August 22, 2005

Susan Tave Zelman
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215

SYLLABUS: 2005-033

1. Pursuant to R.C. 121.22(H), R.C. 3313.33(B), and R.C. 3314.02(D), in order for an educational service center to sponsor a community school, there must be a majority vote of the governing board of the educational service center to adopt a contract, and the contract must be made or authorized at a regular or special meeting of the governing board that is open to the public. The governing board is not empowered to delegate these specific duties to the superintendent of the educational service center.

2. The governing board of an educational service center may lawfully ratify and adopt any contract made in the name of the governing board by its superintendent, if the governing board could have entered into the contract when the contract was made. Proper ratification requires compliance with relevant statutes, including R.C. 121.22, R.C. 3313.33, and R.C. 3314.02. A contract that is properly ratified is effective as if the governing board had entered into the contract at the time the contract was made.

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August 22, 2005

OPINION NO. 2005-033

Susan Tave Zelman
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
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Dear Superintendent Zelman:

We have received your request for an opinion concerning the authority of the Governing Board of the Lucas County Educational Service Center ("Lucas County ESC") to enter into contracts to sponsor community schools. You have asked about the Governing Board's attempt to delegate to the superintendent of the Lucas County ESC the Governing Board's authority to enter into those contracts, and about the validity of contracts made by the superintendent pursuant to that attempted delegation, as follows:

1. Is the Lucas County ESC Governing Board empowered to delegate to its superintendent its authority to enter into contracts to sponsor community schools?

2. If an attempted delegation of that contracting authority is not valid, does the Lucas County ESC have the authority to ratify its superintendent's actions, and what impact does ratification have upon community school contracts entered into by the superintendent?

For the reasons below, we conclude that, pursuant to R.C. 121.22(H), R.C. 3313.33(B), and R.C. 3314.02(D), in order for an educational service center to sponsor a community school, there must be a majority vote of the governing board of the educational service center to adopt a contract, and the contract must be made or authorized at a regular or special meeting of the governing board that is open to the public. The governing board is not empowered to delegate these specific duties to the superintendent of the educational service center. We conclude, further, that the governing board of an educational service center may lawfully ratify and adopt any contract made in the name of the governing board by its superintendent, if the governing board could have entered into the contract when the contract was made. Proper ratification requires compliance with relevant statutes, including R.C. 121.22, R.C. 3313.33, and R.C.

3314.02. A contract that is properly ratified is effective as if the governing board had entered into the contract at the time the contract was made.

We have been informed that, after you submitted your opinion request, the Governing Board of the Lucas County ESC took action at a public meeting to ratify the community school sponsorship contracts previously entered into by its superintendent. Therefore, we find it unnecessary, at this time, to address issues concerning the effect of unauthorized contracts that are not subsequently ratified, or remedies relating to those contracts.

Background regarding matters at issue

Your questions concern certain actions taken by the Lucas County ESC as the sponsor of new start-up community schools in Ohio. The Lucas County ESC was granted sponsor status initially in section 50.52 of Am. Sub. H.B. 215 of the 122nd General Assembly as part of a pilot project, *see* 1997-1998 Ohio Laws, Part I, 909, 2041-58 (Am. Sub. H.B. 215, eff. June 30, 1997) (sec. 50.52, uncodified), amended in 1997-1998 Ohio Laws, Part III, 5609, 5794, 5796-5802 (Am. Sub. H.B. 770, eff. June 17, 1998) (sec. 4, uncodified), and now acts pursuant to the codified provisions of R.C. Chapter 3314. *See* R.C. 3314.02(A)(2); R.C. 3314.15; note 3, *infra*.[1]

Pursuant to R.C. 3314.01(B), community schools are public schools, independent of any school district, and are part of the state's program of education. You have informed us that community schools vary in their configurations, with some including grades K to 12 and others limited to elementary or secondary grades. Approximately 60,000 students are enrolled in Ohio's community schools. Community schools are generally funded by state foundation moneys, based upon student enrollment and the school district of residence of the students. The Department of Education administers the funding process in accordance with R.C. 3314.08.

