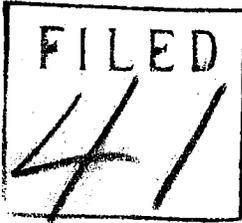


SCHOOLS: School board may pay teacher only salary specified in contract for services encompassed by contract; board may make separate agreement for other services not included within scope of teaching contract; salary schedule may be included in teacher's contract and must be made part of contract to be effective.

SCHOOL DISTRICTS:



August 20, 1956

Honorable Haskell Holman
State Auditor
Capitol Building
Jefferson City, Missouri

Dear Mr. Holman:

This is in response to your request for opinion dated June 8, 1956, which reads as follows:

"In a recent audit of a six-director school district it was found that the board of education paid additional compensation on an hourly basis to various teachers in addition to the compensation stipulated in the teacher's contract for the performance of extra-curricular duties. Also, the board of education paid teachers who had earned additional college credits on a different salary rate than the amount specified in the teacher's contract. In connection therewith, the conditions of the teacher's contract are as follows:

'THIS AGREEMENT made the _____ day of _____ 19____ between _____, a legally qualified public school teacher, of the first part, and the Board of Education of the _____ School District, County of _____, State of Missouri, of the second part.

'WITNESSETH: That the said _____ agrees to teach in the public school of said _____ District and to perform such extra-curricular duties as assigned by the principal of the school for the term of _____ months, commencing on the _____ day of _____ 19____, for the sum of _____ per year, to be paid monthly, and that for services properly rendered and reports

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correctly made, according to law said Board agrees to issue warrant upon the Treasurer of the _____ School District in favor of the said _____ for the amount due under this agreement.'

"In addition to the provisions of the aforesaid contract, the board of education adopted rules and regulations, which set forth, among other things, provisions for extra-curricular duty, which are as follows:

'Extra duty. Teachers are to be paid at the rate of \$2.00 per hour for approved extra duty assignments. No guarantee is made of extra duty assignments and they may be declined without prejudice provided an approved substitute can be secured. Pay for extra duty may not begin before 4:15 P.M. on regular school days.'

"Boards of education also frequently establish salary schedules for teachers based on college hours of training, successfully experienced, etc. The teacher's contract is usually issued in the spring soon after the school election in April. The contract states a specific amount to be paid a teacher monthly and sometimes with a provision to adjust the contract to comply with the established salary schedule, provided the teacher does additional college work in the summer between school sessions. In some cases nothing is stated in the original contract to make adjustments for additional college credits earned, but later when the teacher earns such additional credit, the board of education automatically pays additional wages based on the salary schedule. This raises a legal question as to the board's authority to pay an additional salary other than stated in the contract.

"I shall appreciate your advice and official opinion in answer to the following questions:

1. Is there a legal basis for the board of education of a six-director school district for making rules and regulations in contracting with teachers for additional compensation in performing extra-curricular duties

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in addition to the annual salary stipulated in the teacher's contract? If not, under what conditions, if any, may the board pay a teacher compensation over and above the amount stipulated in the teacher's contract?

2. Is the board of education of a six-director school district authorized to pay a teacher any amount in excess of the exact salary specified in the teacher's contract, or include in the contract a provision for the payment of a different salary rate, but within the provisions of the established salary schedule, when additional college credits are earned by the teacher, or establish rules and regulations to pay an increased salary to a teacher who earns additional college credits, even though not stipulated in the contract?"

In the past this office has issued numerous opinions on this general subject and has consistently held that a teacher cannot be paid more for the performance of his duties than is specified in his contract of employment. In that connection, we are enclosing copies of the following opinions:

Donald B. Dawson, May 10, 1939;
G. C. Beckham, March 18, 1936;
Richard Chamier, April 23, 1938.

Section 432.070, RSMo 1949, requires all contracts of a school district to be in writing. Section 163.080, RSMo 1949, requires that all contracts for the employment of teachers, among other things, shall specify "the wages per month to be paid." In this connection, your first specific inquiry is whether a school district can pay extra compensation for extracurricular duties based upon rules and regulations of the board.

The contract quoted above from your opinion request provides expressly that the teacher shall "perform such extra-curricular duties as assigned by the principal" for a certain sum per year. Under such a contract, no additional sum can be paid the teacher for the performance of such duties. To do so would be violative of Sections 38(a) and 39(3) of Article III of the Constitution of Missouri, 1945, as held in the enclosed opinions.

The question arises, however, as to what duties the teacher would be expected to perform under this contract as "extra-curricular" duties. An excellent discussion of a teacher's duties is found in *Parrish v. Moss*, 106 N.Y.S. (2d) 577, 584, where it is said:

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" * * * The hours of service of its teachers may not necessarily coincide with the hours of classroom instruction, nor is it legally required that the hours fixed be the same for all teachers. The board may authorize the principal or other official in charge of the school to excuse teachers at earlier hours than those contained in the bylaws when their services on a given day are no longer needed. Furthermore, under ordinary circumstances the board, in fixing such laws, is limited to the usual hours of the day. However, I do not hold that there may not be occasions when hours in the evening may be specified if the service can be said to fall fairly within the regular duties of the teacher."

