

OPINION NO. 90-085**Syllabus:**

1. The provisions of R.C. 3313.46 apply when a board of education determines to build, repair, enlarge, demolish or furnish a schoolhouse and when a board of education determines to make any improvements or repairs regardless of whether such improvements or repairs concern a schoolhouse.
2. R.C. 3313.46 is applicable to the purchase of office equipment by a board of education pursuant to R.C. 3313.37(B)(5).
3. R.C. 3313.46 is applicable to the purchase of computer hardware and software by a board of education.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 14, 1990

I have before me your request for my opinion with respect to several questions concerning R.C. 3313.46, which requires boards of education to follow procedures for competitive bidding in certain circumstances. Your questions are as follows:

1. Does R.C. 3313.46 apply to all buildings owned by a school district or only to "school houses"? Do facilities such as administration buildings, bus maintenance garages, warehouses and other structures fall within the purview of R.C. 3313.46?
2. If R.C. 3313.46 applies only to buildings in which school is conducted, does it apply to all parts of those buildings or only to the portion devoted directly to school? For example, in some school districts, the administrative offices are located in the same building as a school, in others, they are located in a separate building. Does the application of R.C. 3313.46 depend upon the particular use of the building space?
3. Does R.C. 3313.46 apply to the procurement of office equipment acquired pursuant to paragraph (B)(5) of R.C. 3313.37?
4. Does R.C. 3313.46 apply to computer hardware and to computer software?

R.C. 3313.46 provides a procedure for competitive bidding which must be followed "[w]hen the board of education of any school district determines to build, repair, enlarge, demolish, or furnish a schoolhouse, or make any improvements or repairs, the cost of which will exceed fifteen thousand dollars, except in cases of urgent necessity, or for the security and protection of school property...." Your first question asks whether this mandate applies only to "schoolhouses" or whether it applies to all buildings owned by a school district. Since the statute does not expressly state whether its application is limited to schoolhouses, the answer to your question requires that I construe R.C. 3313.46 to determine its applicability to buildings other than schoolhouses.

The object of statutory construction is to determine the intent of the legislature. Legislative intent is determined primarily from statutory language. *Stewart v. Board of Elections*, 34 Ohio St. 2d 129, 296 N.E.2d 676 (1973). In construing such language, words must not be inserted or deleted from the statute; every part of a statute's language is to be given effect. R.C. 1.47(B); *Scott v. Reinier*, 58 Ohio St. 2d 67, 388 N.E.2d 1226 (1979); *State ex rel. Celebrezze v. Board of Commissioners*, 32 Ohio St. 3d 24, 512 N.E.2d 332 (1987). The effect given to the words of a statute is dependent upon the arrangement of those words within the statute according to the rules of grammar. R.C. 1.42.

The specific language of R.C. 3313.46 that gives rise to your question is: "[w]hen the board of education of any school district determines to build, repair, enlarge, demolish, or furnish a schoolhouse, or make any improvements or repairs...." Reading this clause in such a manner as to give proper grammatical effect to the arrangement of the words of the statute, it is clear that the object of the infinitives "to build, repair, enlarge, demolish or furnish" is "schoolhouse." "Schoolhouse" is not defined for purposes of R.C. Chapter 3313 although it is used in several sections. See, e.g., R.C. 3313.42; R.C. 3313.46; R.C. 3313.75; R.C. 3313.76; R.C. 3313.77. In the absence of statutory definition, words should be accorded their natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "schoolhouse" as "[a] building used as a school." *The American Heritage Dictionary* 1098 (2d college ed. 1985). "School" is defined to include "[a]n institution for the instruction of children...." *Id.* A "schoolhouse" is, therefore, a building in which the instruction of children takes place.¹ Thus, the board of education is bound by the mandates of R.C. 3313.46 if it determines to build, repair, enlarge, demolish or furnish a building in which the instruction of children takes place. What is not immediately clear, however, is whether the language "or make any improvements or repairs" applies only to schoolhouses or whether it extends the scope of R.C. 3313.46 to include other buildings owned by the board of education. Therefore, I must examine further the language of the clause in question.

An analysis of the grammatical structure of this clause indicates that the verb "make" must be read as part of the infinitive phrase "to...make any improvements or repairs." This phrase must be read in turn as the object of the verb "determines." Thus, the clause is read as "[w]hen the board of education of any school district determines...to make any improvements or repairs...." Because the infinitive phrase "to make any improvements or repairs" is a direct object of the verb "determines," and the infinitive phrase "to build, repair, enlarge, demolish or furnish a schoolhouse" is a separate direct object of the verb "determines," it is clear that the two phrases do not depend upon each other for meaning. Additionally, if the improvements and repairs to which the statute refers concerned only schoolhouses, then the use of the word "repair" in the first part of the clause would be meaningless. Since effect must be given to each part of a statute, I conclude that the improvements and repairs referred to in the second part of the clause are not limited to schoolhouses.

