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**SCHOOLS:** Authority of boards of education to pay certain benefits to teachers and administrators.

Boards of education lack statutory authority to pay a sum at retirement based upon the number of years of service or a sum when the employee leaves the employment of a school district, other than by retirement, the sum being based on the number of years of service.

Boards of education have statutory authority to pay one-half of the regular salary to a teacher on sabbatical leave.

Boards of education lack statutory authority to pay sick leave benefits including both payments for sick days used beyond the allotted number of sick leave days at the difference between the regular pay and the substitute pay and unused sick leave payments at the end of each school year or on termination of employment.

Boards of education lack statutory authority to reimburse teachers for tuition for credits earned beyond the baccalaureate degree.

Boards of education lack statutory authority to establish a sinking fund for the purpose of paying certain enumerated benefits.

No. 4583

October 11, 1968.

Hon. James N. Callahan  
State Representative  
The Capitol  
Lansing, Michigan

Hon. Gordon Rockwell  
State Senator  
The Capitol  
Lansing, Michigan

This office is in receipt of letters from each of you relative to the authority of boards of education to provide certain benefits to public school teachers and administrators. Some of the questions that each of you have asked are precisely the same and others are somewhat related so that for purposes of convenience the questions have been combined in one opinion in answer to all of the questions.

1. Does a board of education of a local school district have authority, either under a school contract so providing or apart from any such contract, to pay a sum at retirement such as a payment of \$100 per year of service in the district, provided the teacher shall have been employed in the school district for 12 consecutive years?
2. Does a board of education of a local school district have authority, either under a school contract so providing or apart from any such contract, to pay a sum when the employee leaves the employment of a school district other than by retirement based upon the number of years of service?
3. Does a board of education of a local school district have authority, either under a school contract so providing or apart from such contract, to pay one-half of the regular salary for sabbatical leave, provided the teacher has served 7 years in the school district?

4. Does a board of education of a local school district have authority, either under a school contract so providing or apart from such contract, to pay teachers for sick leave used beyond the allotted number of sick leave days, the difference between the regular pay and the substitute pay?
5. Does a board of education of a local school district have authority, either under a school contract so providing or apart from such contract, to pay for unused sick leave at the end of the school year or on termination of employment?
6. Does a board of education of a local school district have authority, either under a school contract so providing or under the law apart from such contract, to reimburse teachers for tuition for credits earned beyond the baccalaureate degree?
7. Does a board of education of a local school district have authority to establish a sinking fund from a general fund or trust fund for the purpose of paying reimbursement of tuition, or for sabbatical or terminal leave?

The Michigan Supreme Court has consistently held that boards of education have only such powers as are expressly or by reasonably necessary implication conferred upon them by statute. *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126, 128 (1940); *Senghas v. L'Anse Creuse Public Schools*, 368 Mich. 557, 560 (1962). Thus, boards of education may contract to pay teachers and administrators only such forms of compensation as are authorized either expressly or by reasonably necessary implication by legislative enactment. The extent of their authority to pay various forms of compensation is derived from legislative enactment and from no other source. This legislative grant of authority is then exercised by boards of education in the process of contracting with public school teachers and administrators.

It should be noted that Section 15 of Act 336, P.A. 1947, as amended, being M.S.A. 1968 Cum. Supp. § 17.455(15), imposes a duty upon public employers to bargain collectively regarding "wages, hours, and other terms and conditions of employment." This legislation is a general act covering not only school districts, but other public employers as well, such as cities and counties. Therefore, the interpretation to be given the above quoted general statutory language must be determined in the context of specific statutes dealing with boards of education and their employees, since it is a well recognized principle of statutory construction that specific statutes control over general acts. *Mayor of Port Huron v. City Treasurer of Port Huron*, 328 Mich. 99, 111-112 (1950). The relevant major legislation to consider in this regard is Act 269, P.A. 1955, as amended,<sup>1</sup> hereinafter referred to as the School Code of 1955.

Your first inquiry relates to payment of a sum at retirement based upon the number of years of service in the school system. Section 569 of the School Code of 1955, as amended, *supra*, requires that contracts with teachers specify the "wages" to be paid. Section 574 provides that school boards may employ assistants and employees and fix their "compensation."

<sup>1</sup> M.S.A. 1968 Rev. Vol. § 15.3001 et seq.; C.L.S. 1961 § 340.1 et seq.

Other sections dealing with the hiring of superintendents mention the "salary" they are to receive.<sup>2</sup> Since there is no express statutory provision specifically authorizing school boards to pay this type of benefit, our question narrows itself to whether such authority may be implied from the power to pay "wages."

