

OPINION NO. 99-007**Syllabus:**

1. A vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasonably finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.
2. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their

training or to others as services that students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.

3. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee.
4. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.
5. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.
6. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a determination of the amount of taxes or other public funding required to meet the needs of the district.

To: Michael K. Allen, Hamilton County Prosecuting Attorney, Cincinnati, Ohio
By: Betty D. Montgomery, Attorney General, February 2, 1999

We received from your predecessor a request for an opinion concerning the authority of a vocational school district known as Great Oaks to operate a system for access to the Internet and make access services available to other entities and individuals.¹ The request asked the following questions:

¹ Great Oaks is a vocational school district (also known as a joint vocational school district) established under R.C. 3311.18. See R.C. 3311.01. We have been informed that the

1. Is Great Oaks' investment in the necessary hardware and software, contracting with bulk providers of communication services (*i.e.*, T-1 lines), and operation of a system for access to the Internet authorized and/or permitted by R.C. 3311.19, 3311.215, 3313.75, 3313.90, 3313.76, 3313.77 or any other applicable statute?
2. Is Great Oaks' provision of Internet access services to governmental entities, nonprofit organizations, students, business and industry advisory groups, vendors, or employees authorized and/or permitted by R.C. 3311.19, 3311.215, 3313.75, 3313.90, 3313.76, 3313.77 or any other applicable statutes?
3. May Great Oaks charge a fee, which covers the costs of such services, for such services and is the fee of \$160 per year for each individual subscriber and \$300 per year for participating governmental agencies a "reasonable" fee as contemplated by R.C. 3313.76 and 3313.77 or any other applicable statute?
4. Is the provision of services as proposed permissible under the Ohio law and Ohio Constitution?
5. If a joint vocational school district may provide Internet service to any or all of the above-referenced entities, what impact, if any, does providing such Internet service have on the joint vocational school district with regard to taxes and its status as a tax exempt educational entity (*i.e.*, would its status be affected by engaging in activity which may compete with private enterprise)?
6. If a joint vocational school district may provide Internet service to any or all of the above-referenced entities, what impact, if any, does providing such Internet service have on the joint vocational school district with regard to its ability to levy taxes or obtain public funding?

The facts that were presented to us indicate that an Internet access system known as Oak Web was established in February of 1995 by Fayette County residents through grants and public funding in order to provide Internet access services to rural areas not served by a commercial access provider. The Oak Web system's hardware and software are currently owned by Great Oaks, which proposes to expand the Oak Web system to cover the Great Oaks' district. The cost of the equipment was approximately one hundred fifty thousand dollars, which is less than one percent (.0035%) of Great Oak's budget. The Oak Web system also includes leased telephone lines and a temperature-controlled room. The computer hardware and software have an excess capacity that could be used to serve various groups. The excess capacity is not divisible and, therefore, cannot readily be disposed of by sale.

Great Oaks has identified three types of uses for the Oak Web system. The primary use is as part of the educational functions of the vocational school district. The Oak Web

vocational school district includes twelve counties and thirty-six school districts in southwest Ohio.

system would be part of Great Oaks' curriculum and would be used to offer its students courses on the uses of the Internet. Great Oaks could also offer educational courses to its students through the Internet. In addition, Great Oaks could use the Internet to provide its students and the community with course catalog information, registration for courses, information regarding the school district, and educational courses.

The second purpose for which the Oak Web system could be used is community access. Great Oaks proposes, for a reasonable fee, to offer excess capacity of Oak Web to the general community located in the district. As the request letter states: "Great Oaks believes that community access to the Internet will promote the welfare of the community through educational instruction, holding religious, civic and social meetings over the Internet."

The third purpose for which the Oak Web system could be used is communication by or with Great Oaks. The request letter lists various types of communication: communication of assignments to students, communication between educators and students, submission of course work by students, Great Oaks' communication with other governmental entities, communication with nonprofit support organizations, communication with business and industry partners providing employment opportunities for Great Oaks' students, communication with vendors, and communication with employees of the district.

