

SYLLABUS:

1. Representation on a board of education of a joint vocational school district may be proportional in accordance with a plan approved by all of the local, exempted village, city and county boards of education of school districts participating therein but only persons who are members of exempted village, city and county boards of education are eligible for appointment to a board of education of a joint vocational school district.

2. Section 3311.16 to 3311.217, inclusive, Revised Code, reflect a legislative intention that joint vocational school districts be a joint effort by, and for the mutual advantage and benefit of, the separate school districts participating therein. With the exception of the use of school buildings specified in Section 3311.212, Revised Code, for which a rental payment is permissive, said sections do not authorize sales or leases of real or personal property as between joint vocational school districts and the participating districts and such authority may not be necessarily implied.

3. A joint vocational school district may construct a building on land leased from a third party but only if the terms of the lease are such as adequately to protect the interest of the school district.

4. A bond issue or levy proposed for the use of a joint vocational school district must be submitted to the electors of all of the individual school districts which are, at that time, participating districts.

Columbus, Ohio, November 21, 1963

Honorable E. E. Holt
Superintendent of Public Instruction
Department of Education
Columbus 15, Ohio

Dear Sir:

Your recent request for my opinion reads as follows:

“A number of questions are being raised by school districts which are considering the formation of a joint vocational school district in accordance with the provisions of Chapter 3311 of the Revised Code. I would appreciate receiving your Opinion on the following questions:

“1. Six local school districts of one county and a city school district located in the same county propose to form a joint vocational school district. Fifty-six percent of the combined pupil population of all seven districts will be in the city district and so it is desired that representation on the joint vocational school district board of

education be approximately proportional to student population. May such proportional representation be achieved by one of the following methods:

“A. One member appointed from each of the local school district’s boards of education, five from the city school district board of education and two additional members to be appointed by the city school district board of education who are residents of such city school district but not members of its board of education?

“B. Two members from the county school district of which the local school districts are a part and three members from the city school district. The essence of this plan is that less than one member for each local school district is appointed, and so variations of the plan are possible?

“2. May the board of education of a school district which becomes a part of a joint vocational school district sell equipment now in use to the joint vocational school district for use by the pupils of such joint vocational school district?

“3. May a joint vocational school district construct a building upon leased land, whether the lessor be one of the member districts or some third party?

“4. May a joint vocational school district lease a building and equipment from a city, exempted village or local school district and use such facilities jointly with the lessor?

“5. Where a bond issue or levy for vocational purposes has been approved by the electorate of a city, exempted village or local school district which becomes part of a joint vocational school district, can part, or all, of the proceeds of such levy or bond issue be paid to the joint vocational school district in lieu of permitting the joint vocational school district to submit an additional bond issue or levy question to the electorate of such city, exempted village or local school district? Another way of stating this question is, is it mandatory that a bond issue or levy for use by the joint vocational school district submitted to the electors of any portion of a joint vocational school district be submitted to the electors of the entire joint vocational school district?”

Section 3311.19 of the Revised Code provides in part:

“The management and control of a joint vocational school district shall be vested in the joint vocational school district board of education.

“Where a joint vocational school district is composed only of two or more local school districts located in one county, or when all the participating districts are in one county and the boards of such participating districts so choose, the county board of education of the county in which the joint vocational school district is located shall serve as the joint vocational school district board of education. Where a joint vocational school district is composed of local school districts of more than one county, or of any combination of county, local, city, or exempted village school districts, unless administration by the county board of education has been chosen by all the participating districts in one county pursuant to this section, then the board of education of the joint vocational school district shall be composed of one or more persons who are members of the boards of education from each of the city, exempted village, or county school districts affected to be appointed by the boards of education of such school districts. In such joint vocational school districts the number and terms of members of the joint vocational school district board of education and the allocation of a given number of members to each of the city, exempted village, and county districts shall be determined in the plan for such district, provided that each such joint vocational school district board of education shall be composed of an odd number of members.

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“1. Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.”

