OPINION NO. 78-033

Syllabus:

A board of education is not required to pay wages to a vocational education student who, as part of the approved curriculum, works on a construction project for the benefit of the school district or a third party.

To: Helen W. Evans, Director, Dept. of Industrial Relations, Columbus, Ohio
By: William J. Brown, Attorney General, June 6, 1978

I have before me your request for my opinion concerning the payment of wages to vocational education students. In your letter you indicate that your office has received a number of complaints concerning the use of non-paid vocational students on private and school district building projects. You have therefore requested my opinion on the following specific questions:

1. Must wages be paid to a vocational student who works on a construction site or on any other project belonging to a private party where the project in

question has been approved by the school board as part of the curriculum?

2. Would payment of wages to students be required if the project was for the school district itself, i.e. building an addition to an existing school building, but where again the project has been labeled part of the vocational school's curriculum?

3. If wages are to [be] paid to a vocational student on such a construction project, is the rate of wage to be determined in accordance with Chapter 4111 of the Revised Code, or would Chapter 4115 R.C. be applicable?

R.C. 3313.90 requires that each school district establish and maintain a vocational education program adequate to prepare a student enrolled therein for an occupation. As I indicated in 1971 Op. Att'y Gen. No. 71-068, the purpose of vocational education programs is to enable high school students to develop saleable skills, to motivate students to complete their high school training and to develop attitudes necessary in the work-a-day world. In order to fulfill their statutory duties pursuant to R.C. 3313.90, school districts across the state have developed educational programs which often replicate in detail the actual work environment.

I have on several prior occasions considered the power of a board of education to undertake such programs. On each occasion I have concluded that a board of education may exercise its discretion in the design and implementation of such programs. See 1976 Op. Att'y Gen. No. 76-065 (A joint vocational school may construct and sell single family residences as part of its vocational education program); 1971 Op. Att'y Gen. No.71-068 (A school district may engage 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 (Use of school facilities for serving meals and banquets to community organizations is justified as part of the vocational education curriculum.

It is my understanding that students who participate in vocational education programs are graded on their performance and receive classroom credit upon satisfactory completion of the course. I shall assume that classroom credit will be given for the satisfactory completion of the courses about which you have inquired and that in the question of whether wages must be paid to such students the wages are intended to be in addition to classroom credit.

With but one exception, none of the various provisions in R.C. Chapter 3313 relating to the administration of vocational education programs make mention of the payment of wages to students who participate in such programs. The one exception is set forth in R.C. 3313.93 as follows:

> A board of education operating an occupational work adjustment laboratory in which students work to produce items on a contract basis for public agencies, private individuals, or firms may pay wages to such students as may be determined by the board. Such students shall not be considered employees of the board for the purposes of Chapters 3309, 3319. 4123, and 4141 of the Revised Code, or for any other purpose under state or federal law. (Emphasis added.)

The term, occupational work adjustment laboratory, is not statutorily defined. It is my understanding, however, that the term refers to a specially equipped school laboratory designed to provide instruction in work adaptability skills to handicapped or disadvantaged students who are not capable of succeeding in a regular school program. The provisions of R.C. 3313.93 are, therefore, applicable only to a limited number of highly specific vocational programs.

Moreover, even in those specific situations to which R.C. 3313.93 applies, the payment of wages to students is permissible rather than mandatory.

I have also considered whether R.C. Chapter 4111, the Minimum Fair Wage Standards Law, requires a school district to pay wages to students participating in vocational education programs. It is my opinion that it does not. R.C. 4111.02 sets forth the minimum wage rates that every employer must pay each of his employees. Thus, R.C. 4111.02 only applies where there is an employment relationship. The fact that the vocational educational program produces, as a by-product of the program, a saleable commodity or a building or improvement benefitting the school district or a private contractor does not necessarily transform the relationship between the school district and the student into that of an employment. The primary purpose of the relationship is still the education and development of the student. Moreover, even if it could be successfully argued that the unique characteristics of a vocational education program make the relationship one of an employment, R.C. 4111.01 (E) (7) would exempt the school district from the payment of wages. R.C. 4111.01(E) (7), which defines an employee for the purposes of R.C. Chapter 4111, expressly states that employee does not include "[a] member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state.

With respect to vocational education programs dealing with the construction of buildings or other public improvements by or for the benefit of a school district or other governmental unit, it is also necessary to consider the applicability of R.C. 4115, which governs the payment of wages on public works projects.

R.C. 4115.04 provides, in part, as follows:

> Every public authority authorized to contract for or construct with its own forces a public improvement, . . . shall have the department of industrial relations determine the prevailing rates of wages for mechanics and laborers in accordance with section 4115.05 of the Revised Code for the class of work called for by the public improvement, in the locality where the work is to be performed.

R.C. 4115.06 provides, in part, as follows:

> In all cases where any public authority fixes a prevailing rate of wages under 4115.04 of the Revised Code, and the work is done by contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed . . . Where a public authority constructs a public improvement with its own forces, such public authority shall pay a rate of wages which shall not be less than the rate of wages fixed as provided in section 4115.04 of the Revised Code . . .

Pursuant to R.C. 4115.03(A), public authority means "any officer, board or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by direct employment of labor . . ." A board of education is, therefore, a public authority for the purposes of R.C. Chapter 4115. I shall assume, moreover, that there are vocational education projects which constitute the "construction" of a "public improvement" as defined in R.C. 4115.03(B) and R.C. 4115.03(C). The applicability of R.C. Chapter 4115 to such vocational educational projects depends, however, on whether the students participating in such programs can be classified as mechanics and laborers for the purposes of R.C. 4115.04.

Since R.C. Chapter 4115 does not provide a definition for laborer or mechanic, the common usuage of these terms is controlling. R.C. 1.42. In 1977 Op. Att'y Gen.

No. 77-076, I concluded that "[a]n individual practicing a particular trade or occupation qualifies as a laborer, workman or mechanic, as those terms are used in R.C. 4115.04 and R.C. 4115.05, if members of the same trade or occupation are paid wages pursuant to the terms of a collective bargaining agreement or an understanding between employers and bona fide labor organizations." It is my opinion that a vocational education student does not qualify as a mechanic or laborer under this definition. A vocational education student is not practicing a particular trade or occupation other than that of student. While the student does perform many of the functions of the workman or laborer, the scope of his performance is limited to the approved curriculum and the duration of the course. Moreover, the given purpose of the student's activities is to develop skills and attitudes which will assist the student in entering, at some future time, the occupation to which he aspires. Since a student does not become a mechanic or laborer by virtue of his participation in a vocational education program, R.C. Chapter 4115 imposes no duty on a board of education to pay such students wages.

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

> A board of education is not required to pay wages to a vocational education student who, as part of the approved curriculum, works on a construction project for the benefit of the school district or a third party.