Great Oaks proposes, for a reasonable fee, to sell excess capacity to the following groups:

- (1) governmental entities, consisting of local, state, or federal agencies that are funded at least in part with tax money and are located where the Oak Web service is available (examples include public school districts, public libraries, and county offices), to ensure access to governmental information;
- (2) nonprofit organizations, as classified under IRS guidelines, that support the Great Oaks mission, whether located within or outside the district boundaries;
- (3) students, for communication with the district and access to Internet educational materials;
- (4) business and industry advisory groups, to communicate hiring needs and other support initiatives;²
- (5) vendors of Great Oaks, for ordering, delivery, and invoicing purposes;
- (6) employees of Great Oaks.

² R.C. 3313.174 provides for the board of education of each city and exempted village school district and the governing board of each educational service center to appoint a business advisory council to advise the board on matters relating to employment skills and training. It does not apply to the board of education of a vocational school district. R.C. 3313.174.

Great Oaks proposes pricing that is reasonably calculated to offset the costs associated with the provision of Internet access services. The amounts proposed are \$160 per year for an individual subscriber (a typical commercial provider fee would be \$240) and \$300 per year for a governmental agency, plus the cost of its own communications line (a typical commercial provider fee would be \$600 to \$800). Individuals would be required to take a training course to subscribe to Oak Web, and the cost of training would be covered by the subscription fee.

Subscribers would be required to sign a written contract. All subscription rentals that are not related to school functions would be subject to termination if Great Oaks needs the Oak Web property for school purposes. The Oak Web system would have technical support provided by personnel who also provide support for other Great Oaks' computer equipment and functions. There would be two types of subscriptions, one for individuals who use a modem and single phone line (single node members) and one for organizations or entities that use a dedicated line (multi-node members).

Let us consider first the question whether a vocational school district is permitted to operate a system for Internet access. In order to answer that question, we must look to the statutes setting forth the powers of a vocational school district.

A vocational school district created pursuant to R.C. 3311.18 is managed and controlled by the joint vocational school district board of education. R.C. 3311.19. As a creature of statute, the board has only those powers that it is granted by statute, either expressly or by necessary implication. *See Verberg v. Board of Educ.*, 135 Ohio St. 246, 20 N.E.2d 368 (1939); 1965 Op. Att'y Gen. No. 65-17. Subject to certain exceptions, a joint vocational school district board of education is granted the same powers, duties, and authority for the management and operation of its district as the board of education of a city school district. R.C. 3311.19(D); *see* R.C. 3313.47.

A vocational school district has the responsibility of providing vocational education programs for students, in accordance with standards established by the State Board of Education. R.C. 3313.90; *see also* R.C. 3313.901; 5 Ohio Admin. Code Chapter 3301-61. The major goal of such a district is to provide opportunities for individuals to gain the skills and knowledge required for employability. 5 Ohio Admin. Code 3301-67-01(A)(2).

A vocational school district may offer a variety of programs and activities. R.C. 3313.53. Upon approval of the voters, a vocational school district may issue bonds and levy taxes. *See* R.C. 3311.20-.21; R.C. 3311.213; R.C. 3313.911; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

A vocational school district is authorized to acquire the land, buildings, and apparatus needed to perform its functions. R.C. 3313.17; R.C. 3313.37; R.C. 3313.374-.375; R.C. 3313.39; R.C. 3313.46. A board of education has express authority to acquire necessary office equipment and computer hardware and software for instructional purposes for the schools under its control through a variety of financial arrangements. R.C. 3313.37(B)(4). A vocational school district is expressly permitted to use its facilities for post-high school training, technical training, and re-training programs of vocational education and to construct and operate facilities for those purposes. R.C. 3311.215; *cf.* R.C. 3313.52 (evening schools); R.C. 3313.53 (vocational schools); R.C. 3313.531 (adult high school continuation programs).

A vocational school district has broad discretion to determine the manner in which it carries out its statutory duties. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-092; 1978 Op. Att'y Gen.

