OPINION NO. 74-063

Syllabus:

1. A board of education may charge a fee for parking on school-owned property for school functions, but may not charge such a fee to students who are attending classes.

2. A board of education may not permit school-owned property to be used, by a school activity group or a private enterprise, for the sole purpose of operating a revenue-producing parking lot.

3. A board of education may permit an organization or group of persons which is using a school building or grounds for a purpose authorized by R.C. 3313.76 or 3313.77, to charge a fee for parking on the school grounds. (Opinion No. 1670, Opinions of the Attorney General for 1928, page 280, approved and followed)

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, August 5, 1974

I have before me your request for my opinion, which presents the following questions:

"1. Would there be any statutory provision

that would prevent the charging for parking on school-owned property for a school function such as a football game, basketball game, graduation exercise, P.T.A. carnival, etc?

"2. May the board of education charge a fixed fee under contract to a school activity group or a private enterprise whether non-profit or one organized for profit with such school activity group or private enterprise setting a rate per car for parking space, or, must the board control and operate the parking itself?"

I have found no authority, statutory or otherwise, which either permits or prohibits, by express language, the charging of a fee for parking on school-owned property by a board of education. However, such power may be implied from R.C. 3313.20 and 3313.47, which grant broad, general powers to a board of education. R.C. 3313.20, which grants to a board of education the power to make rules and regulations, reads as follows:

"The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. * * *"

(Emphasis added.)

R.C. 3313.47, which vests the management and control of schools in the board of education, reads as follows:

"Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution."

(Emphasis added.)

It is the settled law of this state that the courts will not interfere with the discretionary power of a board of education where the exercise of such power is reasonable, in good faith, and not an abuse of discretion. State ex rel. Milhoof v. Board of Education, 76 Ohio St. 297 (1907); Youngstown Education Association v. Board of Education, 36 Ohio App. 2d 35 (1973); Board of Education v. State ex rel. Goldman, 47 Ohio App. 417 (1934); State, ex rel. Evans v. Fry, 11 Ohio Misc. 231 (1967); Opinion No. 73-129, Opinion No. 73-114, and Opinion No. 73-084, Opinions of the Attorney General for 1973.

A board of education has the management and control of all of the public schools in its district, pursuant to R.C. 3313.47, and may make such rules and regulations as are necessary for the government of all persons entering upon the school grounds, pursuant to R.C. 3313.20. Thus I must conclude that, pursuant to R.C. 3313.20 and 3313.47, a board of education has the implied power to charge a fee for parking on school-owned property for school functions. An analogous situation concerns the power of a board of education to charge an admission fee to athletic events, such as football or basketball games. As in the instant situation there is no express statutory authority to do so, yet this practice has been carried on for many years. Therefore such power may also be implied from the broad powers granted by R.C. 3313.20 and 3313.47.

However, this power may not be extended to include charging students for parking while they are attending school, for that might deny the right to a free education provided by R.C. 3313.48 and 3313.64. See also Opinion No. 1860, Opinions of the Attorney General for 1960, page 712.

Your second question concerns whether a board of education may contract with a school activity group or a private enterprise, profit or non-profit, to operate a revenue-producing parking lot on school-owned property. R.C. 3313.76 and 3313.77 provide that a board of education shall make schoolhouses and grounds available for certain purposes. R.C. 3313.76, which concerns educational and recreational purposes, reads as follows:

> "Upon application of any responsible organization, or a group of at least seven citizens, all school grounds and schoolhouses, as well as all other buildings under the supervision and control of the state, or buildings maintained by taxation under the laws of this state, shall be available for use as social centers for the entertainment and education of the people, including the adult and youthful population, and for the discussion of all topics tending to the development of personal character and of civic welfare, and for religious exercises. Such occupation should not seriously infringe upon the original and necessary uses of such properties. The public officials in charge of such buildings shall prescribe such rules and regulations for their occupancy and use as will secure a fair, reasonable, and impartial use of the same."

R.C. 3313.77, which concerns the use of schoolhouses and grounds for public meetings and entertainments, reads as follows:

> "The board of education of any city, exempted village, or local school district shall, upon request and the payment of a reasonable fee, subject to such regulation as is adopted by such board, permit the use of any schoolhouse and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:
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> "(A) Giving instructions in any branch of education, learning, or the arts;

"(B) Holding educational, religious, civic, social, or recreational meetings and entertainments, and for such other purposes as promote the welfare of the community; provided such meetings and entertainments shall be nonexclusive and open to the general public;

"(C) Public library purposes, as a station for a public library, or as reading rooms;

"(D) Polling places, for holding elections and for the registration of voters, or for holding grange or similar meetings."

A general principle of statutory construction is that the mention of one thing implies the exclusion of all others, expressio unius est exclusio alterius. See 50 O. Jur. 2d, Statutes, Section 188, and cases cited therein. Since the use of school-owned property for a revenue-producing parking lot is not one of the purposes provided by R.C. 3313.76 or 3313.77, the maxim applies here to exclude such use. Thus, I must conclude that a board of education may not permit school-owned property to be used for the sole purpose of operating a revenue-producing parking lot.

However, if the school building and grounds or both are being used by some organization or group of persons for one of those purposes listed in R.C. 3313.76 and 3313.77, such organization or group could also charge for parking on the school grounds. This conclusion results from Opinion No. 1670, Opinions of the Attorney General for 1928, page 280, whose syllabus reads as follows:

"A board of education may permit the use of the auditorium in a school building for the playing of basketball under the auspices of any responsible organization, including a church basketball league, even though a fee is charged for admission to the games. The charging of a fee for admission to such entertainments is not violative of the provision of Section 7622-3, General Code, that "such meetings and entertainments shall be non-exclusive and open to the general public."

If an organization or group of persons can charge admission to a function which they sponsor at a public school, there is no legal reason why they cannot also charge for parking space on the grounds, provided that the board of education's rules permit such a charge.

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

1. A board of education may charge a fee for parking on school-owned property for school functions, but may not charge such a fee to students who are attending classes.

2. A board of education may not permit school-owned property to be used, by a school activity group or a private enterprise, for the sole purpose of operating a revenue-producing parking lot.

3. A board of education may permit an organization or

group of persons which is using a school building or grounds for a purpose authorized by R.C. 3313.76 or 3313.77, to charge a fee for parking on the school grounds. (Opinion No. 1670, Opinions of the Attorney General for 1928, page 280, approved and followed)