

## OPINION NO. 86-062

## Syllabus:

1. A board of education which sells football equipment purchased with funds raised from a student activity must comply with the requirements of R.C. 3313.41, if the aggregate value of the equipment exceeds two thousand dollars. The board may sell such equipment at a private sale or sales only if such equipment remains unsold after twice being offered for sale at public auction.
2. A board of education may sell football equipment purchased with funds raised from a student activity to students, who participated in the student activity and on the football team, for one dollar where the aggregate value of the equipment does not exceed two thousand dollars, if the board determines that the property is no longer needed for use and the sale serves the public interest, and if the board determines that such method of sale is reasonable.

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To: R. David Picken, Madison County Prosecuting Attorney, London, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, August 21, 1986

I have before me your request for my opinion regarding the sale of football equipment to boys participating in a football program. The equipment was purchased with private donations derived from a student fund-raising activity, and the board of education would like to sell the equipment for one dollar to those boys who participated in the student activity and remained on the football team for the entire season. The equipment to be sold to each boy includes jerseys, pants, and socks, and is valued at seventy dollars. You wish to know if such a sale would violate R.C. 3313.41.

A board of education, as a creature of statute, has only those powers which are expressly granted by statute, or which are necessarily implied therefrom. See State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921). Pursuant to R.C. 3313.17:

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

Thus, R.C. 3313.17 grants corporate powers to a board of

education and expressly authorizes a board to dispose of both its real and personal property. R.C. 3313.41 sets forth the methods by which a board of education may dispose of personal property which the board owns in its corporate capacity, and states in relevant part:

(A) Except as provided in divisions (C) and (D)<sup>1</sup> of this section, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity, and that exceeds in value two thousand dollars, it shall sell the property at public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property. The board may offer real property for sale as an entire tract or in parcels.

(B) When the board of education has twice offered real or personal property for sale at public auction pursuant to division (A) of this section, and the property has not been sold, the board may sell it at a private sale. Regardless of how it was offered at public auction, at a private sale, the board shall, as it considers best, sell real property as an entire tract or in parcels, and personal property in a single lot or in several lots. (Emphasis and footnote added.)

Thus, pursuant to R.C. 3313.41, where a board of education wishes to sell personal property which is owned by the board in its corporate capacity, and such property exceeds two thousand dollars in value, the board must, as a general rule, offer the property for sale twice at public auction before it may dispose of such property by private sale. See Schwing v. McClure, 120 Ohio St. 335, 342, 166 N.E. 230, 232 (1929) (public officers cannot "pass title to public property except when acting within their strict powers. Property devoted to public use can only be disposed of by express authority, and a school corporation must pursue the statutory method of disposing of its property"); 1983 Op. Att'y Gen. No. 83-082 at 2-329 ("a board of education that decides to dispose of...property exceeding two thousand dollars in value must sell such property in the manner described under R.C. 3313.41(A) and (B), unless the board sells such property to one of the entities enumerated under R.C. 3313.41(C)") (footnoted omitted); 1934 Op. Att'y Gen. No. 2474, vol. I, p. 422, 424 (except as the power to dispose of property held in a board of education's corporate capacity "is reposed in a board of education by virtue of [what is now R.C. 3313.41], a board of education possesses no power whatever to sell or dispose of the property held by it in its corporate capacity, and it clearly follows that a board of education in exercising this power, is limited by the terms of the statute"). See generally Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (in statutory construction, the word "shall" is to be interpreted

<sup>1</sup> Division (C) provides that a board of education may dispose of real or personal property that it owns in its corporate capacity and that exceeds in value two thousand dollars upon terms as are agreed upon, to any of the public authorities listed in division (C). Division (D) provides that a board of education is permitted to trade as a part or an entire consideration, an item of personal property on the purchase price of an item of similar personal property.

as mandatory, absent a clear and unequivocal legislative intent that it be otherwise construed).

I note first that the football equipment about which you ask constitutes personal property owned by the board of education in its corporate capacity for purposes of R.C. 3313.41. R.C. 3315.062(C) provides in part that, "[i]f 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 activity you have described appears to constitute a student activity program. See generally 1982 Op. Att'y Gen. No. 82-014 at 2-46 ("[w]hile...there is no express statutory authority for a board of education to raise funds through a student athletic program, R.C. 3315.062(C) implicitly authorizes a board of education to raise and receive funds from student activity programs"). It is my understanding that the activity produces more than fifty dollars per year. Thus, pursuant to R.C. 3315.062(C), such money must be paid into an activity fund. Further, even though funds paid into a student activity fund may be derived from private donations, such moneys constitute public funds, and may be expended only for a public purpose. See 1986 Op. Att'y Gen. No. 86-013; 1980 Op. Att'y Gen. No. 80-060; 1975 Op. Att'y Gen. No. 75-008. See also 1982 Op. No. 82-014 (a board of education is authorized to expend public moneys for student activity programs, including extracurricular athletics); 1963 Op. Att'y Gen. No. 157, p. 249 (concluding that a board of education may expend money from student athletic funds for the purchase of football equipment). As noted above, R.C. 3313.17 designates a board of education as a body politic and corporate, and thus capable of "acquiring, holding, possessing, and disposing of" property, and "taking and holding in trust for the use and benefit" of the school district any donation of money or personal property. Although property purchased by a board of education is held in trust for the state for public use, the title to school grounds and other school property is vested in the board of education. Board of Education v. Volk, 72 Ohio St. 469, 74 N.E. 646 (1905).

