

OPINION 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.

To: George C. Smith, Franklin County Pros. Atty., Columbus, Ohio
By: William J. Brown, Attorney General, September 8, 1976

You have requested my opinion as to whether a joint vocational school has authority to institute a program for the construction and sale of residences on school land, which is no longer needed for other school purposes. The details of

the program are set out in your letter as follows:

1. Declare approximately ten acres of the one hundred fifty acre school site as no longer necessary for educational purposes.
2. Divide the ten acres into six parcels, each parcel containing from one to three acres.
3. Obtain the services of a registered surveyor for the subdividing.
4. Obtain proper zoning from a zoning commission.
5. Construct one family residences on each of the six parcels beginning with the 1976-77 school year (approximately one residence per school year).
6. Sell, at public auction, the completed residences. The first residence will be sold during late spring, 1977.
7. Materials for said construction will be purchased from the uniform supply fund.
8. Proceeds from the sale of the residences will be placed into the general, special building, or permanent improvement fund.

Pursuant to conversations between this office and yours it is my understanding that the proposed program is designed to provide vocational training to students in the skills involved in the construction trades. On this point I would refer you to R.C. 3313.90, which requires each school district to establish a vocational education program adequate to prepare a pupil for an occupation, in accordance with standards adopted by the state board of education. Under R.C. 3311.16 et seq., any local, exempted village, city, or county school district or combination thereof may join in forming a joint vocational school district for the purpose of providing vocational education and training for school age youth within the joint vocational district. 1965 Op. Att'y Gen. No. 65-017.

In 1971 Op. Att'y Gen. No. 71-068, I had occasion to consider the scope of a school district's authority under R.C. 3313.90 to establish a vocational education program. Part one of the syllabus of that opinion reads:

1. Through the implementation of vocational education programs authorized under Section 3313.90, Revised Code, a school may engage and compete in private enterprise, even at a profit, so long as such program is reasonably necessary to fulfill the requirements of the school's curriculum.

This opinion was in response to a question of whether a board of education, as part of its carpentry and electrical class curriculum, could contract with private individuals or companies to furnish student labor for the construction of a house. Other training programs, similarly designed to involve students

in various occupations competing in private enterprise, were also proposed. In concluding that such activities were within the scope of a school board's authority I approved and followed 1971 Op. Att'y Gen. No. 71-026, in which I held that joint vocational school facilities may be used to prepare and serve meals to community organizations as a part of the training in a vocational food service program offered by the school.

The same principles and test relied on in Op. Nos. 71-026 and 71-068 are applicable in the present case. Boards of education are creatures of statute and are limited to those powers which are expressly given or necessarily implied. Schwing v. McClure, 120 Ohio St. 335 (1929). However, it has also been held that such boards are given wide discretion in adopting rules and regulations to carry out their statutory functions, Greco v. Roper, 145 Ohio St. 243, 249 (1945). As I noted in Opinion No. 71-026, supra:

. . . "The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933).

Because of the clear mandate of the General Assembly in R.C. 3313.90 that vocational education programs be developed and made available, I conclude that a joint vocational school may, as part of a vocational education program, construct and sell single family residences on land owned by the joint vocational school district.

The details of the proposed program raise another question, which I understand, pursuant to conversations between this office and yours, is your primary concern and the reason for this opinion request. Specifically the proposal calls for the subdivision of a ten acre tract of land into six separate lots, on each of which would be built a house. The ten acre tract would therefore, be sold piecemeal as each house is completed.

You have referred to 1974 Op. Att'y Gen. No. 74-002. Part four of the syllabus of that opinion reads as follows:

"4. The board of education may not divide property into smaller parcels to be offered separately at the public auction."

As indicated in the syllabus, that opinion was in response to a question whether a school board in selling a tract of land pursuant to R.C. 3313.41 could divide that tract into smaller parcels to be sold separately. That opinion can and should be distinguished from the situation you have described.

While Opinion No. 74-002 considered the sale of a tract of land by what would essentially be several concurrent transactions for the sale of portions of that tract, the situation you describe is not in fact the subdivision of land where the entire tract is being sold. Contrary to your description of

the proposal the ten acre tract is needed for educational purposes, that is as a site for the construction of houses as part of the proposed vocational training program. Under the proposal no lot would be sold until completion of the construction of the house on an estimated schedule of one house per year. When such construction is completed and the house is to be sold, R.C. 3313.41 would provide guidelines for the sale.

With respect to the subdivision of the ten acres into lots on which the houses are to be built, I am of the opinion that authority for such a subdivision is necessarily implied by a board's authority to provide vocational training. As I noted in Opinion No. 72-068, a school district may pursuant to R.C. 3313.90 engage and compete in private enterprise, so long as the program is reasonably necessary to fulfill the requirements of the school's curriculum. The subdivision of land into lots, which comply with any applicable planning and zoning and platting requirements, is a reasonable and necessary incident to any program for the construction and sale of houses. See, for example, R.C. Sections 711.05, 713.09 and 713.13.

Therefore, when a school district has adopted a vocational educational program, which provides for the construction and sale of single-family residences, it may undertake the necessary subdivision of land to be used in order to facilitate the sale of each house as it is completed.

Since the foregoing is responsive to your specific question, I make no comment regarding the propriety of other details of the proposed program.

In specific answer to your question, then, it is my opinion and you are so advised that 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.