"The hours established in any case must be reasonable. The broad grant of authority to fix "duties" of teachers is not restricted to classroom instruction. Any teaching duty within the scope of the license held by a teacher may properly be imposed. The day in which the concept was held that teaching duty was limited to classroom instruction has long since passed. Children are being trained for citizenship and the inspiration and leadership in such training is the teacher. Of course, it is recognized that any bylaw of a board outlining teachers' duties must stand the test of reasonableness. Any teacher may be expected to take over a study hall; a teacher engaged in instruction in a given area may be expected to devote part of his day to student meetings where supervision of such teacher is, in the opinion of the board, educationally desirable. Teachers in the fields of English and Social Studies and undoubtedly in other areas may be expected to coach plays; physical training teachers may be required to coach both intramural and inter-school athletic teams; teachers may be assigned to supervise educational trips which are properly part of the school curriculum. The band instructor may be required to accompany the band if it leaves the building. These are illustrations of some of the duties which boards of education have clear legal justification to require of their

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employees. A board is not required to pay additional compensation for such services. The duty assigned must be within the scope of teachers' duties. Teachers may not be required, for instance, to perform janitor service, police service (traffic duty), school bus driving service, &c. These are not "teaching duties." The board may not impose upon a teacher a duty foreign to the field of instruction for which he is licensed or employed. A board may not, for instance, require a mathematics teacher to coach intramural teams. Where the service is not part of the duties of the teacher, there is nothing to prevent the board from arranging for such extra service and paying for the same in its discretion. * * * There are some activities that are part of instruction, but, by their very nature, may be performed after the close of the regular school session. The athletic program, for instance, in many instances takes place under such circumstances. It has, nevertheless, over the years been always regarded as part of the school curriculum (see Commissioner's Regulations section 155). As has been heretofore stated in departmental publication, "athletic activities are a definite and integral part of the instruction program in physical education." Coaching in athletic sports is teaching. It, therefore, does not follow that because an activity is conducted after regular class hours, it is not part of the regular curriculum."

Those duties, then, which are incidental to the teaching profession must be performed by the teacher under his contract and no other compensation may be allowed therefor.

However, if a teacher is called upon to perform duties foreign to his field and beyond the scope of his contract, a separate agreement for compensation may be entered into between the teacher and the district for the additional duties to be performed. For example, in Joint Consol. School Dist. No. 2 v. Johnson, 166 Kan. 636, 203 P2d 242, some teachers were called to military service. Other teachers to fill the vacancies were unobtainable. It was arranged by the board and teachers that the remaining teachers should take on the work of the teachers called to service in addition to their own work. The board agreed to pay a reasonable amount for the extra work performed. A taxpayer of the district sued the district treasurer on

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his bond for paying the teachers for the extra work performed by them. He contended that the teachers were legally obliged to do whatever was reasonably necessary to carry on the schools without additional pay and, thus, that additional pay amounted to a gift, bonus or gratuity, in violation of a constitutional provision similar to the one in Missouri. The court sustained the legality of the payments, saying at P2d l.c. 245:

" * * * In our opinion the allegation that certain employees performed services over and above those required by the terms of their written contracts, warranted the school board in paying them the amounts which would otherwise have been paid to other teachers under written contracts for those services which the latter class of teachers were unable to perform under the circumstances pleaded, and that the trial court did not err in ruling on the motion for judgment on the defendants' opening statement."

More explicitly, additional payments cannot be made under the teacher's original contract for anything, but if he performs services not encompassed by his contract, a separate agreement may be entered into for those services.

The above answers the first part of your second question, i.e., that the board may not pay a teacher any amount in excess of the exact salary specified in the teacher's contract for services performed under that contract. However, you next inquire as to whether a graduated salary schedule may be included in the contract and you have given as an example the provision for added pay upon completion of additional college hours of training.

In some states, e.g., Indiana (Board of School Trustees v. Moore, 218 Ind. 386, 33 NE2d 114), a salary schedule is required by statute and automatically made a part of the teacher's contract. In others, salary schedules are incorporated into the teacher's contract in the absence of a statute based upon the general authority of the board to fix the compensation of teachers (Fry v. Board of Education, 17 Cal. 2d 753, 112 P2d 229; Rible v. Hughes, 24 Cal. 2d 437, 150 P2d 455; Heinlein v. Anaheim Union School Dist., 96 Cal. App. 2d 19, 214 P2d 536). Some of the above cases arose out of salary schedule provisions objective in nature, e.g., additional college training, and others on subjective standards. (See, also, Turner v. Keefe, 50 Fed. Supp. 647 (Fla.).)

Section 163.080, RSMo 1949, provides that teachers' contracts shall be construed under the general law of contracts. As long as

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the salary schedule is definite and certain and not discriminatory or unreasonable, we perceive no reason why such salary schedule cannot be made a part of the teacher's contract either by being included directly in the contract or incorporated therein by reference. Whatever method is employed, in order to be effective the salary schedule must be made a part of the contract. Rules and regulations of the board establishing a salary schedule and not made a part of the contract would be ineffective.

CONCLUSION

It is the opinion of this office that a school board may not pay a teacher more than is specified in the contract of employment for services encompassed by the contract. The board may make a separate contract with such teacher for other services not included within the scope of the original contract of teaching.

It is the further opinion of this office that a teacher's contract may include a salary schedule, but that such salary schedule in order to be effective must be made a part of the contract.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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