A community school may be created either as a conversion school or as a new start-up school, in accordance with an appropriate contract with a sponsor. *See* R.C. 3314.01(A); R.C. 3314.02; R.C. 3314.03. A conversion school is created when a board of education permits all or part of any of the schools under its control to become a community school, upon the request of a proposing person or group that meets statutory requirements. R.C. 3314.01(A)(1). New start-up

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[1] An educational service center (created as the successor to a county school district) consists of territory that is not located within city or exempted village school districts but, rather, comprises local school districts. R.C. 3311.05(A); *see* R.C. 3311.01; R.C. 3311.053; 1999 Op. Att'y Gen. No. 99-023 at 2-150 n.1. The educational service center provides services and support of various types for the local school districts that it serves, and may provide services to other school districts by agreement. *See, e.g.*, R.C. 3313.60; R.C. 3313.843; R.C. 3315.07; R.C. 3317.11; R.C. 3319.07; 2001 Op. Att'y Gen. No. 2001-043 at 2-267; 1999 Op. Att'y Gen. No. 99-023 at 2-150 n.1. The governing board of an educational service center consists of elective officials and constitutes a body corporate and politic. R.C. 3313.01; R.C. 3313.17; *see also* R.C. 3311.054; R.C. 3311.056.

schools are created anew, rather than being converted from existing schools. R.C. 3314.01(A)(2). A community school sponsorship contract may extend for no more than five years and may then be renewed. R.C. 3314.03(A)(13) and (E); R.C. 3314.07. There are various statutory limits governing the permissible numbers of community schools of various types and the numbers that certain entities may sponsor. R.C. 3314.013; R.C. 3314.014; R.C. 3314.015(B); *see* R.C. 3314.02(D) ("[s]ubject to sections 3314.013 and 3314.014 of the Revised Code, an unlimited number of community schools may be established in any school district provided that a contract is entered into for each community school pursuant to this chapter").

Various public entities, including the governing board of an educational service center, may serve as a sponsor of a community school. R.C. 3314.02(A)(1) and (C). An educational service center is considered a school district for purposes of R.C. Title 33 whenever the term "school district" is used "without expressly referring to city, local, exempted village, or joint vocational school districts, or some specific combination thereof," and the governing board of an educational service center is considered a board of education in the same circumstances. R.C. 3311.055. Hence, the governing board of an educational service center has many of the same powers and duties as the board of education of a school district.

The Ohio Department of Education is responsible for the approval and oversight of sponsors of community schools. The Department also provides technical assistance to the schools and sponsors in their compliance with applicable laws and contracts and in their development of community schools. R.C. 3314.015; *see also* R.C. 3314.02(A)(1).

In connection with its oversight of community school sponsors, the Department of Education learned that the Governing Board of the Lucas County ESC adopted a resolution in which it delegated to its superintendent the authority to enter into agreements to sponsor community schools. The resolution was adopted on or about January 20, 2004, and states:

> NOW, THEREFORE, BE IT RESOLVED, that Thomas B. Baker, Superintendent to [sic] authorized to enter into and execute, on behalf of the Governing Board of the Lucas County Educational Service Center, all Ohio community school contracts; and all such acts are hereby ratified and approved.