No. 78-040; 1974 Op. Att'y Gen. No. 74-063, at 2-262 ("[i]t is the settled law of this state that the courts will not interfere with the discretionary power of a board of education where the exercise of such power is reasonable, in good faith, and not an abuse of discretion"); 1971 Op. Att'y Gen. No. 71-026.

There is no statute that expressly authorizes a vocational school district to acquire necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet. A vocational school district, however, may acquire and operate such a system as part of its statutory functions if the acquisition and operation of the system is part of its curriculum or is otherwise necessary for the performance of its statutory duties. *See* R.C. 3313.17; 1981 Op. Att'y Gen. No. 81-092; 1959 Op. Att'y Gen. No. 922, p. 619. Thus, a vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasonably finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.³

Let us turn now to the second question, which is whether a vocational school district is permitted to provide Internet access services to governmental entities, nonprofit organizations, students, business and industry advisory groups, vendors, or employees. As discussed above, a vocational school district is responsible for providing educational programs and is given broad discretion in determining how to carry out its statutory duties. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their training or to others as services that students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.

A school district that decides that it needs to operate an Internet access system as part of its curriculum may clearly provide its students with access to that system in order for

³ The State Board of Education is required to adopt rules for a statewide Education Management Information System (EMIS) containing information about student enrollment and performance, staffing, and costs. R.C. 3301.0714; 5 Ohio Admin. Code Chapter 3301-14 and Chapter 3301-19. The State Board of Education is also required to adopt rules governing the purchasing and leasing of data processing services and equipment for school districts, including vocational school districts. R.C. 3301.075. The rules include provisions for the establishment of an Ohio Education Computer Network (OECN) and procedures, guidelines, and specifications for the OECN. R.C. 3301.075; 5 Ohio Admin. Code Chapter 3301-3; *see also* R.C. 3313.92. Our research does not disclose that any provision of law or rule relating to the EMIS or OECN restricts the authority of a vocational school district to own and operate a system for Internet access. To the extent that any such provisions may apply to the proposed activity, Great Oaks must, of course, comply with those provisions.

State government also includes an independent agency known as the Office of Information, Learning, and Technology Services, which is monitored by the Information, Learning, and Technology Authority. R.C. 3301.80. Those entities have various responsibilities relating to the use of educational technology by school districts and other educational institutions. *Id.*, *see also* 5 Ohio Admin. Code Chapter 3301-28 (Schoolnet Plus Program: Computers for K-4 Classrooms).

them to participate in the curriculum. *See* R.C. 3311.19; R.C. 3313.90. This authority extends to all students of the district, including those participating in post-high school training, technical training, and re-training programs. R.C. 3311.215.

Vocational schools are permitted to include in their curriculum, as part of their training of pupils, programs that result in the production of products or provision of services and in the sale of those products or services. *See, e.g.*, 1989 Op. Att’y Gen. No. 89-061 (students of a joint vocational school may construct a juvenile treatment facility for the county); 1981 Op. Att’y Gen. No. 81-092 (the board of education of a vocational school district may enter into an agreement with a nonprofit corporation under which students construct houses on property owned by the corporation, provided that such action is reasonably necessary to fulfill the requirements of the vocational education curriculum, or the board may purchase land, have students construct houses, and then sell the houses); 1976 Op. Att’y Gen. No. 76-065 (syllabus) (“[a] joint vocational school may, as part of its vocational education program, construct and sell single family residences on school land which may be subdivided for this purpose”); 1971 Op. Att’y Gen. No. 71-068 (a school may engage and compete in private enterprise, even at a profit, if the program is reasonably necessary to the vocational education curriculum); 1971 Op. Att’y Gen. No. 71-026 (to the extent reasonably necessary to fulfill the requirements of the curriculum, the facilities of a vocational school may be used on occasion for the preparation, serving, and management of meals and banquets to organizations in the community as part of the training in the vocational food service program). Sales may be made to the general public. *See, e.g.*, 1971 Op. Att’y Gen. No. 71-068. Thus, if a vocational school district operates a program for training in Internet access under which it offers for sale services provided by its students, the sale of those services can be a proper part of the district’s functions. The sale of such services as part of the curriculum of the district may not, however, go beyond what is reasonably necessary to fulfill the requirements of the curriculum. *See, e.g.*, 1981 Op. Att’y Gen. No. 81-092; 1971 Op. Att’y Gen. No. 71-026, at 2-84.