The question now focuses on what improvements or repairs the legislature intended to include within the operation of R.C. 3313.46. The word "any", which modifies "improvements or repairs," has been variously interpreted. "[T]he proper rule of construction is that 'any' must be interpreted according to its context." 1990 Op. Att'y Gen. No. 90-015; see also *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948). The dictionary defines "any" as "1. one, no matter which, of more than two...2. some, no matter how much or how little, how many, or what kind...3. without limit...4. even one; the least amount or number of...5. every...6. of considerable size or extent." *Webster's New World Dictionary* 62 (2d college ed. 1984). Because the statute is a mandate which does not permit the board of education to exercise discretion in the determination of when to employ competitive bidding procedures, I find that the term "any" must be understood in this context as "every," a meaning which reflects the absence of choice and thus the absence of discretion.² Therefore, I find that the scope of R.C. 3313.46 includes every

¹ I note that in the past the only buildings of a school district may have been those in which the instruction of children took place and, thus, the term "schoolhouse" was sufficient to describe all school district buildings. It might be argued that the word "schoolhouse" took on a broader meaning as the functions of a school district expanded into buildings used for purposes other than the instruction of children. However, there is no indication from the legislative history that the legislature intended a meaning other than the common or plain meaning of the word "schoolhouse."

² In 1990 Op. Att'y Gen. No. 90-015, I interpreted "any" to mean "some, one or all" in the context of R.C. 307.71, which provides that county

improvement or repair that will exceed fifteen thousand dollars, unless one of the exceptions expressed therein applies.

Although I found no case law specifically addressing the issue of whether R.C. 3313.46 applies to school district buildings other than schoolhouses, the court in *Perkins v. Bright*, 109 Ohio St. 14 (1923) construed G.C. 7623, which required boards of education to employ competitive bidding in particular circumstances and which was similar in pertinent part to R.C. 3313.46. In that regard, G.C. 7623 provided as follows:

When a board of education determines to build, repair, enlarge or furnish a schoolhouse or schoolhouses, or make any improvement or repair provided for in this chapter,³ the cost of which will exceed in city districts, fifteen hundred dollars, and in other districts five hundred dollars, except in cases of urgent necessity, or for the security, and protection of school property, it must proceed as follows....

1904 Ohio Laws 356 (S.B. 57, approved April 25, 1904) (as R.S. 3988, subsequently recodified as G.C. 7623 pursuant to S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in General Code of State of Ohio, Commissioners of Public Printing 1911)). Although *Perkins* concerned the construction of schoolhouses, the court found that "[t]he purpose of the statute is doubtless to enable school boards to have the schoolhouses and other structures under their control erected and maintained at the lowest cost to the public consistent with the best material and workmanship." *Perkins* at 17-18 (emphasis added).

Accordingly, I find that the provisions of R.C. 3313.46 apply when a board of education determines to build, repair, enlarge, demolish or furnish a schoolhouse and when a board of education determines to make any improvements or repairs regardless of whether such improvements or repairs concern a schoolhouse.

Because I have determined that R.C. 3313.46 applies to all of the buildings of a school district, I need not answer your second question. Your third question asks whether R.C. 3313.46 applies to the procurement of office equipment acquired pursuant to R.C. 3313.37(B)(5). R.C. 3313.37 generally authorizes a board of education to provide, furnish and repair schoolhouses and to "make all other necessary provisions for the schools under its control." R.C. 3313.37(A). R.C. 3313.37(B)(5) reads as follows:

As used in this division, "office equipment" includes but is not limited to typewriters, copying and duplicating equipment, and computer and data processing equipment. A board of education may acquire the necessary office equipment for the schools under its control by purchase, by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to purchase.

commissioners may adopt a resolution setting forth the provisions of a curfew for persons under the age of eighteen when it deems such a curfew necessary "for the immediate preservation of the public peace, health or safety in any of the unincorporated areas" of a county. R.C. 307.71(A) (emphasis added). My interpretation of "any" in Op. No. 90-015 as allowing the choice of "some, one or all" reflected the discretionary nature of that statute.

³ In 1943, G.C. 7623 was repealed and G.C. 4834-18 was enacted in its place. 1943 Ohio Laws 475 (H.B. 217, eff. June 17, 1943). The language of the first part of G.C. 4834-18 was substantially the same as that of G.C. 7623. However, the words "provided for in this chapter" were deleted, thus extending the application of the competitive bidding requirements and evincing the intention of the legislature to broaden the scope of the statute. The language of the first portion of the current R.C. 3313.46 is nearly identical to that of G.C. 4834-18.

