

OPINION 65-198**Syllabus:**

1. Section 3317.01 (B), Revised Code, as amended, requires a school district to have school actually open for instruction 182 days, less the statutory exceptions, but in no case less than 175 days during the 1965-1966 school year, to qualify for school foundation funds under Chapter 3317., Revised Code.

2. Section 4 of Amended Sub. House Bill No. 950 is applicable to both full-time and part-time certificated employees and provides a two hundred dollar (\$200.00) addition to the gross annual salary base as established by the salary schedule.

3. The two hundred dollar (\$200.00) salary increase created by Section 4 of Amended Sub. House Bill No. 950 is an increase applied to the salary schedule in effect April 1, 1965, pursuant to which payment of salaries was then being made.

To: E.E. Holt, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William B. Saxbe, Attorney General, November 12, 1965

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

"Does Section 3317.01 (B), Revised Code, as amended by House Bill No. 950, require school districts to have the schools actually open for instruction 180 days during the 1965-66 school year in order to continue to qualify for school foundation funds under Chapter 3317, Revised Code?

"Does Section 4 of House Bill No. 950 require an increase in total compensation of \$200.00 to all certificated employees regardless of whether they are full-time or part-time employees?

"Where a board of education has, prior to April 1, 1965, adopted a salary schedule to become operative after April 1, 1965, is each certificated employee entitled to a

\$200.00 increase in total compensation pursuant to Section 4 of House Bill No. 950 in addition to the increase granted such employee by such salary schedule regardless of whether the increase granted by such salary schedule is less than or more than \$200.00?"

Your first question asks for an interpretation of Section 3317.01, Revised Code, as amended which states in part:

" * * * * *"

"Commencing with the effective date of this section, August 16, 1965 moneys distributed pursuant to Chapter 3317. of the Revised Code shall be calculated and paid on a fiscal year basis, beginning with the first day of July and extending through the thirtieth day of June. * * *

" * * * The payments authorized by Chapter 3317. of the Revised Code shall be made only to those school districts in which:

" * * * * *"

"(B) Beginning July 1, 1966, the school year next preceding the fiscal year for which such payments are authorized consisted of not less than one hundred eighty two days during which the schools of the district were actually open for instruction, including such days, not exceeding two, for the professional meetings of teachers when such days occurred during a regular school week and the schools were not in session, except that this requirement shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed because of disease epidemic, temporary circumstances rendering the school building unfit for school use, or other public calamity, provided the number of days the school was actually open for instruction with pupils in attendance is not less than one hundred seventy-five."

" * * * * *"

It is my opinion and you are hereby advised that the school year as referred to in 3317.01 (B) is the 1965-1966 school year. Therefore, for a school district to be eligible to participate in the foundation program for which payments start July 1, 1966, that district must have had a school year for 1965-1966, consisting of one hundred eighty two (182) days during which the schools of the district were actually open for instruction, less the statutory exceptions, but in no case less than 175 days.

Your second and third questions call for an interpret-

ation of Section 4 of Amended Substitute House Bill No. 950 as became effective August 16, 1965, which states:

"For the fiscal year beginning July 1, 1965, each certificated employee in each school district shall receive an increase in total compensation of two hundred dollars more than such employee would have received under the salary schedule in effect for that school district as of April 1, 1965."

The term certified employee is derived from Section 3319.09 (A), Revised Code, which states:

"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."

A further breakdown as to certification is found in Section 3319.22; Revised Code, which states:

"Teachers' certificates of state-wide validity shall be issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code, or in accordance with standards, rules, and regulations authorized by law. The grades of certificates shall be designated as 'temporary certificates,' 'provisional certificates,' 'professional certificates,' and 'permanent certificates.' Each of such grades of certificates may be issued in each or any of the following types:

"(A) Kindergarten-primary, valid for teaching in kindergarten, first, second, and third grades;

"(B) Elementary, valid for teaching in grades one to eight, inclusive;

"(C) High school, valid for teaching the subjects named in such certificate in grades seven to twelve, inclusive;