In addition to providing Internet access as part of its curriculum, a vocational school district that finds a need for an Internet access service in order to carry out its administrative and organizational duties may grant its students and employees access so that they can make use of the programs and information that the district provides by means of the Internet. *See* R.C. 3311.19. It might also be found that the provision of access to other groups—such as vendors and business and industry advisory groups—enables the district more efficiently to perform its statutory functions. If this is the case, the district is permitted to provide that access. In general, then, if providing Internet access to particular persons or entities is incidental to, or would facilitate the performance of, the district’s statutory duties, the district may provide that access as part of the provision of programs and operation of the district.

A vocational school district, like other school districts, is entrusted with the management and control of its schools, and has been given authority to adopt rules governing its schools and premises. R.C. 3313.20; R.C. 3313.47. The board of education of a school district is authorized by statute to make its schoolhouses available for lawful purposes that do not interfere with the operations of the public schools. R.C. 3313.75; R.C. 3313.76. Lawful purposes include entertainment, education, religious exercises, and the discussion of topics that tend to develop personal character and civic welfare. R.C. 3313.76. Other statutory provisions authorize a board of education, upon the payment of a reasonable fee and subject to regulation by the board, to “permit the use of any schoolhouse and rooms therein and the grounds and *other property under its control*” for purposes of instruction; for holding

educational, religious, civic, social, or recreational meetings and entertainments that are open to the general public and for other purposes that promote the welfare of the community; for public library purposes or reading rooms; and for polling places, voter registration, or grange or similar meetings. R.C. 3313.77 (emphasis added). Thus, a school district may share its facilities with the community by making them available, subject to standards that it establishes. *See, e.g.*, 1974 Op. Att’y Gen. No. 74-086 (a school cafeteria and equipment may be used by the board of education and a municipality for a program to sell warm meals to senior citizens at approximately actual cost because such a program promotes the welfare of the community).

Although the statutes governing access speak primarily to real property, they also refer generally to “other property” under the control of the board of education. R.C. 3313.77; *see also* 1974 Op. Att’y Gen. No. 74-086, at 2-356 (“[t]he cafeteria and equipment needed are property under the control of the board”). This reference, together with the school district’s general authority to manage its property, would permit the district to grant access to any of its property, including Internet access services, when such access would serve educational or civic purposes or promote the welfare of the community.

Thus, a vocational school district that properly operates an Internet access system may permit persons or organizations to have access to the system pursuant to its general authority to make its facilities available to the community. Property that is made available pursuant to that authority may be used, however, only for the statutory purposes and may not be used solely for a revenue-producing enterprise, though incidental fees may be charged in conjunction with a proper purpose. *See* 1974 Op. Att’y Gen. No. 74-063 (syllabus, paragraphs 2 and 3) (“[a] board of education may not permit school-owned property to be used, by a school activity group or a private enterprise, for the sole purpose of operating a revenue-producing parking lot” but may permit an organization using the property “for a purpose authorized by R.C. 3313.76 or 3313.77, to charge a fee for parking on the school grounds”).

Another means by which a vocational school district may grant Internet access to others is through its authority to sell or lease property. If a school district has property that it does not currently need for public use, it may sell or lease the property, if it finds that the sale or lease serves the public interest. *See* R.C. 3313.17; R.C. 3313.41; 1992 Op. Att’y Gen. No. 92-016; 1986 Op. Att’y Gen. No. 86-062; 1983 Op. Att’y Gen. No. 83-082. In selling its property, a school district must comply with any statutory provisions that apply. *See* R.C. 3313.41 (requiring that real or personal property that exceeds ten thousand dollars in value be offered for sale at public auction, unless it is sold to a named public entity or traded for an item of similar personal property). A lease of property that the school district does not currently need must include the condition that the district may terminate the lease if the property becomes needed for school district purposes. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051; 1992 Op. Att’y Gen. No. 92-016; 1953 Op. Att’y Gen. No. 2534, p. 158; 1932 Op. Att’y Gen. No. 4588, vol. II, p. 1006. Within these limitations, a school board has broad discretion in determining when and how to dispose of its property. *See, e.g.*, 1986 Op. Att’y Gen. No. 86-062.

