

Opinion No. 53-5742

April 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: O. J. Holder Educational Budget Auditor Santa Fe, New Mexico

{*143} You have requested the opinion of this office as to the legality of a resolution of the Los Alamos County Board of Educational Trustees, which reads as follows:

"A Sabbatical Leave of Absence for a year may be granted to any teacher in the Los Alamos County Schools who has completed at least six years of service in these schools, and who submits, for the consideration of the Board, an accepted plan of study, travel, or self improvement. If approved, the Board will grant one full year of leave with the remuneration of one-third of the teacher's salary of the year of the Sabbatical Leave; one-half of this amount payable on November 1st, and one-half payable on March 1st of the Sabbatic year. During the Sabbatic year the recipient teacher will be under contract with the Los Alamos County Board of Educational Trustees, and it is assumed will return to full teaching status in the following year. Tenure rights of a teacher on Sabbatical Leave are not guaranteed. A Sabbatical Leave is a privilege and not a right which necessarily follows a six or more year period of service, and as such, is subject to the availability of funds and competent substitute service for the absent teacher."

{*144} The matter of granting leaves of absence to teachers with pay has not been before the Supreme Court of this state for decision. Cases from other jurisdictions do not present any clear pattern to form an indication of what our courts might do were the question before them. As is said in 47 Am. Jur., Schools, § 123:

"As to whether leaves of absences with pay may be granted to teachers, the cases are not clear. It has been declared that a general grant of authority to a school board to fix the salaries of teachers includes the subsidiary power to decide within reasonable limits whether, in order to promote efficiency on the part of teachers, temporary absences without loss of pay may be afforded them. On the other hand, the granting of a leave of absence with pay has been held to constitute a gift of public money, and to be beyond the power of any school board."

In California, at least, such a plan has been provided for by statute. Even there, the court held that to receive salary, there must be a rendition of some type of service. It will be noted that under the Los Alamos plan, there is no assurance that the teacher will return to the School system after the completion of his leave, and therefore no assurance that the school district will benefit in the slightest degree from the fruits of the teacher's leave with pay.

Without deciding whether such a plan, if otherwise sanctioned, would violate Art. 9, Sec. 14 of the Constitution of the State of New Mexico, which section prohibits donations by, amongst others, school districts, in aid of any person, it is abundantly clear that school districts in this state have no statutory authority to expend school funds for such purposes. School funds are expended upon funds budgeted either under the Maintenance Budget (§ 55-603, 1941 Compilation, Pocket Supplement) or the Direct Charge Budget (§ 55-605, 1941 Compilation). The only item in either of these budgets under which this proposal would apply is that in the Maintenance Budget which provides funds for "**Salaries; of Teachers**". As previously noted, even where such a plan is expressly approved by statute, the term "salary" contemplates and requires the rendition of some service by the teacher. Where, as here, the teacher is under no obligation to return to the system and impart to the pupils thereof any of the added knowledge he or she acquired during this leave, the element of rendition of service is lacking. Nor would it be possible to require a teacher to return to the school system after completion of his leave, for the school board may only contract with teachers on an annual basis. (§ 55-1111, 1941 Compilation, Pocket Supplement).

Such a plan cannot be upheld as withheld compensation under the teacher's contract, for, as previously stated, under our statutes annual contracts for teachers are the only type contemplated.

If school boards were permitted by statute to enter into such an arrangement, and if such a plan was not violative of Art. 9, § 14 of our State Constitution, a question which we do not decide, sabbatical leave with pay for public school teachers would be legal. In the absence of such statutory authorization, it is our opinion that the plan proposed by the quoted resolution of the Los Alamos Board of Educational Trustees is invalid and any grants of leave with pay made pursuant thereto would constitute an illegal expenditure {**145*} of school funds.

By: Walter R. Kegel

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