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1. WHEN SEVERAL SCHOOL DISTRICTS ARE CONSOLIDATED INTO ONE NEW SCHOOL DISTRICT THE CONTRACTS OF TEACHERS BECOME THE OBLIGATION OF THE NEW CONSOLIDATED BOARD OF EDUCATION—

2. THE BOARD OF EDUCATION OF THE NEW SCHOOL DISTRICT MUST ADOPT A TEACHERS' SCHEDULE—§§3319.18, 3319.12, R.C.

SYLLABUS:

1. When several school districts are consolidated into one new school district the contracts of teachers employed by the former boards of education become the obligations of the new consolidated board of education as required by Section 3319.18, Revised Code.

2. The board of education of a newly consolidated school district must adopt a teacher's salary schedule pursuant to Section 3317.14, Revised Code, but such salary schedule cannot operate to reduce the salary of any teacher on a continuing contract or of any teacher on a limited contract during its term unless such salary reduction is part of a uniform deduction under Section 3319.12, Revised Code.

Columbus, Ohio, April 15, 1960

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir :

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

“In the last November General Election, three of our local school districts consolidated to form a new local school district under the provisions of Ohio Revised Code 3311.26. Each of the three local school districts had its own salary schedule, each schedule being different from the other two, and their certificated employees in the three districts held unexpired contracts of employment of varying lengths of time.

“Our queries are as to the legal responsibility, the power and authority of the Board of Education of the newly created school district as to the unexpired contracts and salaries. Specifically,—

“(1) Are the contracts automatically terminated by the dissolution of the three districts and the formation of a new district, or must the new school board assume the outstanding contracts of employment?

“(2) Whether or not a new salary schedule for the new district can be adopted and be enforced as respects all the contracts?

“(3) Realizing that the salary question may be dependent upon the question of whether or not the contracts must continue or terminate, assuming the continuing contracts must be recognized and honored, can the new board adopt a uniform salary schedule, which in effect, may increase the former salaries of some of the employees, while at the same time, reducing the salaries of some of the former employees?”

In answer to the first question you pose, Section 3311.26, Revised Code, the statute by authority of which the consolidation was effected, provides that there shall be an assumption by the new consolidated district of the obligations of the former districts in the following manner :

“* * *

“Upon the creation of such district, the indebtedness of each former district becoming in its entirety a part of the new district shall be assumed in full by the new district. * * *”

This term "indebtedness" was construed by the Supreme Court of Ohio in *State ex rel. Board of Education of Swanton v. Board of Education of Sharples*, 114 Ohio St., 602. At page 606, the Court defined the term as follows:

" 'Indebtedness' includes all liabilities incurred prior to the date of the transfer, including bonded indebtedness, contractual obligations, such as building contracts, teachers' contracts, janitors' contracts, and the like, though not as yet fully performed."

The *Swanton* case, *supra*, was followed in Opinion No. 5811, Opinions of the Attorney General for 1955, page 499. In that opinion the present situation was reversed, i.e., one large district was divided into four smaller new ones. The same reasoning applied, however, and the Attorney General held that contracts executed by the former district were binding on the new districts and were part of the funds and indebtedness to be divided equitably among them. On page 503, the then Attorney General reasoned as follows:

"It appears to me that in the light of the foregoing, particularly the decision of the Supreme Court we must conclude that contracts made by the original district, such as mentioned in your letter, have all the force that the law gives to an agreement between parties competent to contract, and that no action by the new districts created by the severance of the original district could result in destroying the contract."

In Opinion No. 225, Opinions of the Attorney General for 1951, page 74, the same rationale was applied to teacher contracts as being part of the assumed indebtedness of merged school districts, the very issue here in question.

Applicable also to this problem is Section 3319.18, Revised Code, which provides as follows:

"If an entire school district or that part of a school district which comprises the territory in which a school is situated is transferred to any other district, or if a new school district is created, the teachers in such districts or schools employed on continuing contracts immediately prior to such transfer, or creation shall, subject to section 3319.17 of the Revised Code, have continuing service status in the newly created district, or in the district to which the territory is transferred."

The only remaining question is, therefore, what salaries are to be paid the teachers on contracts now the obligations of the new board and

whether that board can now adopt a uniform salary schedule for all such teachers.

Section 3317.06, Revised Code, provides for minimum salaries for all public school teachers and Section 3317.14, Revised Code, provides that all boards of education participating in the school foundation program shall annually adopt and file with the state board of education a teachers' salary schedule. By the terms of this section not only may the new board here in question adopt a new salary, but it is a mandatory requirement if it wishes to participate in the school foundation program.

Turning now to the relation between the contractual obligations of the new board on teacher contracts executed by the former boards and the new salary schedule to be adopted, the issue presented is—must the salaries provided by the assumed contracts operate as exceptions to the new salary schedule during the effective period of such contracts?

Section 3319.18, Revised Code, *supra*, states that teachers who were on continuing contracts in any of the consolidated school districts continue to be on such continuing contracts in the new district.

Contracts of teachers are of two types and are provided by Section 3319.08, Revised Code, as follows :

“The board of education of each city, exempted village, and local school district shall enter into contracts for the employment of all teachers and shall fix their salaries which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code.* * *

“Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract is a contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates.”

Salaries for teachers covered by such contracts are set by the board of education pursuant to Section 3319.12, Revised Code, as follows :

“Each board of education shall cause notice to be given annually not later than the first day of July to each teacher who holds a contract valid for the succeeding school year, as to the salary to be paid such teacher during such year. Such salary shall

not be lower than the salary paid during the preceding school year unless such reduction is a part of a uniform plan affecting the entire district. This section does not prevent increases of salary after the board's annual notice has been given.

“* * *”

These provisions were construed in Opinion No. 1099, Opinions of the Attorney General for 1946, page 517. It was there held that the requirement in Section 3319.12, Revised Code, *supra*, that a salary cannot be reduced unless the reduction is part of a uniform plan coupled with the definition of a continuing contract in Section 3319.08, Revised Code, which contracts become the obligation of a succeeding school district under Section 3319.18, Revised Code, necessitated the conclusion that a salary of a teacher on a continuing contract could never be reduced. This conclusion appears to be well supported by the statutes and it is one which I expressly affirm. It follows, then, that the only way a salary of a teacher on a continuing contract can be reduced is if the reduction is part of a uniform plan for salary reduction or the position of such teacher is eliminated by a reduction in force required by consolidation as authorized by Section 3319.17, Revised Code, or the contract of such teacher is terminated pursuant to Section 3319.15, Revised Code, or Section 3319.16, Revised Code. A salary of a teacher on a limited contract may be reduced when a new contract is executed after the expiration of the limited contract.

It is, therefore, my opinion and you are accordingly advised as follows:

1. When several school districts are consolidated into one new school district the contracts of teachers employed by the former boards of education become the obligations of the new consolidated board of education as required by Section 3319.18, Revised Code.

2. The board of education of a newly consolidated school district must adopt a teachers' salary schedule pursuant to Section 3317.14, Revised Code, but such salary schedule cannot operate to reduce the salary of any teacher on a continuing contract or of any teacher on a limited contract during its term unless such salary reduction is part of a uniform deduction under Section 3319.12, Revised Code.

Respectfully,

MARK McELROY
Attorney General