A school district does not have general authority to acquire property for the purpose of going into the business of selling or leasing the property. Rather, a school district is permitted to own property—including an Internet access system—only if that property is required for proper purposes of the district. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051, at 2-198 to 2-199; 1981 Op. Att’y Gen. No. 81-092, at 2-355. *See generally* R.C. 3313.811 (a school board, principal, teacher, class organization, or student may sell uniform school

supplies, foods, candies or the like for profit only when the profit is to be used for purposes of the school or school activities).

If a vocational school district acquires and operates an Internet access system for purposes that are consistent with the district's statutory powers and duties and the vocational school district finds that it has excess capacity, it may sell or lease that capacity, if it finds that such sale or lease serves the public interest. There are no limitations on the persons or entities to which such sale or lease may be made. *See, e.g.*, 1959 Op. Att'y Gen. No. 922, p. 619 (syllabus, paragraph 2) ("[a] local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, after [*sic*] so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of [R.C. 3313.17]").

Let us now consider whether the vocational school district may charge a fee for the Internet access services in question. As noted in the request, the fee will cover the cost of providing the services.

A vocational school district has limited authority to charge students fees in connection with courses. Students who are entitled to attend schools of the district without payment of tuition may not be charged for attendance. *See* R.C. 3313.48; R.C. 3313.64; R.C. 3313.641; R.C. 3313.645. They may, however, be charged for summer school, for certain kinds of classes, or for materials other than textbooks. *See* R.C. 3313.641; R.C. 3313.642; *see also* 1974 Op. Att'y Gen. No. 74-063 (syllabus) ("[a] board of education may charge a fee for parking on school-owned property for school functions, but may not charge such a fee to students who are attending classes").

No statute expressly authorizes a vocational school district to impose a fee for Internet access services upon students who are entitled by statute to attend school without payment, when they are using the Internet access as part of their educational program. It does not appear that Internet access is a "material" for which a charge can be instituted in connection with a student's course of instruction. R.C. 3313.642. The board of education, however, may prescribe a schedule of charges for damage or destruction of school apparatus, equipment, or library materials, including computer systems. *Id.*

Individuals attending adult education programs may be charged tuition or other fees. R.C. 3313.52; R.C. 3313.531; R.C. 3313.54; R.C. 3313.641. Similarly, a student who seeks Internet access for personal educational, civic, and social reasons, rather than as a course work requirement, could be charged for such access. *See* 1974 Op. Att'y Gen. No. 74-063.

A similar analysis applies to employees. If Internet access is required for the performance of their jobs, it should ordinarily be provided by the employer, absent a requirement in a particular instance that the employee provide it as a condition of the job. Teaching staff and nonteaching employees may be governed both by statute and by contract, including provisions of collective bargaining agreements. Applicable provisions must be examined to determine what fees may be charged. *See, e.g.*, R.C. 3317.12; R.C. 3317.13; R.C. 3317.14; R.C. 3319.07; R.C. 3319.08; R.C. 3319.12; R.C. 4117.10; 1997 Op. Att'y Gen. No. 97-047. If the employees are obtaining access for personal use, however, a reasonable fee would be appropriate. *See generally* 1983 Op. Att'y Gen. No. 83-029.

The other entities to which the vocational school district proposes to sell excess capacity are governmental entities, nonprofit organizations, business and industry advisory

groups, and vendors. Whether the district provides access as part of its effort to share facilities with the community, as the lease or sale of excess capacity, or as the sale of a product generated by its students as part of their educational program, the district is authorized to charge a reasonable fee. *See, e.g.*, R.C. 3313.77; 1992 Op. Att’y Gen. No. 92-016; 1981 Op. Att’y Gen. No. 81-092; 1959 Op. Att’y Gen. No. 922, p. 619.