In the course of Opinion No. 4588, Opinions of the Attorney General for 1932 it was stated, in discussing the authority of a board of education to acquire property:

“To acquire property, however, which the board does not intend to utilize for school purposes, and which is not needed for school purposes, merely for the purpose of renting or leasing the same is, in my opinion, wholly unauthorized, and beyond the powers of the board.”

In the case of *State ex rel Baciak v. Board of Education*, 55 Ohio Law Abs., 185, it was held:

“It is incumbent upon a Board of Education in its fiduciary capacity as an owner of school property to pre-

serve the availability of such school property for school purposes where a present or probable future need therefore (sic) exists."

Referring again to the 1932 opinion of the Attorney General above quoted, branch two of the syllabus held:

"When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes or that it should be sold, the right to the use of the premises by said third parties would terminate."

It is thus apparent that the power granted to boards of education by Section 33131.7, Revised Code, is limited by the fundamental purpose of such boards in three respects: (1) acquisitions of property must be for school purposes, (2) that which it acquires must be preserved for present and probable future school needs and (3) if it has property for which it has no present need it may rent or lease the same to another (under proper terms and conditions) or if it has neither present nor probable future need it may, if advantageous, dispose of same by sale.

Section 3311.212, Revised Code, reads:

"The board of education of a school district which is a part of a joint vocational school district and the board of education of such joint vocational school district may enter into agreements to permit the school buildings of the district first noted to be used for the purposes of carrying on a vocational school program. Such use may be either free of cost or pursuant to such rental arrangements as may be stipulated in such agreements."

It is apparent that in enacting the above-quoted section the legislature was not authorizing the type of transaction suggested by your fourth question, the net effect of which would be that the participating school district would be disposing of portions of facilities for which it has a present need and the joint vocational school district would be leasing portions of facilities for which it had no need.

The fact that the city, exempted village, or local school district would continue to use the building jointly with the joint vocational school district does not cure this defect. On the contrary, it raises the question of whether the proposed transaction would not transcend the stated purpose of the statute, i.e., carrying on a joint vocational school program and address itself primarily to effectuating a transfer of funds from one school district to another.

Clearly, said section authorizes a participating school district to permit a joint vocational school district to have exclusive use of a school building together with any equipment therein, for which the participating school district has no present need, and this may be either free or for such rental as may be agreed. Likewise, I conclude that Section 3311.212, Revised Code, may fairly be construed as authorizing a participating school district to permit a joint vocational school district to use all or any portion of a school building together with any equipment therein, at such time or times as the former may have no present need therefor. This, too, may be either free or for such rental as may be agreed. In this event, if the use is less than exclusive and a rental is charged the rental should, in my opinion, be based upon the portion of the building used for the joint vocational school program and the extent of such use.

In answering your third question it must first be noted that Section 3311.212, Revised Code, refers only to use of school buildings, not to leases of school lands. In view of the previously noted necessity of a reclaimer clause in any lease by a school district of land for which it has no present need, it would appear improper for a joint vocational school district to construct a building upon land leased from a participating school district.

In connection with this question it may also be observed that prior to the amendments which became effective October 26, 1961, 129 Ohio Laws, 1544, joint vocational school districts were administered by vocational school committees. Through the amendments noted the administering body came to be known as joint vocational school district boards of education. It might be assumed that by this action the legislature intended to clothe the administering body of joint vocational school districts with the characteristics generally ascribed to other boards of education. However, this must be

construed in the light of the basic purpose of a joint vocational school district board of education which is the management and control of a joint vocational school district pursuant to a plan approved by the participating districts. Section 3311.16, Revised Code, states that such a plan shall provide for the establishment *and operation* of the joint vocational school district. By its nature such a plan must be expected to provide for a joint or mutual effort on behalf of, and a joint or mutual benefit to, the participating school districts. Reading Sections 3311.16 through 3311.217, Revised Code, as a whole I conclude that the plan for the establishment and operation contemplates mutually beneficial cooperation of the participating districts for joint vocational school purposes. Section 3311.212, Revised Code, is specifically of this tenor in that it refers to a use of school building rather than outright rental or lease thereof and provides only for a permissive rental payment. This I conclude to be a recognition of the obvious fact that the efforts, contributions and benefits of the participating districts may not be mutual if one of such districts carries the entire burden of supplying the building to be used for the joint vocational school purposes.

