

**OPINION NO. 82-014****Syllabus:**

1. A local board of education may charge a student reasonable fees to participate in an extracurricular athletic program.
2. A board of education may expend money from a student activity fund to pay the costs of supplemental salaries and transportation costs associated with operation of an extracurricular athletic program.
3. The board of education's contribution to the employers' trust fund of the state teachers retirement system for the supplemental retirement costs associated with the operation of an extracurricular athletic program must be paid from funds allocated under R.C. Chapter 3317, and may not be paid from a student activity fund.
4. The money collected from fees charged to students to participate in an extracurricular athletic program, if it totals more than fifty dollars a year, must be paid into an activity fund established by the board of education under R.C. 3315.062(C).

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**To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio**  
**By: William J. Brown, Attorney General, March 22, 1982**

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

1. Is it legal for a local School Board of Education to charge a student fees to participate in varsity sports, in order to pay supplemental salaries, retirement, and transportation costs?
2. If such a fee is allowed, where should the funds be deposited?

The initial consideration must be whether a board of education has the

March 1982

authority to charge a student fees to participate in varsity sports. There is no express statutory authorization particularly directed toward collection of such a fee. The legislature, however, has given local boards of education broad, discretionary rule-making and regulatory powers.

R.C. 3313.20 provides, in part, that "[t]he board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." The courts have determined that the limits of this authorization are fraud and abuse of discretion. Ohio High School Athletic Association v. Judges, 173 Ohio St. 239, 181 N.E.2d 261 (1962); Brannon v. Board of Education, 99 Ohio St. 369, 124 N.E. 235 (1919). Within these limits, rules promulgated by boards of education, which are "reasonable and fairly calculated to insure good government and promote the ends of education will be sustained by the courts." Board of Education of Sycamore v. State ex rel. Wickham, 80 Ohio St. 133, 88 N.E. 412 (syllabus, paragraph 2) (1909). Specifically, it has been recognized that the authority given to a board of education under R.C. 3313.20 extends to the regulation of extracurricular activities, including athletic programs. 1939 Op. Att'y Gen. No. 356, p. 432.

While, as I stated above, there is no express statutory authority for a board of education to raise funds through a student athletic program, R.C. 3315.062(C) implicitly authorizes a board of education to raise and receive funds from student activity programs by providing as follows:

If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board. (Emphasis added.)

R.C. 3313.53, which, together with R.C. 3315.062,<sup>1</sup> authorizes the expenditure of public moneys for student activity programs, specifies extracurricular athletics as one such program. Neither statute, however, expressly authorizes boards of education to collect student fees for participation in such programs. It appears, however, that in situations analogous to that in question, similar types of fees have been permitted. For example, the imposition of parking fees charged to students who elect to drive their own vehicles to school and park on school property, and the collection of admission fees at school-related athletic events have been permitted although no express statutory authorization for either of these actions exists. The authority for charging admission fees has been implied from the broad scope of R.C. 3313.20. 1974 Op. Att'y Gen. No. 74-063. The imposition of parking fees has also recently been upheld as a measure within the purview of the local board of education's authority under R.C. 3313.20. Picklesimer v. Southwestern City School District Board of Education, No. 80AP-195 (Ct. App. Franklin County, Ohio, Sept. 30, 1980), cert. denied, No. 80-1681 (Sup. Ct. Ohio Jan. 22, 1981) [hereinafter cited as Picklesimer].

<sup>1</sup>R.C. 3315.062 preempts that part of 1963 Op. Att'y Gen. No. 157, p. 249, 254-55, wherein my predecessor opined that a board of education has no statutory authority to expend public funds for extracurricular activity programs, except for those expenses expressly set forth under R.C. 3313.53 concerning supervision and coaching for such programs. R.C. 3315.062(A) provides that a board of education may expend moneys from its general revenue fund for the operation of such student activities programs as may be approved by the state board of education.

In Picklesimer, the court expressly determined that the imposition of parking fees does not deny the right to a "free education," which encompasses only those courses and services that a board of education is statutorily required to offer the public.<sup>2</sup> Similarly, the right to a "free education" is clearly not an issue with respect to extracurricular athletic programs. There is no statutory requirement for a board of education to offer extracurricular athletic programs. The pertinent statutory provisions allow such boards the discretion to establish and maintain such activity programs.<sup>3</sup>

The court, in Picklesimer, also considered the "reasonableness" of the parking fees in question. The fee was found to be reasonable in amount, and the court noted that the regulation provided for a waiver of the fee if there were special circumstances and the students were indigent. While the Picklesimer court looked at the waiver of fees for indigent students as one factor in judging the reasonableness of the regulation, at least one court has indicated that such waivers may be necessary from a constitutional standpoint. See Crim v. McWorter, 242 Ga. 863, 867-868, 252 S.E.2d 421, 424-425 (1979) (fee waiver policy for indigent students who wished to participate in a summer school program was necessary to avoid a denial of equal protection); but see Carpio v. Tucson High School District, 111 Ariz. 127, 129-130, 524 P.2d 948, 950 (1974), cert. denied, 420 U.S. 982 (1975) (failure to supply indigent children with textbooks, when state law permits imposition of a usage fee for such textbooks, does not involve a denial of equal protection).

Based upon the foregoing analysis, I conclude that a local board of education may charge a student fees to participate in an extracurricular athletic program. Such fees, however, must be reasonable in amount and consideration should be given to the situation of indigent students who might be precluded from participation in the program by the imposition of the fees.