Following the adoption of this resolution, the superintendent of the Lucas County ESC executed 78 contracts to sponsor community schools.[2] We have been informed that the members of the

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[2] The large number of contracts may be explained by the fact that Sub. H.B. 364, effective April 8, 2003, eliminated the authority of the State Board of Education to sponsor community schools (except for the ability to assume sponsorship under R.C. 3314.015(C) upon the failure of the school's sponsor to comply with its obligations) and required existing State Board-sponsored schools to find new sponsors within two years. *See* 2001-2002 Ohio Laws, Part V, 10175, 10210, 10275-76 (Sub. H.B. 364, eff. Apr. 8, 2003) (amendment to R.C. 3314.02(C)(1)(d) and sec. 6, uncodified). We have been informed that the Lucas County ESC's resolution was

Governing Board of the Lucas County ESC had no involvement with those contracts until it recently included them in its ratification of all 114 of the Lucas County ESC's community school sponsorship contracts. Questions have arisen concerning the validity of the action taken by the Governing Board to delegate its contractual authority and the consequences of that action. You have requested our assistance in resolving this matter.

We are not able, through the exercise of the opinions function, to make findings of fact or to determine the validity or effect of particular contracts or resolutions. Those matters must be determined in a particular case by the persons involved, or by the courts. *See, e.g.*, 2004 Op. Att'y Gen. No. 2004-022 at 2-186; 1986 Op. Att'y Gen. No. 86-039 at 2-198 (the Attorney General is "unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of persons under such documents"); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). We are able, however, to set forth a discussion of general principles of law that may be applied to particular situations as appropriate.

Contractual powers of the governing board of an educational service center

The governing board of an educational service center is a creature of statute and, as such, has only the powers it is granted by statute, either expressly or by clear implication. *See Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*, 52 Ohio St. 3d 222, 223, 556 N.E.2d 511 (1990) ("[s]chool boards are creations of statute and have no more authority than what has been conferred on them by statute or what is clearly implied therefrom"). Governing boards of educational service centers have been given general powers to acquire and hold property and to enter into contracts. R.C. 3313.17; R.C. 3313.33; 1999 Op. Att'y Gen. No. 99-023. With regard to the authority of a board of education (including the governing board of an educational service center) to enter into contracts, R.C. 3313.33(B) states: "No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board." *See also* R.C. 3311.055.

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intended to facilitate the expeditious transfer of contracts from the Ohio Department of Education to the Lucas County ESC, and that the Lucas County ESC did, in fact, take over the sponsor functions that the Department had been performing with regard to numerous existing community schools by assuming the provisions of existing contracts, rather than negotiating new contractual terms. Sub. H.B. 364 allowed existing sponsors (including the Lucas County ESC) to enter into new contracts to sponsor community schools without being approved as sponsors by the Department of Education as required under newly-enacted R.C. 3314.015, "as long as the contracts conform to and the entity complies with all other provisions of Chapter 3314. of the Revised Code as amended by this act." *Id.* at 10276 (sec. 6, uncodified). There is no indication in the legislation that new sponsor relationships may be made without contracts that comply with the requirements established by statute.

Like other public bodies, the governing board of an educational service center is subject to the public meeting provisions of R.C. 121.22, which "require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A); *see* R.C. 121.22(B)(1)(a) (defining "[p]ublic body" to include a board of a school district); *Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 161 Ohio App. 3d 372, 2005-Ohio-2868 (Adams County). R.C. 121.22 provides generally that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times." R.C. 121.22(C). It requires, further, that a member of a public body be present in person at a meeting open to the public in order to be considered present or to vote at the meeting. *Id.* Although certain limited matters may be considered in executive session, *see* R.C. 121.22(G) and (J), "[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." R.C. 121.22(H); *see also* 2000 Op. Att'y Gen. No. 2000-010 at 2-55 ("formal action of the public body, such as voting, may be taken only at an open meeting"). In addition, "[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid" unless the deliberations were conducted at a lawful executive session for a statutorily-authorized purpose. R.C. 121.22(H); *see Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*

The governing board of an educational service center is given express authority to enter into contracts with community schools that the educational service center sponsors. R.C. 3314.02(D) prescribes the manner in which a contract to sponsor a community school must be made, as follows: "*A majority vote of the board of a sponsoring entity* and a majority vote of the members of the governing authority of a community school *shall be required to adopt a contract* and convert the public school to a community school or establish the new start-up school." (Emphasis added.)

