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1. MANUAL TRAINING AND OTHER VOCATIONAL AND INDUSTRIAL ARTS—BOARD OF EDUCATION HAS AUTHORITY TO ESTABLISH COURSES—ADULTS MAY BE ADMITTED—TUITION—RESIDENTS OF DISTRICT—SECTIONS 3303.04, 3313.52 RC.
2. VOCATIONAL CLASSES—BOARD OF EDUCATION—MAY PERMIT PERSONS OVER TWENTY-ONE YEARS OF AGE, NOT RESIDENTS OF DISTRICTS TO ATTEND SCHOOLS—TUITION.

SYLLABUS:

1. A board of education has authority under the provisions of Sections 3303.04 and 3313.52, Revised Code, to establish courses and classes in manual training and other vocational and industrial arts, and may admit adults to such classes, upon the payment of such tuition as the board prescribes, but the board is not required to make a tuition charge to residents of the district for admission to such classes.

2. A board of education of any district which has established vocational classes pursuant to the provisions of Sections 3303.04 and 3313.52, Revised Code, may permit persons over twenty-one years of age and not residing within the district, to attend such schools upon such terms and upon the payment of such tuition as the board prescribes. Such tuition should be in an amount sufficient to cover the additional cost entailed by the admission of such non-resident students.

Columbus, Ohio, March 8, 1954

Hon. Clyde Hissong, Superintendent of Public Instruction
Department of Education, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“1. Does a city board of education have the legal right to provide an apprenticeship training educational program for non-resident students without establishing a tuition rate for these non-residents based on the actual cost of operating such program?”

“2. If a city board of education establishes such a program without requiring the tuition payment above referred to, is the board of education subject to a finding by the State Bureau of Public Accounting?”

The establishment and maintenance of so-called apprenticeship training schools or vocational schools is based in part upon certain legislation enacted by the Congress of the United States, particularly the so-called Smith-Hughes Act, which provides for federal assistance to the various states, in the maintenance of such schools.

The provisions of this act were accepted by the General Assembly of Ohio, as early as March 21, 1917. The provisions of the original statutes in substantially the same form are now found in Sections 3303.01 to 3303.05, inclusive, of the Revised Code, 154-49 to 154-49h, G. C. I do not consider it necessary to go, particularly, into the provisions of the Smith-Hughes Act. The act provided among other things, for a federal subsidy, to be matched by an appropriation by the state. The scope and purpose of that subsidy are shown by the provisions of Section 3303.03, Revised Code, being a part of the act accepting the federal aid. That section reads:

“The benefits of all funds appropriated under the act of Congress referred to in section 3303.02 of the Revised Code is hereby accepted as to:

“(A) Appropriations for the salaries of teachers, supervisors, and directors of agricultural subjects;

“(B) Appropriations for salaries of teachers of trade, home economics, and industrial subjects;

“(C) Appropriations for the preparation of teachers, supervisors, and directors of agricultural subjects and teachers of trade, industrial, and home economics subjects.”

The provisions of the Revised Code, to which I have referred, generally speaking, provide for the establishment of a state board of vocational education, to carry out the provisions of the federal act.

Section 3303.04, Revised Code, provides for cooperation by the State Board of Vocational Education with the Federal Board for Vocational Education, and provides specifically for the promotion of vocational education in agricultural, commercial, industrial, trade, and home economics subjects. It is further provided that the board may formulate plans for the promotion of such vocational education as “an essential and integral part of the public school system of education.”

Section 3303.05, Revised Code, provides as follows:

“Any school, department, or class giving instruction in agricultural, commercial, industrial, trade, and home economics subjects approved by the state board of vocational education and

any school or college so approved, training teachers of such subjects, which receives the benefit of federal moneys shall be entitled also to receive for the salaries of teachers of said subjects an allotment of state money equal in amount to the amount of federal money which it receives for the same year."

The Smith-Hughes Act and the Ohio statutes above referred to, were the subject of an opinion by one of my predecessors, to wit, No. 1227, Opinions of the Attorney General for 1920, page 539, where it was held:

"A city board of education may establish and maintain vocational schools to which adults may be admitted and may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However, said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend."

The opinion quotes from a bulletin issued by the federal board as follows:

"According to the provisions of the Smith-Hughes act the controlling purpose of evening industrial schools is to fit for useful employment persons over sixteen years of age who have entered upon the work of a trade or industrial pursuit. Generally in evening industrial schools the entrance age of pupils will be considerably higher than the minimum required by law. Average age thus far has, in fact, usually been around 23 or 24. The maturity must be taken into account at every step since the character of instruction, methods of organization, and discipline must be such as will attract and hold adult workers."

I find nothing in these statutes that undertakes to add anything to the powers of boards of education in carrying out these purposes, except the provisions of Section 3303.05 above quoted. Accordingly, we must look to the statutes which outline the powers and duties of boards of education. I note, first, that under the provisions of Section 3313.48, Revised Code, it is the duty of the schools of every district to provide *free education* to all residents of the district "of school age" and Section 3313.64, Revised Code, contains this provision:

"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, * * *"

I find nothing in the statutes which expressly authorizes school boards to provide free education to adults. Provisions are found in Sec-

tions 3317.08 and 3327.04, Revised Code, whereby "pupils" may attend school in a district other than that of their residence, pursuant to contract between the boards of education of the respective districts and at the expense of the district of residence. It is my opinion that the legislature in those sections was dealing only with pupils of "school age" that is, between the ages of six and twenty-one, and was dealing only with what we generally speak of as the "common schools" to wit, the grades and the high school.