It can be concluded, then, that if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee. The request letter outlines proposed fees and asks whether they are reasonable. The reasonableness of a fee is a question of fact that cannot be determined by means of a formal opinion of the Attorney General. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051, at 2-192; 1984 Op. Att’y Gen. No. 84-083.

The next question is whether the proposed provision of Internet access services is permissible under the Ohio law and Ohio Constitution. The provision of these services in appropriate circumstances is authorized by statute, as discussed above. The arrangements proposed for allowing access to the Internet do not appear to violate any provision of the Ohio Constitution. In particular, they do not create a union of public and private interests and, thus, do not constitute a joint venture or lending of credit that would violate Ohio Const. art. VIII, §§ 4 and 6. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051; 1992 Op. Att’y Gen. No. 92-016; 1981 Op. Att’y Gen. No. 81-092; *cf.* 1978 Op. Att’y Gen. No. 78-040 (syllabus) (“[a] board of education is prohibited by Ohio Const art. VIII, § 4 from entering into a joint venture with a commercial oil company to construct and operate for profit a gas and service station on school property as part of a vocational education program”). An examination of relevant provisions thus leads to the conclusion that if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.

Let us now consider the question whether the provision of Internet access services would affect the status of a vocational school district as a tax exempt educational entity. Let us look first at Ohio law governing real and personal property taxes.

Pursuant to R.C. 3313.44, all real or personal property owned by the board of education of a school district is exempt from taxation. This exemption is granted regardless of the purpose for which the property is used, consistent with the principle that a school district is empowered to acquire property only for school purposes and not for the purpose of undertaking a business enterprise. *See* Ohio Const. art. XII, § 2; *Board of Educ. v. Board of Tax Appeals*, 149 Ohio St. 564, 568, 80 N.E.2d 156, 158 (1948) (“the property became subject to exemption from taxation when title vested in the board of education. The board was without authority or power to purchase it for any other purpose than a public use”).

A related grant of tax exemption appears in R.C. 5709.07. That exemption applies to “[p]ublic schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit.” R.C. 5709.07(A)(1). The exemption extends to “leaseholds, or other estates or property, real or personal, the rents, issues, profits, and

income of which is given to a ... school district ... in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge" as long as the property or income "is used and exclusively applied for the support of free education." R.C. 5709.07(B). Thus, provided that proceeds received from the provision of Internet access services are used for purposes of the vocational school district, it appears that the district would qualify for tax exemption under R.C. 5709.07. *See also* R.C. 5709.12 and R.C. 5709.121 (providing tax exemption for real and tangible personal property belonging to an educational institution or political subdivision if the property is used for charitable, educational, or public purposes or if it is made available for use incidental to charitable, educational, or public purposes and not with a view to profit).

The tax exempt status of real and personal property of a school district thus is established by provisions of statute. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.

Provisions governing sales tax are less definitive. Sales by a board of education of tangible personal property, or licenses to use or consume personal property, are generally considered to be subject to sales tax if the purpose of the sales is to make a profit. R.C. 5739.01; R.C. 5739.02; 1974 Op. Att'y Gen. No. 74-052; 1971 Op. Att'y Gen. No. 71-068. The sales tax does not apply, however, to sales of services provided by the state or political subdivisions, including school districts. R.C. 5739.02(B)(22).

With respect to electronic technology, the statutes provide that the sales tax applies when "[a]utomatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental." R.C. 5739.01(B)(3)(e); *see also* R.C. 5739.01(Y)(1). The provision of telecommunications service is included as a sale when the service originates in Ohio and is charged to the consumer's telephone number or account in Ohio, or when it both originates and terminates in Ohio, with certain exceptions. R.C. 5739.01(B)(3)(f); R.C. 5739.01(AA). Among the exceptions are "[s]ales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service." R.C. 5739.01(AA)(4).

