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SYLLABUS:

A leave of absence with part pay may be granted as provided in Section 3319.131, to a public school teacher who has completed five years of service but such service must, by reason of Section 3319.09, Revised Code, be actual service of not less than one hundred twenty days within a school year; therefore, a public school teacher who has had only three years of actual service as a teacher and two years of prior service in the armed services of the United States may not be granted a leave of absence and be paid a portion of his salary under authority of Section 3319.131, Revised Code.

Columbus, Ohio, June 27, 1963

Hon. Joseph Loha
Prosecuting Attorney
Jefferson County
Steubenville, Ohio

Dear Sir:

Your request for my opinion reads:

"1. For the purposes of Sec. 3319.131 of the R.C. of Ohio, may a teacher qualify for the required five years of service if he has received two years of military training service prior to receiving his three years of teaching service, would this constitute five years of service?

"2. If this teacher does qualify as one with five years of service under this code section, may a leave of absence and a part payment of salary be granted to such a teacher?

"Of course, the part salary would be only as spelled out in the Code Section, being that part of the difference between the salary of the substitute and the teacher's expected salary. Of course, it is also understood that if this

teacher would qualify under the five year service clause and could be granted the leave of absence and part salary that the other restrictions and conditions in the code section would have to be met as far as the School Board, the Superintendent and the teacher were concerned."

Section 3319.131, Revised Code, was enacted by the 102nd General Assembly and was effective on September 6, 1957; see 127 Ohio Laws, 105. That section reads:

"A public school teacher who has completed five years of service may, with the permission of the board of education and the superintendent of schools, be entitled to take a leave of absence with part pay, for one or two semesters subject to the following restrictions: The teacher shall present to the superintendent for approval, a plan for professional growth prior to such a grant of permission, and at the conclusion of the leave provide evidence that the plan was followed. The teacher may be required to return to the district at the end of the leave for a period of at least one year, unless the teacher has completed twenty-five years of teaching in this state.

"The board of education may not grant such a leave unless there is available a satisfactory substitute, nor grant such leaves to more than five per cent of the professional staff at any one time, nor allow a part salary in excess of the difference between the substitute's pay and the teacher's expected salary, nor grant a leave longer than one school year, nor grant a leave to any teacher more often than once for each five years of service, nor grant a leave a second time to the same individual when other members of the staff have filed a request for such a leave."

Section 3319.09, Revised Code, provides the definitions which must be examined in considering your questions; that section reads in part:

"As used in sections 3319.08 to 3319.18, inclusive of the Revised Code:

"(A) Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.

"(B) 'Year' as applied to term of service means actual service of not less than one hundred twenty days within a school year; provided that any board of education may grant a leave of absence for professional advance-

ment with full credit for service.

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Sections 3319.08 through 3319.18, Revised Code, provide generally for the employment contracts to be entered into between boards of education and teachers, tenure, notice as to salary for succeeding year, leaves of absence, leave for military service, termination of contracts, reduction in the number of teachers, and the status of teachers in districts which are transferred or consolidated. Section 3319.14, Revised Code, which provides for leaves of absence for military service, reads as follows:

“Any teacher, who subsequent to April 30, 1949, has left, or leaves, a teaching position, by resignation or otherwise, and within forty school days thereafter entered, or enters, the armed services of the United States or the auxiliaries thereof, or such other services as are specified in Section 143.22 of the Revised Code, and who has returned, or returns, from such service with a discharge other than dishonorable, shall be re-employed by the board of education of the district in which he held such teaching position, under the same type of contract as that which he last held in such district, if such teacher shall, within ninety days after such discharge, apply to such board of education for re-employment. Upon such application, such teacher shall be re-employed at the first of the next school semester, if such application is made not less than thirty days prior to the first of such next school semester, in which case such teacher shall be re-employed the first of the following school semester, unless the board of education waives the requirement for such thirty day period.

“For the purposes of seniority and placement on the salary schedule, years of absence in the service of the armed services of the United States or the auxiliaries thereof, shall be counted as though teaching service had been performed during such time.

“The board of education of the district in which such teacher was employed and is re-employed under this section may suspend the contract of the teacher whose services become unnecessary by reason of the return of a teacher from service in the armed services or auxiliaries thereof, in accordance with section 3319.17 of the Revised Code.”

I find nothing else in these sections which authorizes a board of education to consider service in the armed forces as being

equivalent to years of teaching; also, the language used in this section shows clearly that the benefits provided therein are available only to a person whose teaching career is interrupted by military service.

In the situation you have described the teacher has taught in the public schools for a period of three years, and, prior to that time, he had been in the armed services for two years. Section 3319.131, Revised Code, provides for a leave of absence for a teacher who has completed five years of service and Section 3319.09, Revised Code, defines the term "year" as being actual service of not less than one hundred and twenty days within the school year. I am unable to conclude that any time spent in military service may be included in the five years of service required by Section 3319.131, Revised Code. It is, of course, clear that a board of education has authority under Section 3319.13, Revised Code, to grant a leave of absence for educational, professional or military purposes, but there is no authority under that section to pay any part of the teacher's salary during such leave.

In the letters which you forwarded with your request you have mentioned certain statutes and opinions of the Attorney General. These opinions have referred to and interpreted other sections of the Revised Code. The writers of these opinions were considering Section 3317.06, Revised Code, and its predecessor, Section 4848-4a, General Code. That section establishes a minimum annual salary schedule for teaching personnel employed in the public schools and directs that full credit shall be given on the salary schedule for service in the armed forces of the United States.

The syllabus of Opinion No. 926, Opinions of the Attorney General for 1951, page 754, reads:

"A teacher by the terms of Section 4848-4a, General Code, is entitled to service credit on the salary schedule for time spent in the armed forces prior to his first job of teaching."

This ruling was affirmed and followed in Opinion No. 1165, Opinions of the Attorney General for 1960, page 114. At the time Opinion No. 926, *supra*, was written, Section 4848-4a, General Code, read in part as follows:

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“* * * Furthermore, any person employed in any public school system in Ohio who has served or who may serve in the armed forces of the United State shall be given full service credit for time spent in such armed forces. * * *

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Section 3317.06, Revised Code, was amended after Opinion No. 926, *supra*, was issued in 1951, but the Attorney General, in Opinion No. 1165, Opinions of the Attorney General for 1960, page 114, said, at page 117, that “the relevant part is for this purpose the same as then in effect.” See also Informal Opinion No. 469, Informal Opinions of the Attorney General for 1962, issued May 8, 1962.

I am unable to conclude that the statutory provisions which were being considered in these prior opinions are in any way applicable to the question you have presented. Here we are dealing with a special statute which provides that a leave of absence with part pay may be granted to a teacher “who has completed five years of service.” By reason of Section 3319.09, Revised Code, the word “year” means “actual service of not less than one hundred twenty days within a school year.” Both Sections 3319.13 and 3319.14, Revised Code, grant certain rights to teachers who leave a teaching position to serve in the armed services; not only is that situation different from the one you have described, but I do not find that those sections in any way refer to or modify the provisions of Section 3319.131, Revised Code.

It is, therefore, my opinion and you are advised that a leave of absence with part pay may be granted as provided in Section 3319.131, to a public school teacher who has completed five years of service but such service must, by reason of Section 3319.09, Revised Code, be actual service of not less than one hundred twenty days within a school year; therefore, a public school teacher who has had only three years of actual service as a teacher and two years of prior service in the armed services of the United States may not be granted a leave of absence and be paid a portion of his salary under authority of Section 3319.131, Revised Code.

Respectfully,

WILLIAM B. SAXBE

Attorney General