October 19, 1994

OPINION NO. 94-074

The Honorable Greg Carroll
Adams County Prosecuting Attorney
Courthouse, Room 112
West Union, Ohio 45693

Dear Prosecutor Carroll:

You have requested an opinion concerning the county's obligation to provide office space for the superintendent of the county board of education. You specifically ask:

1. What is the county commissioners' obligation to the Adams County/Ohio Valley Board of Education concerning providing office space for the county board of education superintendent?

2. Please advise the commissioners of any potential split of this cost as the county commissioners feel they may not be responsible for the local board superintendent, only the county board superintendent.

3. Lastly, the commissioners need to know what is considered the staff of the county board of education superintendent.

In order to answer your questions, it is first necessary to examine the statutes governing the establishment and operation of various school districts within the state.

County School District Containing Only One Local School District

Pursuant to R.C. 3311.05(A), "[t]he territory within the territorial limits of a county ..., exclusive of the territory embraced in any city school district or exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a _county school district._" Information provided by the Adams County/Ohio Valley Board of Education indicates that in Adams County there is only one local school district. *See generally* R.C. 3311.03 (defining "local school district").

Special provision is made in R.C. 3311.051 for those situations where only one local school

district exists within a county school district. *See generally* 1986 Op. Att'y Gen. No. 86-108. R.C. 3311.051(A) states in part:

> If a county school district contains only one local school district there shall be only *one board of education which shall be the county board of education* which shall have all the powers and duties of a local board of education in addition to those of a county board. In such districts the *county superintendent shall have the powers and duties of a local superintendent in addition to those of a county superintendent.*
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> ....
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> When a county board acting under the authority of this section employs any teacher, assistant superintendent, principal, assistant principal, or other administrator to perform services for a local school district, such persons shall retain all rights granted to local district employees by [R.C. Chapter 3319] and the board shall exercise all powers and duties of a local board in accordance with the requirements of that chapter. (Emphasis added.)

As a general rule, each county school district and each local school district has its own board of education. R.C. 3313.01; R.C. 3311.054.[1] Pursuant to R.C. 3311.051(A), however, in a situation where there is only one local school district within a county school district, there is only a county board of education, which exercises, in addition to its powers and duties as the county board, the powers and duties of a local board of education. Op. No. 86-108 at 2-595 through 2-596 ("R.C. 3311.051 [now R.C. 3311.051(A)],[2] which provides for the consolidation of duties of the county board and the local board ... effectively eliminates the local board of education in those circumstances" (footnote added)). *See generally* R.C. 3311.052 (stating in part, "[a]t the first general election occurring more than seventy-five days after the provisions of [R.C. 3311.051] become applicable in a county school district, a five member *county board of education* shall be elected from the qualified electors residing in the county school district territory" (emphasis added)).

The board of education of each school district, with certain exceptions, appoints a superintendent of the public schools of the district. R.C. 3319.01. In a situation covered by R.C. 3311.051(A), however, the county superintendent exercises the powers and duties of a local superintendent in addition to his powers and duties as county superintendent. Just as there is no separate board of education for a local school district that is the only local school district within a

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[1] In Sub. H.B. 126, 120th Gen. A. (1994) (eff. June 8, 1994), the General Assembly enacted R.C. 3311.054, which authorizes the county school boards that create a joint county school district to choose an alternate structure when establishing the board of education of the newly created county school district.

[2] Sub. H.B. 126 also amended R.C. 3311.051 by adding division (B), which authorizes a county school district that contains only one local school district to combine with one or more county school districts. Prior to this amendment, the language currently found in division (A) of R.C. 3311.051 constituted the entire statute.

county school district, there is no separate superintendent of the local school district. Instead, the duties that would ordinarily be handled by the superintendent of the local school district are carried out by the county superintendent. *Id*.

Duty of County Commissioners to Provide Office Space for County Board of Education and County Superintendent

Your first question asks about the duties of the board of county commissioners with regard to providing office space for the county superintendent in those situations covered by R.C. 3311.051(A). The provision of office space for the county superintendent of schools is addressed by R.C. 3319.19(A), which states in pertinent part, "[t]he board of county commissioners *shall provide and equip offices* in the county f*or the use of the county superintendent* of schools, and shall provide heat, light, water, and janitorial services for such offices. Such offices shall be the permanent headquarters of the superintendent and shall be used by the county board of education when it is in session." (Emphasis added.) Because R.C. 3319.19(A) uses the word "shall" in describing the nature of the county commissioners' duty to provide office space for the county superintendent, such duty is mandatory. *See generally Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one). R.C. 3319.19 provides no exception to the duty of the county commissioners to provide office space to the county superintendent of schools in those situations covered by R.C. 3311.051(A). *Cf*. R.C. 3319.19(B) (authorizing apportionment among counties within a joint county school district of certain costs of office space for superintendent of district). Thus, a board of county commissioners of a county in which there is only one local school district within the county school district has a mandatory duty to provide office space for the county superintendent in accordance with the terms of R.C. 3319.19. *See generally* R.C. 307.031 (distribution of state funds to county board of education office fund); R.C. 3319.19(D) (state grants for office and equipment for county superintendent).

