

## OPINION NO. 75-008

## Syllabus:

1. A board of education may not expend public funds for lunches or dinners for persons attending a local meeting of such board, regardless of how the cost is billed.
2. A board of education may expend public funds from student activity accounts as payment for meals for non-students, provided such expenditure is for a public purpose.

---

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, February 11, 1975

I have before me your predecessor's request for my opinion, which may be restated as follows:

- (1) May a board of education expend public funds for lunches or dinners for persons attending a local meeting of such board?
- (2) Is the expenditure in question number one proper if such cost is billed as "rental of facilities?"
- (3) May a board of education expend public funds from student activity accounts as payment for meals for non-students?

R.C. 3315.15, which provides for the establishment of a service fund to be used in paying the expenses of members of a board of education, reads as follows:

"Any board of education may by resolution set aside from the general fund or, in the case of a county board of education, from the county board of education fund, a sum not to exceed fifty cents for each child so enrolled, or five thousand dollars, whichever is greater, except that in the case of a county board of education the fund shall not exceed five thousand dollars, such sum of money to be known as the 'service fund,' to be used only in paying the expenses of members of such boards of education actually incurred in the performance of their duties,

or of their official representatives; such payments to be made only in such amount as may be approved by the board of education on statement of the several members, or their official representatives, furnished at the next succeeding regular meeting of such board of education, provided, however, that no school district shall expend a sum to exceed thirty thousand dollars in any one school year for such service fund." (Emphasis added.)

This Section provides that such expenses of members of a board of education as are actually incurred in the performance of their duties may be paid by the board of education from the service fund. Thus if the cost of lunches or dinners for persons attending a board meeting is an expense incurred in the performance of their duties, such cost may be paid from the service fund.

This principle is noted in Drury, Ohio School Guide, 3d Ed., Sec. 4.22, which reads, in part, as follows:

"It is legal to use a service fund to pay expenses of board members actually incurred in the performance of their duties, regardless of whether such expenses were incurred within or without the district of such members. \* \* \*.

"The amount of expenses that may be incurred, as well as the nature of the items that may be reimbursed, rests in the sound discretion of each board, subject to the fundamental rule that public funds may not be expended to reimburse public officials or employees for expenses that are personal and private, and not official, or not actually incurred in the performance of their duties."

In State, ex rel. Locher v. Menning, 95 Ohio St. 97 (1916), the court stated at 99:

"The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

See also Opinion No. 1016, Opinions of the Attorney General for 1946. The Locher doctrine was later made applicable to boards of education in State, ex rel. Clark v. Cook, 103 Ohio St. 465 (1921).

Assuming that the board meetings in question are taking place in the home district of the board and do not involve travel away from headquarters, meals appear to be a purely private expense. While a public purpose is served when the board meets, the public receives no benefit from expenditures for lunches or dinners which are served at such meetings, because meals are not necessary to the conduct of the meetings. Therefore, I must conclude that a board of education may not purchase meals for persons attending a local meeting of such board because such cost is a private expense and not one necessarily incurred in the performance of their duties. In support of this conclusion is Opinion No. 70-061, Opinions of the Attorney General for 1970, in which my predecessor advised that a board of education may not purchase food or drink to be served

at meetings held pursuant to R.C. 3315.06. While we are concerned here with R.C. 3315.15, the two statutes are similar in that neither provides authority for the expenditure in question. In case of doubt as to the right to expend public moneys, such doubt must be resolved against the expenditure. State, ex rel. Bentley and Sons Co. v. Pierce, 96 Ohio St. 44 (1917).

Your second question concerns the propriety of an expenditure for meals at board meetings if such cost is billed as "rental of facilities." Certainly if facilities must be rented for a board meeting, such an expenditure would be justifiable because a public purpose is served when the board meets. However, merely clothing meals under another heading, such as "rental of facilities," does not change the basic, private nature of such meals. The expenditure in question, then, is not permissible no matter what name is attached to it.

Your third question is whether a board of education may expend public funds from student activity accounts as payment for meals for non-students. R.C. 3315.062 concerns student activity programs and expenditures pursuant thereto and reads as follows:

"The board of education of any school district may expend moneys from its general revenue fund for the operation of such student activity programs as may be approved by the state board of education and included in the program of each school district as authorized by its board of education. Such expenditure shall not exceed five-tenths of one per cent of the board's annual operating budget.

"The state board of education shall develop, and review biennially, a list of approved student activity programs.

"If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board."

(Emphasis added.)

The third paragraph of R.C. 3315.062 provides for the establishment of a student activity fund. The approval of the board of education is specifically required before an expenditure can be made from the fund. However this Section establishes no guidelines for distinguishing a proper expenditure of student activity funds from an improper one. Thus the determination of which expenditures are proper lies within the sound discretion of the board of education.

Although no statutory guidelines have been written, it must be remembered that the student activity funds in question here are public funds, having been received by public officials under

color of law. See R.C. 117.10. Thus, the limitation that public funds may only be spent for a public purpose must be observed. See Opinion No. 71-044, Opinions of the Attorney General for 1971, and Opinion No. 74-048, Opinions of the Attorney General for 1974. The board of education must look at the facts concerning the proposed expenditure and determine whether such expenditure would serve a public purpose. To use an example which the materials you have furnished me indicate is common, a student club for those now employed and contemplating business careers, an approved student activity program, holds an appreciation banquet. Each student invites his or her employer, and the board is asked to approve payment for the employers' meals. Such an expenditure would appear to serve a public purpose because the banquet encourages employers to continue support of the program. The program, in turn, helps students adjust to the business world. Such an expenditure would appear to be permissible. Thus, the expenditure of public funds from student activity accounts as payment for meals for non-students rests within the sound discretion of the board of education, limited only to the extent that such expenditure must be for a public purpose.

In specific answer to your questions, it is my opinion and you are so advised that:

1. A board of education may not expend public funds for lunches or dinners for persons attending a local meeting of such board, regardless of how the cost is billed.
2. A board of education may expend public funds from student activity accounts as payment for meals for non-students, provided such expenditure is for a public purpose.