

OPINION NO. 72-081**Syllabus:**

A school district which contracts with a licensed proprietary school to provide vocational training under Section 3313.90, Revised Code, should give high school credit for courses provided by such school.

To: Martin W. Essex, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William J. Brown, Attorney General, September 19, 1972

I have before me your request for my opinion, which reads as follows:

"Section 3317.02 (C) (2) of the Revised Code provides for state payments to boards of education for pupils enrolled in licensed proprietary schools in an amount equal to the average payment for all full-time equivalent vocational pupils in the state for the previous school year. Sections 3313.90 and 3313.91 of the Revised Code permit contracting with a school licensed by any state agency to provide vocational services. Institutions providing such service must meet the same requirements as those required for public schools, except that 'no instructor in such courses shall be required to be certificated by the State Department of Education.'

"Your opinion is respectfully requested on whether or not credit in meeting high school graduation requirements may be granted by a board of education pursuant to Sections 3301.07 (D) and 3313.61 of the Revised Code for courses provided by a licensed proprietary school."

In 1967, the enactment of Section 3313.90, Revised Code, placed a "mandatory duty" upon each school district, without exception, to establish and provide vocational education. Opinion No. 71-026, Opinion of the Attorney General for 1971; Opinion No. 67-063, Opinions of the Attorney General for 1967. Section 3313.90, as amended in 1969, provides in part as follows:

"Each school district shall establish and maintain a vocational education program adequate to prepare

a pupil enrolled therein for an occupation which program shall meet standards adopted by the state board of education. * * *

"In meeting standards established by the state board of education, school districts, where practicable, shall provide vocation programs in high schools * * *. A school district may meet this requirement alone, * * * by contract with a school licensed by any state agency established by the Revised Code which school operates its courses offered for contracting with public schools under standards as to staffing and facilities comparable to those prescribed by the state board of education for public schools provided no instructor in such courses shall be required to be certificated by the state department of education or in a combination of such ways. * * *" (Emphasis added.)

Furthermore, Section 3313.91, Revised Code, provides as follows:

"Any public board of education may contract with any public agency, board or bureau, or with any private individual or firm for the purchase of any vocational education * * * service * * * and may pay for such services with public funds. Any such vocational education * * * service shall meet the same requirements, * * * as those required of the public schools and be approved by the state department of education."

The supervisory authority of the State Board of Education over the public school vocational training program established by Sections 3313.90 and 3313.91, is consonant with the Board's general supervisory power over the entire system of public education under Section 3301.07, Revised Code. See Opinion No. 71-026, *supra*. While the state agency which licenses the proprietary school supervises it, that agency enforces "standards as to staffing and facilities comparable to those prescribed by the state board of education for public schools * * *", under Section 3313.90. That Section further exempts teachers in the licensed proprietary schools from being certified by the Board; however, such teachers have already met the standards and qualifications for licensing by the state agencies which supervise their respective schools. Thus, a certified public school teacher and a licensed proprietary school teacher are alike in that the competence of each is certified by a state agency; more particularly, a state agency which is competent to act in the teacher's field.

Therefore, the vocational education course given at the licensed proprietary school is of comparable quality to one given at a public school. In view of this fact, and the fact that a board of education has statutory authorization to provide vocational courses by contracting with a licensed proprietary school, the legislature must have intended to authorize the granting of high school credit for courses given in such school. While this authorization is not expressly stated, it is clearly implied by Sections 3313.90 and 3313.91; and that which is clearly implied by a statute is as much a part of it as its express terms. Opinion No. 72-061, Opinions of the Attorney General for 1972.

Furthermore, when the requirements of Section 3313.90 are met, students in the licensed proprietary school may be counted in the

average daily membership of their public school district of residence, under Section 3317.03, Revised Code, for purposes of foundation grants. Since the public school may count those students in its enrollment, it follows that they may be given high school credit.

Many school boards, to meet the mandatory requirements of Section 3313.90 (see Opinion No. 67-063, supra), found it necessary to expend public funds for vocational programs by contracting with licensed proprietary schools, instead of providing the vocational courses themselves. If a board should deny a high school student credit for courses taken at the proprietary school, it would be penalizing the student for taking the program which the board decided was best. Clearly, such a result would be both unfair and illogical.

I have stated previously that vocational programs are designed to "enable high school students to develop saleable skills in an industry or trade where employment opportunities are unlimited, motivate students to complete their high school training, and develop attitudes necessary in the work-a-day world." Opinion No. 71-068, Opinions of the Attorney General for 1971. To give effect to this design, Section 3313.90 should be liberally construed in order to carry out its plan to conserve the interests of the school youth, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation. See Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933). Applying the reasoning of the Rutherford opinion, Section 3313.90 should be liberally construed to allow high school credit, so that those students who attend such licensed proprietary schools remain motivated to complete their high school education.

In specific answer to your question it is my opinion, and you are so advised, that a school district which contracts with a licensed proprietary school to provide vocational training under Section 3313.90, Revised Code, should give high school credit for courses provided by such school.