

SYLLABUS:

1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education may establish a single fee for pencils, tablets and other items furnished students. However, the students could not be required to pay such fee if they elected to obtain these items elsewhere.

2. Such fee would not be a tax and would, therefore, not constitute double taxation.

3. A special rotary fund would be required for receipts.

4. Such fee would have to be charged to all students receiving these items and could not be waived in hardship cases.

Columbus, Ohio, April 17, 1963

Hon. E. E. Holt
Superintendent of Public Instruction
Department of Education
Ohio Departments Building
Columbus 15, Ohio

Dear Sir:

I have your request for an opinion which reads, in pertinent part, as follows:

"1. Does Section 3313.642 R.C. permit the establishment and collection of a *flat* charge as opposed to specific charges for individual items such as a pencil, a tablet, a quantity of chemical, etc.

"2. The charge which is proposed for the second semester of 1962-63 would cover the furnishing of materials which, in the main, are already in stock and were paid for several months ago from tax funds. The contention is offered that since these materials have already been bought and paid for from public funds, a charge for them would constitute 'double taxation' and would be illegal.

"3. In the event that the contention outlined in '2' above were sustained, would the application of that principle preclude the advance purchase in the future of these materials, or would it be necessary to collect the fee first and purchase the materials only after all collections had been made.

"4. Are there any conditions under which it would be mandatory that a special rotary fund be established as provided for in Section 3313.811 R.C. to handle collections as outlined in the policy described in the opening paragraph of this letter.

"5. If any of the questions posed above presents an impediment to the operation of the described policy, could such objection be overcome by the establishment of a rotary fund.

"6. If, under the operation of the proposed policy, the Board of Education were to permit the waiving of established fees for pupils representing severe hardship cases, without exacting the penalty of withholding grades and credits as authorized in Section 3313.642 R.C., and while applying such penalties in non-hardship cases, would such action constitute a violation of any constitutional or statutory provision."

By use of the term *flat charge*, I assume you intend to collect a single fee for all items furnished.

Section 3313.642, Revised Code, states:

"Notwithstanding the provisions of sections 3313.48 and 3313.64 of the Revised Code, the board of education of a city, exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge pursuant to the provisions of sections 3329.06 of the Revised Code. Boards of education may adopt rules and regulations prescribing a schedule of fees for such materials and prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library material, textbooks required to be furnished without charge, and for damage to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned."

Section 3313.811, Revised Code, states:

"No board, the principal or teacher of any school-room, or class organization of any school district shall sell or offer for sale, or supervise the sale of uniform school supplies, foods, candies, or like supplies for profit on the school premises except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school on whose premises such uni-

form school supplies, food, candies, or supplies are sold or offered for sale. No individual student or class of students, acting as an agent for any person or group of persons directly connected with the school shall sell or offer for sale for profit outside the school building, any such articles, except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school.

“Uniform school supplies are those adopted by the board for use in the schools of the district.

“The enforcement of this section shall be under the jurisdiction of the state board of education.

“The school district board of education shall provide rotary funds for the purchase and sale of uniform school supplies either by appropriations from the general fund or accumulation from sales or receipts. Such fund shall be kept separate from other transactions of the board.”

Section 3313.642, Revised Code, permits but does not require the board of education to establish a schedule of fees for materials furnished. Section 3313.811, Revised Code, permits the sale of supplies at a profit. The board of education can furnish the materials free to all students and it can sell them at a profit. It would, therefore, be my opinion that a board of education may charge a flat fee for such materials. However, there is no statutory authority to permit the board to require the student to purchase such materials from the school.

Taxation is defined by the Ohio Supreme Court in *Exchange Bank of Columbus vs. O. P. Hines*, 3 Ohio State 1, on page 11, as follows:

“Taxation is that tribute for the support of government, imposed on property in return for the protection and advantages which the government affords to the owner.* * *”

The fee proposed here is to defray the cost of materials furnished. The receipts from sale of supplies are no more than payment for merchandise received. It is not a tribute imposed on property and it is not a tax. Therefore, the issue of double taxation is not present here.

Section 3313.811, Revised Code, states, in part, as follows:

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“The school district board of education *shall provide rotary funds* for the purchase and sale of uniform school supplies either by appropriations from the general fund or accumulation from sales or receipts. Such fund *shall be kept separate* from other transactions of the board.”

(Emphasis added)

A separate rotary fund for receipts from sale of school supplies is, therefore, required by statute.

At one time, boards of education could, in certain limited cases of extreme hardship, furnish textbooks free of charge “and such other relief as may be necessary* * *.” This authority was granted by statute, Section 7777, General Code. This section was repealed in 1943. Upon replacing this section, the legislature enacted a provision permitting boards of education to furnish free lunches to needy students. Where free lunches were provided, an appropriation from the general fund of the board to the lunch room fund was required. A similar provision for free lunches to needy children is now included in Section 3313.81, Revised Code. Prior to 1943, Opinions of the Attorney General and courts had held that free lunches could not be provided. The headnote of one such case, *Board of Education of City School District of City of Cleveland v. Ferguson*, 68 Ohio App. 238, states:

“The authority of boards of education is derived solely from the statutes and is limited strictly to such powers as are expressly granted or clearly implied.”

The authority of a school board to furnish free supplies to needy students is not expressly granted by statute and, in my opinion, such authority cannot be clearly implied.

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

(1) Pursuant to the provisions of Section 3313.642, Revised Code, a board of education may establish a single fee for pencils, tablets and other items furnished students. However, the students could not be required to pay such fee if they elected to obtain these items elsewhere.

(2) Such fee would not be a tax and would, therefore, not constitute double taxation.

(3) A special rotary fund would be required for receipts.

(4) Such fee would have to be charged to all students receiving these items and could not be waived in hardship cases.

Respectfully,
WILLIAM B. SAXBE
Attorney General