation for daily attendance of the institute.*

COLUMBUS, OHIO, May 24, 1937.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“Our County Board of Education has authorized the following county institutes to be held during the year while the teachers are teaching. Three days of such session is held on Saturday, as provided under Section 7869-1, of the General Code. Two days of such session has been held on days on which the teachers teach school, the institutes starting about four-thirty in the afternoon, running through the evening meal and on into the night until adjourned.

The teachers, on the days which school is held, teaching a full day, and are, of course, paid their salary for that day.

They, of course, draw no extra compensation in the way of salary for the days they attend the institute.

The following questions have arisen:

First: Can they be paid two dollars a day for their attendance on the Saturdays in question?

Second: Can they be paid two dollars a day for their attendance on the week day, this two dollars to be in addition to their regular salary?

Section 7870, General Code, provides as follows:

“When a teachers’ institute has been authorized by the county board of education the boards of education of all school districts shall pay the teachers and superintendents of their respective districts their regular salary for the week they attend the institute upon the teachers or superintendents presenting certificates of full regular attendance, signed by the county superintendent. If the institute is held when the public schools are not in session, such teachers or superintendents shall be paid two dollars a day for actual daily attendance as certified by the county superintendent, for not more than five days of actual attendance, to be paid as an addition to the first months’ salary after the institute, by the board of education by which such teacher or superintendent is then employed. In case he or she is employed at the time of the institute, such salary shall be paid by the board next employing such teacher or superintendent, if the term of employment begins within three months after the institute closes.”

The import of Section 7870, supra, is: that, the board of education by which a teacher is employed must pay him his regular salary while he is attending an authorized county institute while school is in session, and that, if the institute is held when the public schools are not in session, the teachers or superintendents are to be paid two dollars a day for actual daily attendance as certified by the county board. Therefore, payment of two dollars for actual daily attendance of the institute is dependent upon the institute being held “*when the public schools are not in session.*”

The first question to be determined is: Is the holding of a county institute on Saturdays after the opening of schools as permitted in Section 7869-1, the holding of the institute “when the public schools are not in session” and therefore, the teachers entitled to be paid two dollars a day for actual daily attendance?

The answer to this question depends upon whether or not it can be said that school is in session on the day of the week known as Saturday. Section 7689, General Code, provides in part, as follows:

“Beginning on July 1, 1925, the school year shall begin on the first day of July of each calendar year and close on the thirtieth day of June of the succeeding year; \* \* \* A school week shall consist of five days and a school month of four school weeks.”

It is to be noted by a reading of Section 7689, *supra*, that, a teacher's work week consists of the well-established five days, from Monday to Friday, inclusive. The board of education employing a teacher cannot compel the teachers to render services on Saturday. Therefore, it cannot be said that school is in session on Saturday. In an opinion rendered by a former Attorney General, *Opinions of the Attorney General for 1915, Volume I, page 567, at page 570*, it was said:

“It is clear, under the latter provision of this statute, that a board of education cannot compel a teacher to teach more than five days in any one week. The custom of keeping the schools in session the five working days of each week during the school term, exclusive of Saturday, is well established, and a teacher having taught the required time prescribed by the above provision of the statute, is not required by law, to render additional service outside of the five school days constituting the school week.

A teacher's attendance at a meeting called by the district superintendent within the limits of time above prescribed, is the performance of a duty incidental to his employment. It must therefore follow that if a teacher cannot be called to teach more than five days in any one week, he cannot be compelled to attend a teachers' meeting at a time other than for that which he is employed to render services.”

It can be said that an additional prohibition against a board of education compelling a teacher to render services or attend an institute on Saturday, is contained in Section 5978, General Code, which reads in part, as follows:

“Every Saturday afternoon of each year shall be a one-half legal holiday for all purposes beginning at twelve o'clock noon and ending at twelve o'clock midnight \* \* \*.”

It is therefore my opinion that a teacher who attends an authorized county institute on Saturday is to be paid the two dollars a day for actual daily attendance, as certified by the county board of education.

The facts in your communication show that two days of the institute were held on regular school days, but not during school hours. There is no question as to *school being in session* on these two days. It is my opinion that the fact that the institute commenced after school hours is immaterial. As hereinabove stated, extra payment for attendance is dependent upon the institute being held "when the public schools are not in session." The controlling factor is whether or not the schools are in session on the days the institute is being held? The schools being in session on these two days, in question, the only provision contained in Section 7870, supra, for payment for attending an authorized county institute is that the teacher must be paid his regular salary. The question herein relates to payment of extra compensation. Therefore, the statute must be strictly construed. It is a well established principle of law that to warrant payment out of the public treasury, it must appear that such payment is authorized by statute. *Henry De Bolt vs. The Trustees of Cincinnati Township*, 7 O. S., 237; *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S., 189.

In an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1926, Volume I, page 455, it was said:

"Where teachers are employed on a full time basis in a vocational school under the Smith-Hughes Act, and such school is in session throughout the year, such teachers would have no opportunity to attend an institute other than while such school is in session, and could not be paid for such attendance in addition to their regular salary."

Upon consideration of the foregoing opinion, the conclusion therein reached appears to be sound and I concur in the conclusion.

It therefore is my opinion that when a county institute is held after school hours on regular school days, that the teacher cannot receive extra compensation for daily attendance of the institute in addition to his regular salary.

Specifically answering your questions it is my opinion that:

(1) Where an authorized county institute is held on Saturday after the opening of school such teacher or superintendents attending shall be paid two dollars a day for actual daily attendance as certified by the county superintendent.

(2) If such authorized county institute is held after school hours on regular school days the board of education is only authorized to pay

the teachers and superintendents attending their regular salary for the day and cannot pay extra compensation for daily attendance of the institute in addition to regular salary.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

648.

JUSTICE OF PEACE—LICENSE TO OPERATE MOTOR VEHICLE, SUSPENSION, REVOCATION—AUTHORITY IN COURTS OF RECORD.

*SYLLABUS:*

*A justice of the peace has no authority to suspend or revoke the license of an operator of a motor vehicle who has been convicted of or pleads guilty to an offense resulting from such persons' operation of a motor vehicle, as such power, under the provisions of Sections 6296-17 and 6296-30 of the General Code, is limited to courts of record.*

COLUMBUS, OHIO, May 24, 1937.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"A case has arisen in this county in one of the townships where the operator of a motor vehicle ran his automobile into some mail boxes and a telephone pole. This man was charged with driving while intoxicated and brought before the Justice of the Peace in that township.

The Justice of the Peace has raised the question of whether or not he has a right to suspend, for a period of time, the license of this driver inasmuch as the driver has entered a plea of guilty to the operation of a motor vehicle while under the influence of intoxicating liquor.

The question, therefore, is: can a justice of the peace suspend or revoke the license of the operator of a motor vehicle