In 1984 Op. Att'y Gen. No. 84-046, I determined that the provisions of R.C. 3313.37 and R.C. 3313.46 are complementary and must be read *in pari materia* since both address the issue of furnishing and equipping schoolhouses. "R.C. 3313.37 provides a board of education with the necessary authority to acquire furnishings and apparatus for its schoolhouses and specifies the types of transactions through which such acquisitions may be made. R.C. 3313.46 provides procedures to be followed in exercising such authority." Op. No. 84-046 at 2-147. In that opinion, I found that a telephone system, which a board of education is authorized to purchase pursuant to R.C. 3313.37, must be acquired through competitive bidding since "the purchase and installation of a new and upgraded telephone system...constitute both furnishing and improving a schoolhouse as those terms are used in R.C. 3313.46." Op. No. 84-046 at 2-148.

You have not specified the exact nature of the office equipment in question. Since you have stated, however, that the equipment is to be procured pursuant to R.C. 3313.37(B)(5), I may assume that this equipment will consist of typewriters, copying and duplicating equipment, computer and data processing equipment or similar items. Because you have not indicated whether such equipment will be placed exclusively in schoolhouses or whether it will be used in other buildings, I will address both situations.

If the office equipment is to be placed in schoolhouses, then the reasoning of Op. No. 84-046 may be applied. In that opinion, I determined that the term "furnish" is a broad term which is commonly defined as "'to supply, provide, or equip with whatever is necessary or useful.' *Webster's New World Dictionary* 566 (2d college ed. 1978)." *Id.* at 2-147. Pursuant to this definition, equipping schoolhouses with office equipment which is necessary or useful constitutes "furnishing" such schoolhouses as authorized by R.C. 3313.37. *See also* 1963 Op. Att'y Gen. No. 501 p. 513 ("furnish," as used in R.C. 3313.46, "is synonymous with equip and is intended to refer to equipment and fixtures within a schoolhouse."). *Id.* at 516. Thus, R.C. 3313.46 applies to the procurement for schoolhouses of office equipment pursuant to R.C. 3313.37(B)(5) that is necessary or useful for the schools under the control of such board of education. *See Graphic Enterprises of Ohio, Inc. v. Board of Education*, Nos. 13269, 13274 (Ct. App. Summit County June 15, 1988) (unreported) (R.C. 3313.46 was applied to the purchase of 105 copying machines).

However, if the equipment is not to be placed in schoolhouses, then the inquiry must focus on whether the purchase of new office equipment constitutes the making of an improvement within the meaning of R.C. 3313.46 since I have already determined that R.C. 3313.46 encompasses any improvement or repair undertaken by a board of education.

"Improvement" is not defined for purposes of R.C. 3313.46. In the absence of statutory definition, a word should be accorded its natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "improvement" as "a change or addition that improves." *American Heritage Dictionary* (2d college ed. 1985). In Op. No. 84-046, I determined that the purchase of a new telephone system was an improvement within the meaning of R.C. 3313.46. Similarly, the purchase of new office equipment constitutes an improvement for purposes of R.C. 3313.46 since it is a change or an addition that improves the operation of the schools within the district. Thus, the purchase of office equipment must be accomplished pursuant to R.C. 3313.46 regardless of where such equipment is to be placed.

Your fourth question asks whether R.C. 3313.46 applies to computer hardware and computer software. A member of your staff has indicated that the computer hardware and software to which you refer is that which is used by the schools for administrative purposes and also that which is used for the instruction of students. I find that the answer to your third question also serves as the answer to your fourth question. For the reasons expressed above, the purchase of computer hardware and software constitutes the making of an improvement within the meaning of R.C. 3313.46. Whether it is used for administrative purposes or student instruction, such equipment clearly constitutes a change or addition that improves the operation of the schools within the district and as such, must be acquired pursuant to R.C. 3313.46.

Based upon the foregoing, it is my opinion and you are hereby advised that:

1. The provisions of R.C. 3313.46 apply when a board of education determines to build, repair, enlarge, demolish or furnish a schoolhouse and when a board of education determines to make any improvements or repairs regardless of whether such improvements or repairs concern a schoolhouse.
2. R.C. 3313.46 is applicable to the purchase of office equipment by a board of education pursuant to R.C. 3313.37(B)(5).
3. R.C. 3313.46 is applicable to the purchase of computer hardware and software by a board of education.