

2112

EDUCATION—COURSE IN DRIVER TRAINING, APPROVED BY STATE BOARD—SCHOOL DISTRICT MAY NOT CHARGE TUITION TO STUDENTS UNDER 21 YEARS OF AGE WHO ARE RESIDENTS OF DISTRICT OR PERSONS UNDER §3313.64 R.C.—DISTRICT MAY CHARGE FOR TUITION, PERSONS OVER 21, REGARDLESS OF RESIDENCE.

SYLLABUS:

When the state board of education has approved a driver training course as part of the regular curriculum of a school district, such school district may not charge tuition to students under twenty-one who are residents of said district or are included in one of the categories specified in Section 3313.64, Revised Code; however, the board may charge tuition for students over twenty-one, regardless of the place of their residence.

Columbus, Ohio, May 15, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

In your letter to me of April 2, 1958, you requested my opinion as to whether a school board which has established a driver training course as part of the curriculum of such school district may charge the pupils enrolled in such a course a fee for such enrollment.

You point out in your request Opinion No. 4551, Opinions of the Attorney General for 1954, p. 553, which holds that boards may lawfully establish a graded course of instruction in the operation of motor vehicles and may lawfully expend public funds for such purpose. This opinion was based on the authority granted to boards of education under Section 3313.60, Revised Code, then in effect. Though this section of the code was amended, effective August 5, 1955, there is no change affecting the issue presented and we agree with the above opinion as being a correct interpretation of the current law. This being so, the driver training course may be included in the study curriculum for which a diploma must be granted under the provision of Section 3313.61, Revised Code. The only possible limitation we can see from Section 3313.60, *supra*, is that the course is subject to the approval of the state board of education.

The driver training course having been established as part of the regular curriculum, may a fee for said course be charged? You mention that Section 3313.45, Revised Code, provides for free education of the youth of school age. It is presumed that you had Section 3313.48, Revised Code, in mind; however, we invite your attention to Section 3313.64, Revised Code, which is more specific. This section provides that the schools of each city, exempted village or local school district shall be free to all school residents between six and twenty-one years of age, including children or wards of the residents of the district, employees in the district of school age living apart from their parents or guardians and who work to support themselves, and inmates of children's homes in the district, public and private, subject to the limitations stated in said section. The concluding paragraph of this section reads as follow :

“The board of education of a city, exempted village, or local school district may admit other persons to the public schools of its respective district upon the payment of tuition within the limitation of law.”

The “limitation of law” is found in Section 3317.08, Revised Code, and is a limitation on the amount of tuition only; therefore, it is not pertinent to the question raised.

We call your attention to Opinion No. 3573, Opinions of the Attorney General for 1954, p. 64, which discusses the charging of fees to students enrolled in a vocational school in cooperation with the federal government pursuant to Sections 3303.01 to 3303.05, inclusive, Revised Code. The opinion concludes that a board of education is required to make a tuition charge to nonresidents of the district but may use its discretion on whether to make any charge to resident adults of the district. This reasoning was based on the fact that Section 2 of Article VI of our constitution commands the General Assembly to provide a “thorough and efficient system of common schools throughout the state” but establishes no age maximum. It was further theorized that the charging of a tuition fee to a resident adult was not mandatory because the federal contribution to the vocational school program did not contemplate its use for students within a specific age range only. Inasmuch as the subject inquiry does not involve a vocational course, but according to Opinion No. 4551, *supra*, a course under the heading, “First Aid, Safety, and Fire Prevention,” Section 3313.60 (G), Revised Code, which section presents the necessary subjects to be included in the graded course of study prescribed by a board

of education, there is no need to disagree with the opinion; however, we deem it both necessary and expedient in furnishing an *efficient* system of education under the Constitution to make some reasonable limitation with respect to the age classification to which a course of study would be open. These limitations are clearly set forth in Section 3313.64, Revised Code, from which you will note that the schools of a district shall be free to the residents of the district as defined therein under the age of twenty-one but may admit non-residents under twenty-one and any one over twenty-one *upon the payment of tuition*. The privilege of admission of the latter class is discretionary, but the payment of tuition appears to be mandatory.

A further indication that this is the correct interpretation of the intent of the legislature is found in Section 3313.52, Revised Code, which provides as follows:

“The board of education of a city, exempted village, or local school district may organize evening schools.

“Any person more than twenty-one years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board prescribes.”

Inasmuch as Section 3313.48, Revised Code, providing for a minimum school year, states only that a certain specified number of clock hours is required for a day's attendance, there would appear to be no prohibition in having evening classes as part of the regular curriculum and these classes would be free to those students under twenty-one subject to those limitations pointed out above. The intent of the statute appears then to be only a limitation respecting the maximum age for which free instruction is provided rather than a limitation as to the type of course that may be offered.

Accordingly, you are advised that in my opinion when the state board of education has approved a driver training course as part of the regular curriculum of a school district, such school district may not charge tuition to students under twenty-one who are residents of said district or are included in one of the categories specified in Section 3313.64, Revised Code; however, the board may charge tuition for students over twenty-one, regardless of the place of their residence.

Respectfully,  
WILLIAM SAXBE  
Attorney General