I find no statutory provision specifically authorizing sales or leases of land or equipment between school districts and in view of the nature of a joint vocational school district and its purposes I cannot conclude that such authority is necessarily implied.

With respect to the construction of a school building on land leased from a third party it has previously been held that a school building erected upon land held subject to reverter cannot revert to the fee holder upon termination of the use for school purposes.

In the second branch of the syllabus of *Schwing v. McClure*, *supra*, it was stated:

“2. The members of the board of education of a school district are not authorized to convey or transfer to private parties, without consideration, any of the property of the school district, real or personal. Hence, the acceptance by such members of the board of education of a school district of a deed providing that if at any time the premises in question shall cease to be used for school purposes, the same shall at once vest in the said grantors, their heirs and assigns forever, is not effectual to consti-

tute a public school building erected upon such premises with public funds a part of the realty, so that such building passes with the realty upon reversion to the heirs of the grantor."

Such a reversion of a school building would obviously fail to meet the requirement of Section 3313.41, Revised Code, which prescribes the method for disposition of real or personal property held by a board of education. While it would be possible for a board of education to dispose of a school building pursuant to Section 3313.41, Revised Code, upon the termination of or expiration of a lease of the land upon which it stands the result would appear to be financially disadvantageous to the school district involved. This defect may be cured by incorporating into the lease either an option or a firm contract of purchase such as discussed and approved in Opinion No. 1604, Opinions of the Attorney General for 1958, whichever might be most desirable. However, this procedure is limited in application to land leased from third parties and cannot be applied to leases from other school districts because of the limitations of Section 3313.41, Revised Code, upon the manner in which a board of education may sell real property. As stated in Opinion 596, Opinions of the Attorney General for 1951:

"Section 4834-13, General Code (now 3313.41, Revised Code) grants the power of private sale to a board of education when the board wishes to sell its real property to any municipality or board of trustees of a school district library. *This authority so granted cannot be extended by implication or otherwise, to include any other political subdivision of the state.*" (Material in parenthesis and emphasis added.)

I find no specific authority permitting a joint vocational school district board of education to build a school building on leased land except where the lease is coupled with provisions, such as previously mentioned, securing the future use of the land I am unable to find that such authority may be implied.

Section 3313.41, Revised Code, sets forth the procedure to be followed by boards of education in selling real or personal property. Without examining all of the details of this section in connection with your second question it is apparent that the first requirement is that the board of education which proposes to sell

either real or personal property must decide to do so. This is tantamount to saying that it must determine that it has no present or probable future need for the property in question.

Your second question specifies that the equipment referred to is "now in use." I find no basis for assuming that the term "equipment" refers only to items usable in a vocational education, nor that the present need of the "equipment" would cease to exist upon the creation of a joint vocational school district. As stated previously, in the absence of a determination by the board of education of the participating school district that it has no present or probable future for the "equipment" referred to disposition by any method would be inappropriate.

Even with such a determination on the part of the board of education of the participating school district it is necessary to observe that Section 3313.41, Revised Code, provides that any sale of personal property of value in excess of six hundred dollars must be by public auction. No exception is provided for sales to another school district. Finally, I again observe that no statutory provision is made authorizing school districts to purchase and sell school property between themselves and in view of what has been said concerning the nature of a joint vocational school district I find no necessity to imply such authority in this instance.

Sections 3311.20 and 3311.21, Revised Code, make it apparent that any bond issue or levy which is proposed for the use of a joint vocational school district must be submitted to the electors of all of the individual school districts which are, at this time, participating districts.

In summary, it is my opinion and you are advised as follows:

1. Representation on a board of education of a joint vocational school district may be proportional in accordance with a plan approved by all of the local, exempted village, city and county boards of education of school districts participating therein but only persons who are members of exempted village, city and county boards of education are eligible for appointment to a board of education of a joint vocational school district.

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Respectfully,
WILLIAM B. SAXBE
Attorney General