

OPINION NO. 67-072**Syllabus:**

1. A local board of education does not have authority to establish a minimum compulsory school age date which would enable any child to be eligible for admittance to the first grade of a public school unless such child is six years of age on or before the thirty-first day of October of the year of admittance or on or before the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the beginning of such term or semester. However, if the local board of education has first raised the minimum compulsory school age to seven, it may then set any date during the year on or before which a child must be seven years of age.

2. A local board of education has no mandatory duty to use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements.

3. A local board of education that does use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements, has a mandatory duty upon request of the child's parent

or guardian, to test a child who will be six years of age on or before the first day of January of the school year for which admission is requested.

To: Joseph Murray, Ashland County Pros. Atty., Ashland, Ohio
By: William B. Saxbe, Attorney General, July 31, 1967

I have before me your request for my opinion on the following questions:

"(1) Is a local school district authorized to establish the compulsory school age for children in that school district beyond the date of October 31 of any given school year by virtue of * * * Section 3321.01, Revised Code:

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"(2) If a local school district establishes a compulsory school age date after September 1, but prior to October 31, can the parents of a child who reaches the age of six (6) years on or before October 31, but after the compulsory school age date as set by the school district, demand that the school district admit their child to first grade?

"(3) Is the testing provisions found in Section 3321.01, Revised Code, mandatory upon request of the parent or guardian,* * *:

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"(4) If the testing is mandatory, is it mandatory only in those school districts which are currently 'using, or obtaining' educationally accepted standardized testing programs?"

The compulsory school age for children in this state is established by Section 3321.01, Revised Code, which states:

"A child between six and eighteen years of age is 'of compulsory school age' for the purpose of sections 3321.01 to 3321.13, inclusive, of the Revised Code; but the board of education of any district may by resolution raise the minimum compulsory school age of all

children residing in the district to seven, subject to subsequent modification to six; and the compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which he resides. No child is eligible to be admitted to the first grade of a public school in a district in which all children are admitted to the first grade in August or September unless he is six years of age on or before the thirty-first day of October of the year of admittance or on or before the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the beginning of such term or semester, except that in those school districts using, or obtaining, educationally accepted standardized testing programs for determining entrance, as approved by the board of education of such districts, such boards may admit a child to the first grade who fails to meet the age requirement, provided the child meets necessary standards as determined by such standardized testing programs. Each child who will be six years of age on or before the first day of January of the school year for which admission is requested shall be so tested upon the request of his parent or guardian.

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Section 3321.01, supra, was enacted in the present form by two amendments passed by the 106th General Assembly, one passed July 12, 1965, and the other passed August 10, 1965, with the law in the present form to become effective August 1, 1967. To this date there has been no judicial interpretation of the provisions of this enactment.

Consequently, your questions must be answered by following the established rules of statutory construction. Obviously, the basic object is to arrive at the intention of the legislature.

I will first note that although your letter of request speaks of action by the local school district, any action taken is by the local board of education which is the administrative body for the school district.

It has been well established that a local board of education is limited in the exercise of its powers to those which are clearly and expressly granted. The second syllabus of

State, ex rel., Clarke v. Cooke, 103 Ohio St. 465 reads as follows:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted."

In arriving at the intention of the legislature, it is necessary to first review the statutory provisions. The first portion of Section 3321.01, supra, vests in the local board of education the power to raise the minimum compulsory school age to seven by resolution. If the board elects to so do, it may then set any date during the year on or before which a child must be seven years of age insofar as such date would not be such that the child would not have been six years of age on or before the thirty-first day of October of the year of admittance. This date may be either prior to or subsequent to the date of October 31st or any other date fixed by the rules of the board of the local school district. If, however, the boards elects not to raise the minimum compulsory school age to seven, then the 1965 amendments to Section 3321.01, supra, come into play. These amendments provide that a child must be six years of age on or before October 31st or before the first day of a term in those local school districts granting admittance at the beginning of a term which commences other than in August or September. Therefore, when the local school board elects not to raise the minimum compulsory school age from six to seven years of age, it has no discretion in the matter of setting the date on or before which a child must be six years of age.

This position, I believe, has support in logic and reason, for if a board having once raised the minimum compulsory school age had to set it at October 31st, then conceivably a child who was seven on November 1st would be almost eight before he would be eligible to enter the first grade. Obviously, such was not the legislative intent.

Since I have answered your first inquiry in the manner I have, I believe that the question raised in your second inquiry is moot and I respectfully decline to answer it.

In response to your third and fourth question, I note that Section 3321.01, supra, contains the following language:

"* * *except that in those school districts using, or obtaining, educationally accepted standardized testing programs for determining entrance, as approved by the board of education of such districts, such boards may admit a child to the first grade who fails to meet the age requirement, provided the child meets necessary standards as determined by such standardized testing programs. Each child who will be six years of age on

or before the first day of January of the school year for which admission is requested shall be so tested upon the request of his parent or guardian."

Applying the previously mentioned test of legislative intent, it is my opinion that a school board does not have a mandatory obligation to use or obtain a standardized testing program. The only mandatory duty is to administer such a test if a testing program has been adopted by the board.

Therefore, it is my opinion and you are hereby advised that:

1. A local board of education does not have authority to establish a minimum compulsory school age date which would enable any child to be eligible for admittance to the first grade of a public school unless such child is six years of age on or before the thirty-first day of October of the year of admittance or on or before the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the beginning of such term or semester. However, if the local board of education has first raised the minimum compulsory school age to seven, it may then set any date during the year on or before which a child must be seven years of age.
2. A local board of education has no mandatory duty to use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements.
3. A local board of education that does use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements, has a mandatory duty upon request of the child's parent or guardian, to test a child who will be six years of age on or before the first day of January of the school year for which admission is requested.