In accordance with the provisions outlined above, a contract by which an educational service center sponsors a community school must be adopted by a majority vote of the governing board of the educational service center. R.C. 3314.02(D). In order to be binding upon the educational service center, the contract must be made or authorized at a regular or special meeting of the governing board. R.C. 3313.33(B). In addition, the governing board's formal action must take place at an open meeting. R.C. 121.22(H). It thus appears that, in order for an educational service center to sponsor a community school, there must be a majority vote of the governing board to adopt a contract, and the contract must be made or authorized at a regular or special meeting of the governing board that is open to the public.

General powers of the superintendent of an educational service center

The governing board of an educational service center is required to appoint a properly-qualified person to serve as superintendent. The appointment must be made at a regular or special meeting of the board and must be implemented by means of a written contract of employment. R.C. 3319.01. The superintendent is given certain responsibilities by statute, including the authority to direct and assign teachers and other employees of the service center. R.C. 3319.01; *see also, e.g.*, R.C. 3319.02; R.C. 3319.07; R.C. 3319.11. The superintendent also

has the general responsibility of performing "such other duties as the board determines." R.C. 3319.01. *See Deryck v. Akron City Sch. Dist.*, No. 14660, 1990 Ohio App. LEXIS 5461, *4 (Summit County Dec. 12, 1990) (the superintendent's duties "are determined both by statute and the board itself").

The superintendent of an educational service center is named as the executive officer for the governing board of the center. R.C. 3319.01. This means that the superintendent is an employee of the board, is subject to the direction of the board, and is responsible for implementing policies and management decisions made by the board. *Rumora v. Bd. of Educ. of Ashtabula Area City Sch. Dist.*, 43 Ohio Misc. 48, 54-59, 335 N.E.2d 378 (C.P. Ashtabula County 1973). No statute expressly authorizes the superintendent to enter into contracts on behalf of the governing board. In general, the superintendent is responsible for implementing management decisions made by the board. *Id.* at 56; *Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*, 52 Ohio St. 3d at 224; *Walker v. Lockland City Sch. Dist. Bd. of Educ.*, 69 Ohio App. 2d 27, 429 N.E.2d 1179 (Hamilton County 1980).[3]

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[3] As mentioned above, the Lucas County ESC was initially granted authority to sponsor community schools as part of a pilot project in 1997. *See* 1997-1998 Ohio Laws, Part I, 909, 2041-58 (Am. Sub. H.B. 215, eff. June 30, 1997) (sec. 50.52, uncodified), amended in 1997-1998 Ohio Laws, Part III, 5609, 5794, 5796-5802 (Am. Sub. H.B. 770, eff. June 17, 1998) (sec. 4, uncodified). Those initial provisions gave the superintendent of the Lucas County ESC various powers and duties. For example, they authorized the superintendent of the Lucas County ESC to award planning and start-up grants to community schools. *See* 1997-1998 Ohio Laws, Part I, 2042 (sec. 50.52) and 1997-1998 Ohio Laws, Part III, 5796 (sec. 50.52, as amended). They also authorized the superintendent of the Lucas County ESC to review and accept or reject preliminary agreements submitted by potential sponsors of community schools to ensure that the start-up schools provided diverse educational missions. *See* 1997-1998 Ohio Laws, Part I, 2043-44 (sec. 50.52, subsec. 2(B)) and 1997-1998 Ohio Laws, Part III, 5797 (sec. 50.52.2, as amended).