It is not clear from these provisions precisely how the sales tax provisions would apply to the situation described in the opinion request. To obtain a determination relating to particular circumstances, the vocational school district could request an opinion of the Tax Commissioner. R.C. 5703.53; *see also* R.C. 5703.50(A) (sales taxes are included as taxes under R.C. 5703.53); 16 Ohio Admin. Code 5703-1-12.

We have been informed that your predecessor was interested also in the tax exempt status of the school district under federal law and particularly in the question whether income accrued from the sale of Internet access services would constitute unrelated business taxable income pursuant to section 511 of the Internal Revenue Code. 26 U.S.C.A. § 511 (West 1988 & Supp. 1998); *see also* 26 U.S.C.A. §§ 512-513 (West 1988 & Supp. 1998). This office is not empowered to render authoritative interpretations of federal law. *See, e.g.*, 1997 Op. Att'y Gen. No. 97-025, at 2-146; 1989 Op. Att'y Gen. No. 89-001, at 2-1 n.1; 1988 Op.

Att'y Gen. No. 88-007. We note, however, that federal regulations state that "[e]lementary and secondary schools operated by ... governments are not subject to the tax on unrelated business income." 26 C.F.R. § 1.511-2(a)(2) (1998).

We turn now to the final question, which asks what impact the provision of Internet service has on the joint vocational school district with regard to its ability to levy taxes or obtain public funding. The facts that were presented to us suggest that the fees charged for services will simply cover the costs of providing services, so that the provision of Internet access services will not be a profit-making endeavor. If, however, the provision of such services should result in the receipt of additional moneys by the district, those moneys may be relevant to a determination of the amount of taxes required to meet the needs of the district. *See, e.g.*, R.C. 5705.28; R.C. 5705.29; R.C. 5705.34; R.C. 5705.35; R.C. 5705.36; R.C. 5705.391; R.C. 5705.412.

A vocational school district must submit to the county budget commission an annual tax budget setting forth its estimated expenditures and receipts from all sources. R.C. 5705.29; *see* 1954 Op. Att'y Gen. No. 3793, p. 230, at 234 ("[t]he statute makes no exception in requiring all sources of income to be laid before the commission. The law plainly contemplates that the commission is to have before it all possible data which will throw light upon the financial situation and needs of the ... taxing subdivisions"). The district is not permitted to levy property taxes at a rate greater than required to meet its needs, as set forth in its tax budget. R.C. 5705.341 ("[n]othing in this section or any section of the Revised Code shall permit or require the levying of any rate of taxation, whether within the ten-mill limitation or whether the levy has been approved by the electors of the taxing district, the political subdivision or the charter of a municipal corporation in excess of such ten-mill limitation, unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully advertised, adopted, and filed pursuant to the provisions of [R.C. 5705.01 to 5705.47]"); *Village of South Russell v. Budget Comm'n*, 12 Ohio St. 3d 126, 456 N.E.2d 876 (1984); 1989 Op. Att'y Gen. No. 89-047. If the district's budget reflects that proceeds from providing Internet access services reduce its need to levy taxes, then taxes may be levied only at the reduced level.

Joint vocational school districts receive state funds in accordance with R.C. 3317.16. *See also* R.C. 3317.01; 1972 Op. Att'y Gen. No. 72-049. It does not appear that the receipt of fees for providing Internet access, in itself, would affect the amounts of state funding granted pursuant to that provision. The number of vocational units provided, however, may affect those amounts. *See* R.C. 3317.05(A); R.C. 3317.16.

A vocational school district is permitted to undertake the sale of property or provision of services only in accordance with its statutory authority, as discussed above. Taking such action will not affect the general authority of the district to levy taxes or obtain public funding. However, if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a determination of the amount of taxes or other public funding required to meet the needs of the district.

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

1. A vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasona-

bly finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.

2. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their training or to others as services that students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.
3. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee.
4. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.
5. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.
6. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a determination of the amount of taxes or other public funding required to meet the needs of the district.