Act 136, P.A. 1945, as amended,<sup>3</sup> establishes retirement systems for public school employees. Chapter I contains the provisions covering school districts other than first class school districts, while Chapter II sets out the retirement system for first class school districts. Further, Section 569a of the School Code of 1955, added in 1963, empowers boards of education to purchase annuity contracts for their employees. These statutory provisions indicate that the legislature has on several occasions considered retirement benefits for public school employees.

In *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530, 545 (1953), the Court applied the rule of statutory construction that the express mention of one thing in a statute implies the exclusion of other similar things. Applying this canon of construction to the instant question, we see that the legislature has made express provision for pensions and annuities for public school employees. This necessarily excludes any possibility that boards of education have implied authority to pay other similar benefits at retirement.

Moreover, at the same session of the legislature which resulted in the enactment of the School Code of 1955, supra, the basic legislation regulating public education in Michigan, the legislature also passed Acts 234 and 246, P.A. 1955. These two latter statutes both amended Act 136, P.A. 1945, supra, which provides retirement systems for public school employees, and authorized state legislative appropriations to these retirement systems. The legislature is presumed to have full knowledge of the provisions of acts passed at the same legislative session, and courts are not free to enter the legislative field to supply statutory provisions by implication upon the assumption that they were unintentionally omitted. *Reichert v. Peoples State Bank for Savings*, 265 Mich. 668, 672 (1934). Thus, it may not be assumed that the legislature, in adopting the School Code of 1955, supra, intended to confer implied authority upon boards of education to grant additional benefits at retirement.

In *Bowler v. Nagel*, 228 Mich. 434 (1924), the Michigan Supreme Court interpreted a home rule statute to confer implied power upon a home rule city to establish a retirement system by charter amendment. However, *Bowler v. Nagel*, supra, is readily distinguishable from the instant situation in which express legislation authorizing a retirement system already exists. In *Kane v. City of Flint*, 342 Mich. 74 (1955), the court held that retirement benefits were included within the term "compensation" and thus were not mere gratuities. However, in *Kane v. City of Flint*, supra, there was express authority in the city charter to establish the retirement system in

<sup>2</sup> Since there is no evidence that the legislature intended different meanings to be conveyed by the above quoted three words, subsequently in this opinion the word "wages" will be used to include also the terms "compensation" and "salary."

<sup>3</sup> M.S.A. 1968 Rev. Vol. § 15.893(1) et seq.; C.L. 1948 § 38.201 et seq.

question. Thus, these two cases are not authority for holding that boards of education have implied power to pay this type of benefit.

Therefore, it is the opinion of the Attorney General that boards of education lack statutory authority to pay a sum at retirement based upon the number of years of service.

The second question involves payment of a sum on termination of employment, other than by retirement, based upon the number of years of service. An examination of the School Code of 1955 reveals no express legislative authority for boards of education to pay this type of benefit. Next, we must ascertain whether this power may be implied from the general authority to pay "wages" found in the School Code of 1955, *supra*.

Research has not disclosed any case law authority that would warrant an interpretation implying the power to grant this type of benefit from the express authority to pay "wages." Moreover, in *Bowler v. Nagel*, *supra*, and *Attorney General v. Connolly*, 193 Mich. 499, 513 (1916), the Michigan Supreme Court indicated that the purpose of retirement benefits was to encourage continuous service in public employment. The type of benefit here under consideration may provide incentive for school personnel to leave their employment rather than continue it. Thus, the legal ability to grant this type of benefit is not reasonably necessary to enable boards of education to hire or retain public school teachers and administrators. Consequently, it is the opinion of the Attorney General that boards of education are without statutory authority to pay a sum upon termination of employment, other than by retirement, based upon the number of years of service.

This opinion does not pass upon the question of whether boards of education have statutory authority to provide longevity pay to persons still in the employment of the school district as it is not raised.

The third inquiry relates to sabbatical leave which is expressly provided for in Section 572 of the School Code of 1955, *supra*. Pursuant to Section 572, boards of education may grant teachers holding permanent or life certificates, who have been employed in the school district at least 7 consecutive years, a sabbatical leave not to exceed 2 semesters at any one time. Further, this section states that the teacher on sabbatical may be paid compensation as provided by the board of education. Thus, the amount of compensation to be paid a teacher on sabbatical is within the discretion of the school board. It is the opinion of the Attorney General that boards of education have statutory authority to pay one-half of the regular salary of a teacher on sabbatical leave.

As questions four and five both relate to sick leave benefits, I will deal with these questions together. There is no express provision in the School Code of 1955, *supra*, authorizing school boards to grant sick leave benefits. Again, we must inquire as to whether this power may be implied from the express authority to pay "wages."

