

## OPINION NO. 76-070

**Syllabus:**

A board of education may expend funds to advertise staff openings when such advertisements are necessary to find qualified personnel to fill the vacancies.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, October 28, 1976

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

"Do boards of education have authority to spend public money to advertise in the daily news media to fill staff openings?"

Pursuant to conversations between this office and yours, it is my understanding that you are interested in advertising for both professional and non-professional employees. It also appears that, with regard to professional employees, you are specifically interested in teachers.

It is well-settled that boards of education are creatures of statute and their duties, as well as their authority, are clearly defined by statute. They, therefore, have only such powers as are expressly conferred upon them by statute, together with the powers necessarily implied therefrom. Schwing v. McClure, 120 Ohio St. 355 (1929); Board of Education v. Best, 52 Ohio St. 138 (1894); Verburg v. Board of Education, 135 Ohio St. 246 (1939); 1974 Op. Att'y Gen. No. 74-045; 1974 Op. Att'y Gen. No. 74-095. It is therefore necessary to consider whether the payment of advertising expenses to fill staff openings, both professional and non-professional, is either specifically authorized by statute or necessarily implied by those powers expressly granted.

First, it should be noted that R.C. 3313.47 vests the entire management and control of the public schools in the board of education. It provides, in pertinent part:

"Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district."

Furthermore, under R.C. 3319.07 the ultimate responsibility for employing teachers rests upon the board of education. Justus v. Brown, 42 Ohio St. 2d 53 (1975), DeLong v. Board of Education, 36 Ohio St. 2d 62 (1973). Similarly R.C. 3319.081 provides for contracts of employment for non-teaching employees, who are not covered by R.C. Chapter 143 (now R.C. Chapter 124). However, I find no specific statutory authority for a board of education to expend funds to advertise to fill such positions. Therefore, the power to advertise, if it exists, must be necessarily implied by these express statutory powers.

I had occasion to discuss a similar situation in 1974 Op. Att'y Gen. No. 74-015, in which I considered the authority of community mental health and retardation board to pay the expenses incurred by a prospective employee in coming from out of town for a personal interview. As in the present case, the board in question was a creature of statute with no express authority to make such expenditures. In concluding, however, that the authority was necessarily implied by the board's express authority to employ "such employees and consultants as are necessary for the work of the board", I said that:

"The executive director, whose performance is subject to review by the board, is directed to employ 'such employees and consultants as may be necessary for the work of the board.' R.C. 340.04. It appears clear from the foregoing that the legislature has attempted to provide for an effective community mental health and retardation service program staffed by competent professionals. It follows that authority to pay necessary expenses, incurred in recruiting such professionals, must be implied from the general grant of authority in R.C. 340.03 and R.C. 340.04.

In applying this rationale I followed the conclusions of my predecessors who determined that prospective employees could be reimbursed by a county hospital for travel expenses incident to interviews. 1966 Op. Att'y Gen. No. 66-006; 1952 Op. Att'y Gen. No. 1126. In Opinion No. 1126, supra, my predecessor observed that the recruitment of competent staff members requires careful consideration, which in some cases can only be accomplished by a personal interview, thereby necessitating the incurrence of traveling expenses. Therefore, he concluded that the authority to pay such expenses, as well as the cost of advertising such positions, was necessarily implied by the board's authority to provide for the management and control of the hospital.

The rationale adopted in the foregoing opinions is equally applicable to the question you have raised. The design of R.C. 3313.47, as well as R.C. 3319.07 et seq., is such as to charge school boards with the duty to retain the

most competent staff possible for the operation of its schools. Therefore, when a board of education, in the exercise of its discretion determines that the use of advertisements is necessary to find qualified personnel, authority for such expenditures may be inferred from the board's general grant of power under the above cited statutes.

In so concluding I am not unmindful of 1957 Op. Att'y Gen. No. 1429, in which it was held that a board of education could not expend money from a "service fund" in payment of the travel expenses of prospective employees reporting to the board of education for employment interviews. However, the money in question was in a "service fund," the use of which was specifically restricted to the payment of expenses of members of boards of education or their official representatives in the performance of their duties. See also Opinion No. 74-015, *supra*. As such that opinion must be distinguished from the present case.

Therefore, in specific answer to your question it is my opinion and you are so advised that a board of education may expend funds to advertise staff openings when such advertisements are necessary to find qualified personnel to fill the vacancies.