Your second question asks about the potential splitting of the cost of office space provided to the county superintendent under R.C. 3319.19. You indicate that the county commissioners question whether the fact that the county superintendent is also performing the duties of a local superintendent relieves the county of any of its responsibility to provide office space for the superintendent. Pursuant to R.C. 3311.051(A), where there is only one local school district within a county school district, as is the case in Adams County, there is neither a local board of education nor a local superintendent of schools. Rather, the functions of both are performed by the county board of education and the county superintendent of schools. No statute of which I am aware alters the duty imposed upon the county commissioners by R.C. 3319.19(A) to provide office space for the county school superintendent in those situations covered by R.C. 3311.051(A). Further, with the exception of R.C. 3319.19(B), no statute of which I am aware authorizes the county commissioners to allocate to other units of local government a portion of the costs it incurs under R.C. 3319.19(A). Thus, even though the county superintendent of a county school district that contains only one local school district also performs the functions of a local superintendent, the county commissioners retain the duty to provide office space for the county superintendent in accordance with R.C. 3319.19.

Employment by Board of Education of County School District

By telephone you have indicated that your final question concerns the scope of the authority of a county board of education operating under R.C. 3311.051(A) to hire non-teaching employees. In answering this question, it is important to note that a board of education, as a creature of statute, possesses only those powers expressly granted by statute or necessarily implied therefrom. *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929). Because a county board of education acting under R.C. 3311.051(A) may exercise the powers of a local board of education in addition to the powers of a county board of education, the scope of the authority of a county board of education acting under R.C. 3311.051(A) depends on the authority possessed by both county and local boards of education. *See generally* Op. No. 86-108 (syllabus, paragraph two) ("[a] county board of education that has the powers and duties of a local board of education under R.C. 3311.051 [now R.C. 3311.051(A)] may exercise its discretion in determining to what extent to consolidate the exercise of county board and local board functions, provided that applicable legal requirements are satisfied").

The authority of county boards of education and local boards of education to hire non-teaching personnel is set forth in a number of statutes. For example, R.C. 3313.22 sets forth the circumstances in which boards of education either elect or appoint a treasurer. R.C. 3319.02 permits each board of education to employ one or more assistant superintendents and "such other administrators as are necessary." R.C. 3319.03 permits a board of education of a local school district to elect a business manager, who is responsible either to the board itself or to the superintendent. Pursuant to R.C. 3321.15, "[e]very county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board deems advisable." General hiring authority for local boards of education is provided by R.C. 3313.47, which states in part: "If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution." Thus, the authority of a county board of education operating under R.C. 3311.051(A) to hire non-teaching employees extends to such employees as the board, acting as either a county or local board, is authorized by statute to employ.

Conclusion

It is, therefore, my opinion, and you are hereby advised that:

1. Even though the county superintendent of schools also performs the duties of a local superintendent in accordance with R.C. 3311.051(A), R.C. 3319.19 requires the board of county commissioners, without apportionment of such costs among other units of local government, to provide and equip offices for the use of the superintendent, and to provide heat, light, water, and janitorial services for such offices.

2. The authority of a county board of education operating under R.C. 3311.051(A) to hire non-teaching employees extends to such

employees as the board, acting as either a county or local board, is authorized by statute to employ.

Respectfully,

LEE FISHER
Attorney General

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The Honorable Greg Carroll
Adams County Prosecuting Attorney
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SYLLABUS: 94-074

1. Even though the county superintendent of schools also performs the duties of a local superintendent in accordance with R.C. 3311.051(A), R.C. 3319.19 requires the board of county commissioners, without apportionment of such costs among other units of local government, to provide and equip offices for the use of the superintendent, and to provide heat, light, water, and janitorial services for such offices.

2. The authority of a county board of education operating under R.C. 3311.051(A) to hire non-teaching employees extends to such employees as the board, acting as either a county or local board, is authorized by statute to employ.