However, the authority to exercise the Lucas County Educational Service Center's capacity to enter into a contract to sponsor a particular community school was granted to the Governing Board of the Lucas County ESC. *See* 1997-1998 Ohio Laws, Part I, 2045-46 (sec. 50.52, subsec. 4(B)) and 1997-1998 Ohio Laws, Part III, 5798-5800 (sec. 50.52.4(B), as amended) (proposals for the establishment of community schools may be made to various sponsors, including the Governing Board of the Lucas County ESC, and the Governing Board may enter into preliminary agreements and negotiate the terms of contracts); 1997-1998 Ohio Laws, Part I, 2046 (sec. 50.52, subsec. 4(C)) and 1997-1998 Ohio Laws, Part III, 5800 (sec. 50.52.4(C), as amended) ("[a] majority vote of the appropriate public entity [including the Governing Board of the Lucas County Educational Service Center] and a majority vote of the members of the governing authority of a community school shall be required to adopt a contract and establish the community school"); *see also* 1997-1998 Ohio Laws, Part I, 2042 (sec. 50.52)

Authority of the governing board of an educational service center to delegate to its superintendent the authority to enter into a contract to sponsor a community school

The first question for our consideration is whether the governing board of an educational service center is empowered to delegate to its superintendent the authority to enter into contracts to sponsor community schools. The general rule regarding the delegation of authority by a public body is that, in the absence of specific statutory authority, a public body may delegate ministerial duties, but may not delegate duties that require the exercise of judgment and discretion. *See, e.g.*, 1997 Op. Att'y Gen. No. 97-054 at 2-332; 1994 Op. Att'y Gen. No. 94-030 at 2-135; 1993 Op. Att'y Gen. No. 93-026 at 2-135; 1987 Op. Att'y Gen. No. 87-083 at 2-558 to 2-559 n.1; 1987 Op. Att'y Gen. No. 87-034 at 2-237; 1979 Op. Att'y Gen. No. 79-067 at 2-223. There is a presumption that "the board or officer whose judgment and discretion is required, was chosen because they were deemed fit and competent to exercise that judgment and discretion and unless power to substitute another in their place has been given, such board or officer cannot delegate these duties to another." *CB Transp., Inc. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 82, 397 N.E.2d 781 (C.P. Butler County 1979); *see also, e.g., Burkholder v. Lauber*, 6 Ohio Misc. 152, 216 N.E.2d 909 (C.P. Fulton County 1965); *Kelley v. City of Cincinnati*, 7 Ohio N.P. 360, 362 (C.P. Hamilton County 1899); 1991 Op. Att'y Gen. No. 91-048 at 2-251; 1979 Op. Att'y Gen. No. 79-067 at 2-223 ("[i]t would contravene the legislative intent . . . to allow a judgmental and discretionary act to be delegated to an entity other than the entity originally entrusted with the duty by statute"). Thus, the governing board of an educational service center may direct its superintendent to perform ministerial acts and to assist the board in carrying out its discretionary duties, but, absent specific statutory authority, the board is not permitted to allow the superintendent to perform discretionary duties that have been entrusted to the board.

It is generally established that the development of contractual terms and the decision to enter into a contract require the exercise of judgment and discretion, and that a public body cannot delegate these functions without specific statutory authority. *See, e.g.*, 2004 Op. Att'y Gen. No. 2004-031. In the instant case, no statute expressly authorizes the governing board of an educational service center to delegate to its superintendent the authority to enter into contracts to sponsor community schools. The only statute that arguably might include this authority is R.C. 3319.01, which permits the superintendent to "perform such other duties as the board determines." This language is general and may be construed to include a variety of duties prescribed by the board. *See, e.g., Deryck v. Akron City Sch. Dist.*, at *5 ("[w]hile the General Assembly has decreed that no contract is binding upon a school board unless approved by it,

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and 1997-1998 Ohio Laws, Part III, 5796 (sec. 50.52, as amended) (the Governing Board of the Lucas County Educational Service Center may enter into an agreement to provide services to a community school, as mutually agreed by the school's governing authority and the Service Center Board). Thus, the provisions governing the pilot project did not provide the superintendent of the Lucas County ESC with authority to enter into sponsorship contracts on behalf of the Lucas County ESC.

