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BOARD OF EDUCATION—NO AUTHORITY TO PERMIT TEACHER WHO IS EMPLOYED FULL TIME TO DEVOTE HALF TIME TO TEACHER'S ASSOCIATION—EVEN THOUGH ASSOCIATION OFFERS TO CONTRIBUTE FUNDS TO EMPLOY SUBSTITUTE TEACHER.

SYLLABUS:

A board of education is without authority to permit a teacher, employed and paid for full time service, to devote one half of his time to the organization work of a teacher's association of which he is an officer even though the association should offer to contribute funds to employ a substitute teacher for the time when such original teacher is absent from his duties as a teacher.

Columbus, Ohio, November 28, 1956

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows.

“The local Boards of Education request your opinion on the following:

“The area Teachers Association in order to more effectively cooperate and coordinate its functions with the Boards of Education desires to place its president on one-half day basis on association work during tenure of office.

“To make this possible the association will contribute an amount sufficient to defray the entire cost of a substitute teacher during the excused absence of the regular teacher (president).

“The Board of Educations questions:

1. May Board of Education release a teacher from full time schedule to half day schedule for the above purpose at full salary.
2. May retirement contributions by and for such teacher be continued in full during year of tenure in association office.
3. May a Board of Education accept money from an educational association to defray the cost of a substitute teacher for the time regular teacher is relieved from duty.”

The underlying question in your inquiry appears to me to be whether a board of education may release a regularly employed teacher, for half of his time, for service to an independent organization of teachers. I am not informed as to what is meant by “association work” but I assume that the local board of education considers that the association’s functions cooperative with the purposes and functions of the board, although they are plainly not in any degree subject to the control of the board. Whether the purposes of the association are exclusively for aiding the board in operating the schools, or partly or mainly for the betterment of the personal interests of the teacher members, it would be impossible for me to surmise. It seems to me a fair presumption that the organization, like most employee organizations, is principally devoted to the welfare of its members.

Assuming, however, that the association has no purpose or program except to assist the board of education in operating the schools more beneficially for the pupils, it seems evident that other independent organizations might devote their energies to a like worthy purpose. But could a board of education pay the salary of the president of a parent-teachers' association, or of an assistant secretary of a chamber of commerce, who would devote themselves to bettering the schools and stimulating their support by the community? Or, could the board accomplish substantially the same purpose by lending one of its paid teachers to either of such organizations?

I have no doubt that the desired purpose might be accomplished by placing the teacher on half time and half pay, leaving the association to employ and compensate him for the remainder of his time for organization work of the association, and I would see no legal obstacle to such procedure. But the objection to that course is made manifest by the second question submitted, viz. "May retirement contributions by and for such teacher be continued in full during year of tenure in association office?"

The answer to that question plainly depends upon the answer to the first. If we conclude that the board may lawfully pay a teacher his stipulated salary and allow him to devote half *or all* of his time to the work of the association, then plainly the regular deductions from his salary and the contributions required of the board of the Teachers Retirement law would be regularly paid based on his entire fixed salary. If, however, the teacher's time and salary are divided, the contributions would be reduced by half—a result which the board is endeavoring to avoid. I do not consider the proposed plan a legitimate means of building up the teacher's retirement allowance.

The law guards, somewhat jealously, the use of public funds, confining their expenditures strictly to the public purpose for which they are provided. Thus the Constitution in Article XII, Section 5, provides:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

As stated in 32 Ohio Jurisprudence, page 734:

"Public funds can be disbursed only by clear authority of law, and upon compliance with statutory provisions relating thereto. And in case of doubt as to the right of any adminis-

trative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power. * * *”

In the statutes relative to schools and their management we find no provision whatsoever that would sanction the procedure proposed in your inquiry, and I must conclude that it would be an abuse of the power of a board of education to donate half or any other portion of the time of a teacher whose salary is paid by the board to an independent organization, even though the purposes of such organization are directed toward the betterment of the school and its teachers.

In view of my conclusion above indicated, it hardly seems necessary to answer the third question submitted. The proposed contribution is evidently intended for the purpose of carrying out a plan which I have indicated is not within the law.

In specific answer to the questions which you have submitted, it is my opinion that a board of education is without authority to permit a teacher, employed and paid for full time service, to devote one half of his time to the organization work of a teacher's association of which he is an officer, even though the association should offer to contribute funds to employ a substitute teacher for the time when such original teacher is absent from his duties as a teacher.

Respectfully,
C. WILLIAM O'NEILL
Attorney General