"(D) Special, valid for teaching any subject named in such certificate in all grades of the elementary and high schools, or in such other special fields as are included in public school curricula;

"(E) Elementary principal, valid for teaching or supervision in the elementary schools;

"(F) High school principal, valid for teaching the subjects named in such certificate or for supervision in junior or senior high schools;

"(G) Supervisor, valid for supervising and teaching subjects named in such certificate in elementary, special, or high school fields;

"(H) Superintendent, valid for teaching the subjects named in such certificate, for the supervising in elementary and high schools or for administrative duties in a school system;

"(I) Vocational, valid for teaching and supervising vocational agriculture, vocational distributive education, vocational home economics, or vocational trades and industries as named in such certificates;

"(J) Assistant superintendent, valid for supervising in elementary and high schools or for administrative duties in the school system;

"(K) Pupil-personnel workers, valid for the conduct of all home-school-community relations incident to the adjustment of pupils to the facilities available for their education;

"(L) Executive head, valid for teaching the subjects named in such certificate and for supervision and administration in a local school district."

A part time certificated employee would be one employed as a substitute teacher under the provisions of Section 3319.10, Revised Code, or one regularly employed to work less than the full school day or school year. This practice is common in small school systems where a person is hired to teach one subject.

Section 3319.08, Revised Code, requires a board of education to enter into written contracts of employment of two types, limited contracts for a term not to exceed five years and continuing contracts which, as the name implies, continue until terminated. The amount of the salary is not set by statute but left to the discretion of the local board of education.

In practice a school board establishes a salary schedule based on the requirements of the foundation program. On the basis of this salary schedule the local board enters into salary contracts with the individual certified employees. Section 4 of Amended Sub. House Bill No. 950 provides for an increase of two hundred dollars (\$200.00) more than such employee would have received under the salary schedule in effect for that school district as of April, 1965. The salary increase provided by the Legislature is an increase to the gross salary as set forth in the yearly salary schedule and reflected in the individual salary contracts.

As to your second question, you are further advised that this applies equally to full time and part time certified employees. This would mean the gross base for computa-

tion of annual salary for a part time certified employee would be increased two hundred dollars (\$200.00), so that the compensation for the actual days or hours employed would be proportionately increased. To hold otherwise would require the board of education to pay a one-day substitute teacher one day's salary plus two hundred dollars (\$200.00). Certainly, this was not the intent of the Legislature.

In answer to your third question, Amended Sub. House Bill No. 950 flatly states: The two hundred (\$200.00) increase in total compensation shall be in addition to the salary schedule as of April 1, 1965. The base is definitely established as of April 1, 1965, whatever such base may be.

The legislative intent expressed in Amended Sub. House Bill No. 950, Section 4, is that a minimum of two hundred dollars (\$200.00) over the salary schedule in effect April 1, 1965 be paid. Webster's Third New International Dictionary defines the word "effect" as follows:

"to bring about, accomplish * * * a resultant condition: result, outcome * * * the result of purpose or intention * * * the quality or state of being operative * * *"

A board of education may have adopted a salary schedule for the school year 1965-1966 before April 1, 1965. However, I can not consider such a salary schedule in effect within the contemplation of Amended Sub. House Bill No. 950. Simply stated, I believe the salary schedule in effect on April 1, 1965, is the schedule which provides the rate for payment of salaries on that date. A salary schedule becomes effective when it becomes operable.

In conclusion, it is my opinion and you are therefore advised that:

1. Section 3317.01 (B), Revised Code, as amended, requires a school district to have school actually open for instruction 182 days, less the statutory exceptions, but in no case less than 175 days during the 1965-1966 school year, to qualify for school foundation funds under Chapter 3317., Revised Code.

2. Section 4 of Amended Sub. House Bill No. 950 is applicable to both full-time and part-time certificated employees and provides a two hundred dollar (\$200.00) addition to the gross annual salary base as established by the salary schedule.

3. The two hundred dollar (\$200.00) salary increase created by Section 4 of Amended Sub. House Bill No. 950 is an increase applied to the salary schedule in effect April 1, 1965, pursuant to which payment of salaries was then being made.