R.C. 3313.33, there is no prohibition against allowing an officer of the board to terminate such agreements. certainly [sic], this is a duty that can be delegated to the superintendent pursuant to *R.C. 3319.01*"). R.C. 3319.01 does not, however, provide specific statutory authority for the delegation of the governing board's duties regarding the process of contracting for the sponsorship of community schools.

As discussed above, the governing board's contractual authority may be exercised only in accordance with the statutes granting it that authority. *See Walker v. Lockland City Sch. Dist. Bd. of Educ.*, 69 Ohio App. 2d at 29 (the superintendent of a school district cannot enter into an oral contract that binds the board of education if the board has not authorized the contract pursuant to R.C. 3331.33 and R.C. 121.22); *State ex rel. Steinbeck v. Treasurer of Liberty Township*, 22 Ohio St. 144 (1871). The statutes granting the governing board authority to enter into contracts to sponsor community schools restrict the board's authority to delegate that authority.

The statutes governing contracts to sponsor community schools clearly indicate that the determination to enter into a contract of that nature is a matter of judgment and discretion granted to the board, and that the authority to make that determination is a function that cannot be delegated. In particular, the language of R.C. 3314.02(D) providing that "[a] majority vote of the board of a sponsoring entity . . . shall be required to adopt a contract and convert the public school to a community school or establish the new start-up school" requires that the governing board of an educational service center vote upon a contract to sponsor a community school. Further, the language of R.C. 3313.33(B) stating that "[n]o contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of the board" requires that the board members take action at a regular or special meeting to make or authorize a contract to sponsor a community school. In addition, R.C. 121.22(H) provides that formal action of the governing board is invalid unless adopted in an open meeting of the governing board.

The statutes thus impose upon the governing board of an educational service center specific duties that the board itself must perform. The governing board is not empowered to modify the statutory requirements or to delegate these specific statutory duties to its superintendent. Although the governing board of an educational service center has broad authority pursuant to R.C. 3319.01 to direct the superintendent to perform various duties to implement its policies and management decisions, the governing board does not have authority to delegate to the superintendent the responsibility of deciding whether to enter into a contract to sponsor a particular community school, or the function of carrying out the statutorily-mandated meetings of the board.

We conclude, accordingly, that, pursuant to R.C. 121.22(H), R.C. 3313.33(B), and R.C. 3314.02(D), in order for an educational service center to sponsor a community school, there must be a majority vote of the governing board of the educational service center to adopt a contract, and the contract must be made or authorized at a regular or special meeting of the governing board that is open to the public. The governing board is not empowered to delegate these specific duties to the superintendent of the educational service center.

Authority of the governing board of an educational service center to ratify the actions of its superintendent

Your remaining question concerns the ratification by the Governing Board of the Lucas County ESC of contracts made by its superintendent pursuant to an attempted delegation of authority that may have been invalid. Although we are aware that the contracts in question were ratified by the Governing Board of the Lucas County Educational Service Center after you submitted your opinion request, we are not considering the validity of that action or the status of any particular contract. Rather, this opinion addresses in general terms the authority of the governing board of an educational service center to ratify contracts, and the general effect of that ratification.

By definition, the "ratification" of a contract is "[a] person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at the time no authority to act as the person's agent." *Black's Law Dictionary* 1268-69 (7th ed. 1999); *see also Garrison v. Daytonian Hotel*, 105 Ohio App. 3d 322, 326, 663 N.E.2d 1316 (Montgomery County 1995) ("[a] ratification is a confirmation of a previous, voidable act that operates to give the act the effect it was originally intended to have. It is equivalent to a previous authorization and relates back in time to when the act ratified was done").