Your second question asks where moneys collected from student athletic fees should be deposited. Based on conversations between your office and a member of my staff, I understand that your concern is the appropriate fund in which to account for such moneys. If the board elects to initiate a student participation fee plan, and if it receives more than fifty dollars per year under such plan, the money received should be paid into an activity fund established by the board of education. This result is required by R.C. 3315.062(C), set forth above, whenever more than fifty dollars a year is received through a student activity program. If fifty dollars a year or less is received from a student participation fee plan, it may be deposited in the school district's general fund pursuant to R.C. 5705.10 (revenue "from sources other than the general property tax, unless its use for a particular purpose is prescribed by law shall be paid into the general fund"), or in a special fund created pursuant to R.C. 5705.12 (money from sources other than general property tax may be paid into a special fund created by the taxing authority with the approval of the Bureau of Inspection and Supervision of Public Offices).

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<sup>2</sup>The court therein effectively overruled that portion of my earlier opinion, Op. No. 74-063, supra, which concluded that students could not be charged fees for parking while they are attending school.

<sup>3</sup>Additionally, I have noted that R.C. 3313.53 expressly excludes compulsory classes from the definition of a "pupil-activity program" by providing:

As used in this paragraph [authorizing certain boards of education to employ an individual to direct, supervise, or coach a pupil-activity program], pupil-activity program does not include any class or course required or offered for credit toward a pupil's promotion to the next grade or for graduation, or any activity conducted as a part of or required for such a class or course.

Your letter indicates that, once collected, the board of education would like to use the fees to pay supplemental salaries, retirement contributions, and transportation costs associated with the operation of the extracurricular athletic program. Public funds may be disbursed only by clear authority of law and upon compliance with statutory provisions relating thereto. State ex rel. Smith v. Maharry, 97 Ohio St. 272, 119 N.E. 822 (syllabus) (1918). "In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power." State ex rel. A. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44, 117 N.E. 6 (syllabus, paragraph 3) (1917); State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916).<sup>4</sup>

The first item of expense for which you wish to use funds collected from student athletic fees is for supplemental salaries. R.C. 3319.08 permits the board of education of a city, exempted village, local or joint vocational school district to enter into supplemental contracts with teachers who perform duties in addition to regular teaching duties.<sup>5</sup> R.C. 3313.53 expressly authorizes such payments from public school funds by providing in part:

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.)

As I noted above, once collected, student athletic fees are public school funds from which expenses incurred pursuant to R.C. 3313.53 may be paid. See generally Op. No. 80-060. Accordingly, a board of education may enter into supplemental contracts with teachers for directing, supervising, or coaching student athletic programs and pay the supplemental salaries of such teachers from moneys derived from student athletic fees.

The second item in your question relates to retirement funds, to which the employer must contribute, for personnel associated with the extracurricular athletic program. R.C. 3307.56 requires that a board of education's contribution to the employers' trust fund of the state teachers retirement system be made out of funds allocated to the district under R.C. Chapter 3317. Therefore, moneys collected from student athletic fees could not be used for such purpose.

You also ask whether moneys collected from student athletic fees may be used for transportation costs associated with the operation of the athletic program. As set forth above, R.C. 3315.062(C) permits a board of education to establish an activity fund from the moneys received from an athletic program. It further provides that "[e]xpenditures from the fund shall be subject to approval of the board." Thus, moneys from the fund may clearly be spent, but the purposes for which they may be spent are not specified. "Where authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." Jewitt v. Valley Railway, 34 Ohio St. 601, 608 (1878). Therefore, expenditures which are reasonable may be approved by the board

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<sup>4</sup>R.C. 117.10 defines "public money" to include "all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order or otherwise. . . ." The term includes moneys in a student activity fund established by a board of education pursuant to R.C. 3315.062(C). 1980 Op. Att'y Gen. No. 80-060.

<sup>5</sup>"A board of education is without power to enter into a supplemental contract with its non-teaching employees." 1974 Op. Att'y Gen. No. 74-045 (syllabus) (approving and following 1959 Op. Att'y Gen. No. 156, p. 70).

pursuant to R.C. 3315.062. If it is necessary to provide transportation to students in order for them to participate in an athletic program, expenditures for such purpose appear to be reasonable. I, therefore, conclude that expenditures from a student activity fund for transportation costs associated with the operation of an extracurricular athletic program may be approved by a board of education pursuant to R.C. 3315.062. Cf. 1963 Op. Att'y Gen. No. 157, p. 249 (student athletic fund moneys may be used for the purchase of equipment for students participating in extracurricular football).

It should be noted that, except in the case of county school districts, which are not included as "subdivisions" under R.C. 5705.01(A), a board of education must comply with the provisions of R.C. Chapter 5705 regarding certification of funds when appropriating or expending money from a student activity fund. Op. No. 80-060 (syllabus, paragraph 2) ("[s]tudent activity funds established by the board of education of any school district except a county school district must be budgeted and appropriated in accordance with the procedures set forth in R.C. Chapter 5705, including the certification requirements of R.C. 5705.41(D) and R.C. 5705.412").

In conclusion, it is my opinion, and you are advised, that:

1. A local board of education may charge a student reasonable fees to participate in an extracurricular athletic program.
2. A board of education may expend money from a student activity fund to pay the costs of supplemental salaries and transportation costs associated with operation of an extracurricular athletic program.
3. The board of education's contribution to the employers' trust fund of the state teachers retirement system for the supplemental retirement costs associated with the operation of an extracurricular athletic program must be paid from funds allocated under R.C. Chapter 3317, and may not be paid from a student activity fund.
4. The money collected from fees charged to students to participate in an extracurricular athletic program, if it totals more than fifty dollars a year, must be paid into an activity fund established by the board of education under R.C. 3315.062(C).