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EDUCATION—COLLEGES AND UNIVERSITIES—COMPENSATION OF PROFESSORS AND TEACHERS—§3343.06 R.C.—LEAVES OF ABSENCE, WITH OR WITHOUT PAY, IN DISCRETION OF BOARDS OF TRUSTEES—CENTRAL STATE COLLEGE—SABBATICAL LEAVE.

SYLLABUS:

Under the provisions of Section 3343.06, Revised Code, the trustees of Central State College are given authority to fix the compensation of the professors and teachers in that institution and, as an incident thereof, to provide in their discretion for paid leaves of absence including (1) ordinary vacation leave, (2) leave for extended periods of study, and (3) sabbatical leave for professional personnel in accordance with the custom of colleges and universities generally.

Columbus, Ohio, August 25, 1958

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows

“Section 3345.03 of the Revised Code subjects the expenditure of all moneys received under Section 3345.01 to Section 3345.07 of the Revised Code, inclusive, to the examination of the Bureau of Inspection and Supervision of Public Offices. Section 125.02 of the Revised Code (Paragraph D) vests in the Department of Finance control over the financial transactions of all departments, offices and institutions, except the Judicial and Legislative Departments, and by requiring orders, invoices, claims, vouchers or payrolls to be submitted to the Department where such submission is prescribed by law or where the Governor deems such submission necessary, and by approving or disapproving such orders, invoices, claims, vouchers or payrolls;”

“In the examination of the Central State College the Board of Trustees has granted leaves of absence to certain faculty members to pursue courses of study in other universities. In granting such leaves of absence for such purposes, the resolution provided that one of such faculty members was to receive a monthly sum of \$100.00 while in attendance at such university. In the one case the faculty member was placed on the payroll for September, 1958, at full salary. He is rendering no service for this pay period. His last service to the College was for the month of May.

“An opinion is requested as to whether or not under provisions of Section 3343.05 of the Revised Code, the Board has authority to grant leaves with pay or whether or not the Board of Trustees is bound by provisions of Chapter 125 of the Revised Code.”

The reason for your reference to division (D) of Section 125.02, Revised Code, and to the responsibility of the director of finance in this matter is not readily apparent, but I deem it to be limited to the matter of the approval of “payrolls” involved in the case of college professional personnel on extended periods of leave of the sort you have described. So far as your query relates to this provision it is perhaps sufficient to suggest that this section merely requires the approval or disapproval of payrolls accordingly as the director finds (1) funds available therefor, and (2) such payrolls to involve lawful expenditures. He is in no respect authorized or required by this statute to concern himself with the policy involved. This being so, and assuming the availability of appropriated funds, we may confine our consideration to the question of the legality of the practice described.

At the outset we may point out that paid leave, although commonly thought of as a “fringe benefit” apart from compensation proper, is actually and essentially an incident of the compensation paid to an officer or employee. We thus reach the question of whether the professional personnel of state supported colleges and universities are subject to the provisions of Section 121.161, Revised Code, which authorizes paid leave in a limited amount. This statute by its terms relates only to “each full-time state employee.”

In Section 143.09 *et seq.*, Revised Code, provision is made for the establishment of rates of compensation of numerous employees who are “paid in whole or part by the state,” an expression which clearly comprehends the professional personnel with whom we are concerned here. In Division (J) (5) of this section, however, we find this exception:

“* * * (J) Such sections do not apply to the following persons, positions, offices, and employments:

“(5) Such officers and employees of state-supported colleges and universities as are designated in division (A) (7) of section 143.08 of the Revised Code; and the members of the administrative and research staffs of the Ohio agricultural experiment station, in addition to those employees whose duties include teaching at the state-supported colleges and universities; and

personnel employed temporarily by the department of mental hygiene and correction to participate in specifically designated research projects. * * *

Although these employees are clearly paid in whole or part by the state they are here described as "employees of the state supported colleges and universities." This suggests a meaning at variance from that of the term "full-time state employee" as used in Section 121.161, Revised Code, and this suggestion is supported by the exception of such employees from the application of Section 143.09 *et seq.*, Revised Code, when it is considered that paid leave is merely another form or incident of compensation. In short, we may infer a legislative intent that the compensation of such employees, including paid leave, is elsewhere to be provided for.

In Section 3343.06, Revised Code, there is the following provision :

"The board of trustees of the Central state college shall elect, fix the compensation of, and have the right to remove the president, who shall be the chief executive officer of the college, and elect, fix the compensation of, and remove such number of professors, teachers, and other employees as is necessary. No trustee, or his relative by blood or marriage, is eligible to a professorship or position in the college, the compensation for which is payable out of the state treasury or a college fund. No officer, teacher, or other employee of the college is eligible to membership on the board of trustees of such college while occupying any of said positions."

Of such a grant of power it is said in 40 Ohio Jurisprudence 742, 743 :

"* * * A statute giving the trustees of a college power to appoint professors and teachers gives them a discretion with which the courts cannot interfere, nor can such right of interference be had by private individuals by virtue of a contract. * * *"

Moreover, in 40 Ohio Jurisprudence 730, it is said :

"Whether or not equity will interfere with and regulate the affairs of a college depends upon what is and what is not within the jurisdiction of the trustees; the court has no jurisdiction over any subject within their cognizance. It will, therefore, rarely interfere with the sound judgment of the university officers unless facts are shown which will call into play the revisory authority of a court of equity either because of a gross abuse of power or fraud. * * *"

In the case at hand, because the General Assembly has made no express provision for paid leave for the professional employees of the state sup-

ported colleges and universities, because the statute confers on the governing board of Central State College authority to fix their compensation, and because such leave is essentially an incident of such compensation, I am persuaded that the matter of extending paid leave in such cases is committed to the discretion of the board of trustees of the institution.

Moreover, I am persuaded that this rule is as fully applicable to extended leave for the purpose of pursuing studies designed the better to equip individuals for future service as it is to ordinary "vacation leave". The practice of extended sabbatical leave, for example, to the professional employees of colleges and universities is one of such long standing and of such ubiquity that it may now be said virtually to be one of the inherent powers of such institutions. Of such leaves it is said in 14 Corpus Juris Secundum, 1357:

"* * * Both by custom and in some instances under statutory authority, the governing board of a college or university may elect members of the faculty to emeritus positions and grant them sabbatical leaves of absence with pay, and such grants have been held not to violate state constitutions as respects the faculty of a state institution. * * *"

As we have noted above, courts of equity are quite reluctant to interfere with the exercise by the college authorities of a broad discretion in directing the institution affairs, and consent to do so only in cases of "gross abuse of power or fraud". In the instant case, you have suggested no fraud; and even if I deemed it within the scope of my office to make a finding of "gross abuse of power", I see nothing in the situation described which would warrant such a finding.

In sum, it is my opinion that under the provisions of Section 3343.06, Revised Code, the trustees of Central State College are given authority to fix the compensation of the professors and teachers in that institution and, as an incident thereof, to provide in their discretion for paid leaves of absence including (1) ordinary vacation leave, (2) leave for extended periods of study, and (3) sabbatical leave for professional personnel in accordance with the custom of colleges and universities generally.

Respectfully,
WILLIAM SAXBE
Attorney General