The general rule regarding ratification of a contract by a public body was set forth in *Monarch Construction Co. v. Ohio School Facilities Commission*, 150 Ohio App. 3d 134, 2002-Ohio-6281, 779 N.E.2d 844, ¶ 53 (Franklin County) (quoting *State v. Executor of Buttles*, 3 Ohio St. 309, 322-23 (1854)), as follows:

> [W]hen the agents of the State exceeded their authority, the State had its *option to ratify their acts or repudiate the contract* they had made in its name; but when it elected to ratify, it assumed all the obligations of the contract from its reception [was "inception" intended?], and was entitled to all its benefits. If the State could have lawfully made the contract at the time and under the circumstances it was made, it could lawfully adopt the one made in its name by those who assumed to act as its agents. * * * In short, *any contract that an individual, or body corporate or politic, may lawfully make, they may lawfully ratify and adopt, when made in their name without authority; and when adopted, it has its effect from the time it was made, and the same effect as though no agent had intervened.* (Emphasis added.)

Accord Sys. Automation Corp. v. Ohio Dep't of Admin. Servs., 2004-Ohio-5544, ¶ 24 (Ct. App. Franklin County) (in the *Monarch* case, "this court determined that contracts made on behalf of the state by allegedly unauthorized persons were voidable, not void ab initio, and could be ratified"); *Hersberger v. Ohio Aviation Bd.*, 58 Ohio L. Abs. 432, 434, 97 N.E.2d 41 (Ct. App. Franklin County 1950). The *Monarch* court applied this rule to action of the Ohio School Facilities Commission taken to ratify a contract for school construction. It is applicable also to

action of the governing board of an educational service center taken to ratify contracts executed by a superintendent who lacked authority to enter into the contracts.

Pursuant to the rule set forth in *Monarch*, the governing board of an educational service center may lawfully ratify and adopt any contract made in the name of the board by the superintendent, if the board could have entered into the contract when the contract was made. The contract is then effective as if the board itself had entered into the contract at the time the contract was made. By ratifying a contract, the governing board becomes subject to the obligations of the contract from its inception, and entitled to all its benefits.

It is necessary, however, for the ratification of a contract to comply with applicable law. Where particular requirements govern the execution of a contract, the contract cannot be ratified unless those requirements are met. *Walker v. Lockland City Sch. Dist. Bd. of Educ.*, 69 Ohio App. 2d at 29 (finding that there was no ratification and, thus, no contract, when the board of education "did not ratify the superintendent's representations in a manner comporting with the requirements of R.C. 3313.33 and 121.22(H)"); *see also State ex rel. Steinbeck v. Treasurer of Liberty Township*, 22 Ohio St. at 149 (contract not properly executed by board of education imposed no obligation "unless ratified by the corporate body"); *State v. Executor of Buttles*, 3 Ohio St. 309, 323-24 (the ratification of a contract requires no less power than the power to have bound the public body by the contract at the time it was made). Hence, the governing board of an educational service center can ratify a community school sponsorship contract entered into by its superintendent only by complying with the provisions of relevant statutes, including R.C. 121.22, R.C. 3313.33, and R.C. 3314.02.

We conclude, accordingly, that the governing board of an educational service center may lawfully ratify and adopt any contract made in the name of the governing board by its superintendent, if the governing board could have entered into the contract when the contract was made. Proper ratification requires compliance with relevant statutes, including R.C. 121.22, R.C. 3313.33, and R.C. 3314.02. A contract that is properly ratified is effective as if the governing board had entered into the contract at the time the contract was made.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 121.22(H), R.C. 3313.33(B), and R.C. 3314.02(D), in order for an educational service center to sponsor a community school, there must be a majority vote of the governing board of the educational service center to adopt a contract, and the contract must be made or authorized at a regular or special meeting of the governing board that is open to the public. The governing board is not empowered to delegate these specific duties to the superintendent of the educational service center.

2. The governing board of an educational service center may lawfully ratify and adopt any contract made in the name of the governing board by its superintendent, if the governing board could have entered into the contract when the contract was made. Proper ratification requires compliance with relevant statutes, including R.C. 121.22, R.C. 3313.33, and R.C. 3314.02. A contract that is properly ratified is effective as if the governing board had entered into the contract at the time the contract was made.

Respectfully,

JIM PETRO
Attorney General