I call special attention to Section 3313.53, Revised Code, which reads as follows:

"The board of education of any city, exempted village, or local school district may establish and maintain *in connection with the public school systems*:

"(A) Manual training, industrial arts, domestic science, and commercial departments;

"(B) Agricultural, industrial, vocational, and trades schools;

"(C) Kindergartens. Such board may *pay from the public school funds, as other school expenses are paid, the expenses of establishing and maintaining such departments and schools* and of directing, supervising, and coaching the pupil-activity programs in music, language, arts, speech, government, athletics, and any others directly related to the curriculum."

(Emphasis added.)

This section merely enlarges the range of subjects that would otherwise be normally taught in the public schools, and clearly applies to the sections just noted as to the right of resident pupils of school age to receive instruction without cost, and the children of other districts to receive the same at the expense of their own board.

The only provision of the statute which I have been able to find which appears expressly to authorize schools for pupils over twenty-one years of age, is found in Section 3313.52, Revised Code, which reads 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.*" (Emphasis added.)

It will be noted that this section does not limit attendance to residents of the district, but provides that "any person" more than twenty-one years

of age "may be permitted" to attend such evening schools. There is also a provision that persons so attending, are subject to the payment of such tuition as the board of education prescribes.

It might be contended that school boards are without authority to use the funds at their disposal for anything but the education of the youth of school age, and that schools designed to afford education to adults must be self-sustaining. I do not feel that I may go quite that far. It is quite certain that education for adults who have missed the opportunity during their minority, may be quite as important for the welfare of the state as the education of the children. Our Constitution, in Section 2 of Article VI commands the General Assembly to provide a "thorough and efficient system of common schools throughout the state," but establishes no age limit and gives no hint that they should be confined to children under twenty-one years of age. Nor do I find anything in the statutes that expressly or necessarily limits the use of school funds to the education of children of "school age" or forbids their application to the education of adults. It may be added, in this connection, that some of the states, realizing the importance of adult education, have established night high schools for adults, which have grown to very great proportions.

However, in view of the fact that the federal act above referred to, plainly contemplated aid to schools in furnishing vocational instruction to adults as well as minors, and in view of the acceptance of the federal subsidy on the terms offered, I must conclude that the General Assembly contemplated that the facilities which the school system of the state might offer by way of such cooperation might include adult students as well as children of school age.

Accordingly, the provision of Section 3313.52 *supra*, providing for evening schools for adults "upon payment of such tuition as the board prescribes," should in my opinion be taken as directory rather than mandatory as to a charge for tuition, at least as to the adult pupils of the district. Assuming that a school board has facilities in its night schools or vocational classes, sufficient to accommodate a certain number of non-resident adult students, to whom the board certainly owes nothing by way of educational service, there would seem to be no reason why it should not admit such non-residents upon payment of a reasonable tuition charge.

Furthermore, it would appear to be an abuse of the discretion given the board, and a misuse of the resources placed in its hands to furnish such facilities at its own expense to non-residents. The obvious plan of the law is that each district shall pay its own way and no more. Each school district derives its income from taxes levied on the property of the

district from grants by the state, apportioned according to the average daily membership of the schools of the district, and no authority appears anywhere in the law authorizing the expenditure of these funds except for the benefit of the schools of the district.

Your letter raises the question as to whether a tuition rate established for non-resident students in vocational schools must be based upon the actual cost of operating such program. In Section 3313.53 *supra*, it is expressly provided that the cost of manual training and other vocational courses is to be paid from the public school funds, as other school expenses. As already pointed out, this provision appears to relate to the program for the children of school age. Section 3313.52, however, relating to evening schools, definitely provides that persons over twenty-one years of age may be permitted to attend schools "upon the payment of such tuition as the board of education prescribes." Since I have already concluded that this charge of tuition is not mandatory in so far as it may apply to resident students, taken in connection with the provisions of the federal and state laws above referred to, providing for subsidies for vocational education, from age sixteen upwards, it would be my opinion that the tuition charge which should be made for non-resident adult pupils admitted to these vocational classes should be sufficient to cover the extra cost to the school district entailed by their admission.

The above discussion and conclusions appear to me to afford a sufficient answer to both the questions submitted. Accordingly, you are advised that in my opinion:

1. A board of education has authority under the provisions of Sections 3303.04 and 3313.52, Revised Code, to establish courses and classes in manual training and other vocational and industrial arts, and may admit adults to such classes, upon the payment of such tuition as the board prescribes, but the board is not required to make a tuition charge to residents of the district for admission to such classes.

2. A board of education of any district which has established vocational classes pursuant to the provisions of Sections 3303.04 and 3313.52, Revised Code, may permit persons over twenty-one years of age and not residing within the district, to attend such schools upon such terms and upon the payment of such tuition as the board prescribes. Such tuition should be in an amount sufficient to cover the additional cost entailed by the admission of such non-resident students.

Respectfully,

C. WILLIAM O'NEILL

Attorney General