Research has uncovered no Michigan case law dealing with this point. However, in *Averell v. City of Newburyport*, 135 N.E. 463 (Mass. 1922), the Court held that the power to fix teachers' salaries included the subsidiary power to allow temporary absences due to illness without loss of pay. This case authority, in my opinion, sustains the proposition assumed

in the opinion request; namely, that boards of education in Michigan have lawful authority to permit temporary absences due to illness without loss of pay. This is an implied power that is clearly reasonably necessary to enable boards of education to hire teachers and administrators.

However, in *Averell v. City of Newburyport*, supra, the holding of the Court is limited to the implied power to grant temporary absences due to illness without loss of pay. Payments to teachers for sick leave used beyond the allotted number of sick leave days at the difference between their regular pay and the pay of their substitutes could cover most or all of the school year and thus such payments extend beyond the concept of allowing temporary absences due to illness without loss of pay.

The payment of unused sick leave at the end of each school year or on termination of employment is also beyond the scope of the holding in *Averell v. City of Newburyport*, supra, since in this form of sick leave benefit there is no absence due to illness. Also, this type of sick leave benefit might motivate people to perform their jobs when they are sick. Further, payment of unused sick leave upon termination of employment could encourage people to leave their public school employment rather than encourage them to stay.

It must be concluded that the two forms of sick leave benefits here in question are not reasonably necessary to enable boards of education to hire and retain teachers and administrators. Thus, it is the opinion of the Attorney General that boards of education lack statutory authority to pay the types of sick leave benefits enumerated in questions four and five.

This opinion does not pass on the questions of whether sick leave days may be accumulated from year to year and whether accumulated sick leave days may be paid at retirement since these questions are not posed.

The sixth question deals with reimbursement to teachers for tuition for credits earned beyond the baccalaureate degree. The School Code of 1955, supra, contains no express provision authorizing school boards to pay this particular benefit. Also, I am aware of no case law authority holding that the authority to pay "wages" includes implied authority to make tuition reimbursement.

The legislature has provided, in Section 569 of the School Code of 1955, supra, that boards of education may validly contract only with teachers who hold a legal certificate of qualification. Thus, the legislature has established a minimum standard of competence for teachers. In addition, the legislature has expressly authorized compensable sabbatical leaves for professional improvement, for teachers with at least 7 consecutive years of service in the school district, in Section 572 of the School Code of 1955, supra. This statutory pattern indicates that the legislature has considered both minimum qualifications for teaching and the extent to which boards of education may go in contributing public moneys to foster professional improvement above the required minimum level of competence. Using the rule of statutory construction found in the *Sebewaing* case, supra, the express authorization of compensable sabbatical leave excludes the possibility of implying the power to make tuition reimbursement. It is the opinion of the Attorney General that boards of education lack authority to reimburse teachers for tuition credits earned beyond the baccalaureate degree. This

ruling should not be interpreted as a limitation on the power of school boards to include postgraduate education as a valid factor in devising salary schedules.

The last inquiry relates to whether boards of education have authority to establish a sinking fund for the purpose of paying certain previously enumerated benefits to teachers and administrators. In *Township of Midland v. Township of Roscommon*, 39 Mich. 424 (1878), and the *Michigan Land and Iron Company (Limited) v. The Township of L'Anse*, 63 Mich. 700 (1886), the Michigan Supreme Court stated that it is contrary to the policy of Michigan tax laws to raise taxes to be accumulated in a fund for future use. The only express provision, involving school districts, that authorizes a sinking fund is found in Section 1 of Act 223, P.A. 1941, as amended.<sup>4</sup> This section authorizes a sinking fund ". . . for the purchase of real estate for sites for, and the construction or repair of school buildings; . . ." upon the approval of the electors of the school district. Applying the canon of statutory construction found in the *Sebewaing* case, *supra*, the express mention of a sinking fund for this purpose rules out the possibility of implying authority to establish a sinking fund for other purposes. Consequently, it is the opinion of the Attorney General that boards of education are not legally empowered to establish a sinking fund for the purpose of paying reimbursement of tuition, sabbatical leave or terminal leave.

It must be remembered that the Attorney General is not passing on the wisdom of the various types of benefits here in question, but only on their legal status under current law. In summary, it is clear that legislative action is necessary if boards of education are to have lawful authority to pay teachers and school administrators some of the benefits included in this opinion request.

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<sup>4</sup> C.L. 1948 § 388.881; M.S.A. 1968 Rev. Vol. § 15.2061.