Thus it is clear that a board of education which has acquired and owns football equipment does so in its corporate capacity. The disposal or sale of such equipment must be accomplished in accordance with the requirements of R.C. 3313.41. If the value of the property in question exceeds two thousand dollars,<sup>2</sup> then it must be twice offered for sale at public auction before it may be sold at a private sale. See also Schwing v. McClure (a board of education may not convey to private parties without consideration personal property which must be offered at auction); Op. No. 83-082 (a board of education is not authorized to make a gift of property valued in excess of two thousand dollars; the language of R.C. 3313.41 contemplates that some form of consideration be exchanged for the transfer of the property).

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<sup>2</sup> The question arises whether the two thousand dollar limitation in R.C. 3313.41 pertains to the value of each individual sale or to the aggregate amount of all the property being sold, regardless of how many "individual sales" are involved.

My predecessor, in 1975 Op. Att'y Gen. No. 75-006 concluded in part: "R.C. 3313.41 requires a public auction for the sale of items of personal property, belonging to a board of education, whose aggregate value exceeds \$600..."

R.C. 3313.41, however, has no applicability to the disposal of property; the value of which does not exceed two thousand dollars. Further, I am unaware of any statute which addresses the sale or other disposition of such property. In Minamax Gas Co. v. State ex rel. McCurdy, 33 Ohio App. 501, 170 N.E. 33 (Scioto County 1929), the court addressed the power of a public body to dispose of property in the absence of express statutory authority therefor, and stated that, "if the property is not held in trust, and not dedicated to public use, it may be aliened, because the right to alien follows necessarily as an incident to ownership." 33 Ohio App. at 507, 170 N.E. at 35. See also 1984 Op. Att'y Gen. No. 84-054, n.2. Before a public entity may dispose of its property, however, it must determine that the property is not currently needed for public use and that the alienation serves the public interest. Minamax Gas Co. v. State ex rel. McCurdy; 1981 Op. Att'y Gen. No. 81-106; 1980 Op. Att'y No. 80-028. Once a public body determines that it may properly dispose of its property, it has broad discretion in determining how and when it may sell its property. See 1972 Op. Att'y Gen. No. 72-051. A public body may conduct a sale of its property as it deems reasonable and appropriate. See Op. No. 81-106; Op. No. 80-028; 1974 Op. Att'y Gen. No. 74-020. See also Minamax Gas Co. v. State ex rel. McCurdy.

A board of education may, therefore, sell football equipment, the value of which does not exceed two thousand dollars, under the circumstances you have described if the board determines that the property is no longer needed for public use, and the sale serves the public interest, and if the board determines that the method of sale is reasonable.

You have also asked what effect a sale would have on the school system's bookkeeping when the equipment is purchased with donations to the athletic department and later sold at less than market price.

R.C. 117.43(A) permits the Auditor of State to "prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies." See 8 Ohio Admin. Code Chapter 117-2 and [1985-1986] Monthly Record Ohio Admin. Code Chapter 117-2 at 850-80, (schools). I am not equipped to answer specific bookkeeping questions, but I refer you to the chapter of the Ohio Administrative Code mentioned above to aid you in locating the proper bookkeeping procedure to be employed. You may also wish to contact the Auditor of State for further guidance in this matter.

In conclusion, it is my opinion, and you are advised, that:

1. A board of education which sells football equipment purchased with funds raised from a student activity must comply with the requirements of R.C. 3313.41, if the aggregate value of the equipment exceeds two thousand

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(syllabus). Although 1983-1984 Ohio Laws, Part I, 79 (Am. S.B. 39, eff. Oct. 13, 1983) raised the dollar limitation from \$600 to \$2000, Op. No. 75-006 clearly stands for the proposition that the board of education must aggregate the value of personal property being sold in order to determine whether it must be offered at public auction.

If, however, the property remains unsold after twice being offered for sale at public auction, the board may, pursuant to R.C. 3313.41(B), sell personal property in a single lot or in several lots.

dollars. The board may sell such equipment at a private sale or sales only if such equipment remains unsold after twice being offered for sale at public auction.

2. A board of education may sell football equipment purchased with funds raised from a student activity to students, who participated in the student activity and on the football team, for one dollar where the aggregate value of the equipment does not exceed two thousand dollars, if the board determines that the property is no longer needed for use and the sale serves the public interest, and if the board determines that such method of sale is reasonable.