

OPINION NO. 1421**Syllabus:**

1. A teacher or employee employed full time by the terms of the contract of employment may not be excused from responsibilities of full time employment in order to devote time to a professional or teachers organization.
2. A teacher or employee may be employed on a part time basis, leaving such person free to devote the remainder of time to a professional or teachers organization.
3. A teacher or employee employed on a part time basis may, with the consent of the appropriate system, make additional contributions to one of the retirement system funds to equal their normal full time contributions.

To: John S. Ballard, Summit County Pros. Atty., Akron, Ohio
By: William B. Saxbe, Attorney General, September 30, 1964

Your request for my opinion poses the following questions:

"1. May a local board of education release a teacher or other employee for part of their normal full time work day for purposes of activities and duties for a professional or employees' association at a reduced salary?

"2. May the local board and the teacher make, by mutal (sic) agreement, temporary amend-

ments to their formal contracts for this purpose without interfering with normal tenure and seniority matters?

"3. May this end by (sic) achieved by a 'leave of absence' for part of each school day?

"4. If this is done, may the employee contribute to the proper retirement fund additional payments to equal the normal, full time contributions as though the employee were not on such 'leave of absence' or reduced contract?

"5. May the board, for such part time employees, continue its usual programs of Blue Cross and Hospitalization programs?"

It is important at the outset to distinguish between "released time" and time that is available as a result of part time employment. I am aware of no authority whereby a board of education may release an employee from his regular duties or for a period of time during regular working hours in order that the employee may devote time to duties as an official of a professional or teachers' association. A person employed full time may not be excused from the responsibilities of full time employment, except as expressly provided by statute.

I am of the further opinion, however, that one may be employed on a part time basis, leaving that person free to devote the balance of a day to activities on behalf of a professional organization. In Opinion No. 7462, Opinions of the Attorney General for 1956, page 855, 857, my predecessor in office opined that a teacher could be employed on a part time schedule at part time pay, thus enabling that teacher to devote part of each day to his or her duties as president of a teachers' professional association. I have not found anything in the Revised Code or in the common law of Ohio which would dictate an opposite conclusion and I therefore concur in Opinion No. 7462, supra, insofar as it relates to your first question. Contracts for employment of teachers, with the exception of the stipulations as to types of contracts and minimum rates of pay, are a matter of local concern and as long as the contract is either a limited or a continuing contract awarded pursuant to Section 3319.11, Revised Code, and as long as the minimum salary requirements of Section 3317.14, Revised Code, are met, the variations permissible in the contract are a matter of local concern.

The answer to your second question must necessarily be restricted to the effect of a temporary amendment upon "tenure" since seniority is largely a matter of local concern insofar as it deals with promotions, raises in pay and similar subjects most often affected by seniority. I am constrained to note that for purposes of minimum annual salaries as set forth in Section 3317.06, Revised Code, a "school year of service" required of a teacher is defined as at least one hundred twenty (120) days of "actual service" under a teacher's contract. Although the term "actual service" as used in Section 3317.06, supra, is not defined, the plain and obvious meaning must be taken to be full days of service.

The definition of "school year of service" found in Section 3317.06, supra, is by its own terms inapplicable to define "year of teaching service for purposes of calculating eligibility for a continuing contract pursuant to Section 3319.11, Revised Code. Thus the meaning intended by the General Assembly when Section 3319.11, supra, was enacted must be determined.

There is no definition of the word "year" or the term "school year" for purposes of the Teachers' Tenure Law. Section 3319.11, Revised Code, provides in pertinent part that:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification, who within the last five years have taught for at least three years in the district, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district, but the board of education, upon the recommendation of the superintendent of schools, may at the time of employment or at any time within such two-year period, declare any of the latter teachers eligible."

In providing the standards for continuing contract status or "tenure" the General Assembly must have intended a year of service to mean a full year and not a partial year or a year of service on a part time basis. This is the plain and obvious meaning of the word as used in Section 3319.11, supra. So if a teacher worked part time for a year in order to devote the remainder of the time to duties as president of a teachers' association, that year could not be counted as a full year for purposes of attaining continuing contract status. If a teacher has attained continuing contract status before assuming the duties as president of a teachers' association, the temporary amendment of the continuing contract would not affect in any way the status previously attained. The grounds for termination of a teacher's contract by a board of education are set forth in some detail in Section 3319.16, Revised Code, and temporary amendment of the contract by agreement of all parties is not one of the grounds set forth therein. Thus temporary amendment of a contract will affect attainment of continuing contract or "tenure" status but will not have an affect upon that status once it is attained. See Opinion No. 440, Opinions of the Attorney General for 1945, page 552, 555.

Your third question asks whether the desired result might be achieved by a leave of absence. Section 3319.13, Revised Code, provides that "Upon the written request of a teacher, a board of education may grant a leave of absence ...for educational or professional or other purposes..." The normal usage of the term "leave of absence" contemplates a temporary excuse from all duties for a specified period of time. State, ex rel. Cutright v. Akron Civil Service Comm., 95 Ohio App., 385. That definition does not fit the situation posed here. The question is academic, however, since it is clear that the same end may be achieved by a contract for part time employment.

A teacher may contribute additional payments to the proper retirement fund to make up contributions that would

not be paid because of absences without pay. Section 3307.51, Revised Code, authorizes the State Teachers Retirement Board to approve member contributions covering unpaid absences for other than personal illness. The pertinent part of Section 3307.51, supra, provides that "In addition to the required deposits any member may make additional direct deposits, in multiples of one hundred dollars, which shall be credited to the members' account". The authority of that language is that a member may make contributions in addition to those required by Section 3307.51, supra, for any reason. Thus if one is employed half time for the current term he may make additional contributions in multiples of one hundred dollars to equal the amount that would be paid if he were employed on a full time basis.

Your final point of inquiry concerns the effect of part time employment on hospitalization and Blue Cross plans. Since participation in such plans is a matter of purely local contract, there is no reason why one may not participate as fully as if he were employed on a full time basis. Suffice it to say that this is a matter of local agreement. There is nothing in the Revised Code which would directly or indirectly affect participation in such plans.

Therefore, it is my opinion and you are advised that:

1. A teacher or employee employed full time by the terms of the contract of employment may not be excused from responsibilities of full time employment in order to devote time to a professional or teachers organization.
2. A teacher or employee may be employed on a part time basis, leaving such person free to devote the remainder of time to a professional or teachers organization.
3. A teacher or employee employed on a part time basis may, with the consent of the appropriate system, make additional contributions to one of the retirement system funds to equal their normal full time contributions.