

OPINION NO. 73-030

Syllabus:

1. County school districts may establish and operate special education units, including classes for blind, deaf, and crippled children, as well as child study, speech and hearing, or special education supervisory units, which may also serve city and exempted village school districts. The county school district may be eligible for funding of these units pursuant to R.C. 3317.02 and 3317.11.

2. A city, exempted village, or local school district's right to contract with a county school district for the operation by the county school district of a special education unit which will serve both districts, does not reduce the minimum state payment to the city, exempted village, or local district provided by R.C. 3317.02 (B) and reflected in Line 9 of R.C. 3317.15.

3. The guarantees set out in R.C. 3317.04 protect school districts from losses of foundation payments which are a result of one of the changes specified in that Section. The guarantee provided by Section 40 of Amended Substitute House Bill No. 475, is an unqualified guarantee that is not affected by a school district's transfer of special education units to another district.

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

By: William J. Brown, Attorney General, April 4, 1973

Your request for my opinion reads as follows:

Recent legislation amended Section 3317.11 of the Revised Code to permit county school districts to operate special education classes, many of which were formerly operated by city, exempted village and local school districts. Your opinion is respectfully requested on the following questions:

1. May special education units be approved for county school districts to serve pupils in city and exempted village school districts?

2. May city, exempted village and local school districts, which qualify for minimum state funding under Line 9 of the School Foundation formula and which receive no state funding for the approved units on Line 3 of the formula, transfer such units to a county school district and thus receive services indirectly for which funding is not available to them directly through the formula?

3. May a city, exempted village, or local school district, which receives a guarantee pursuant to Section 3317.04 of the Revised Code or from Section 40 of Am. Sub. H.B. #75, transfer special education units to a county school district and thus receive services indirectly and state funding for such units when such units had been previously funded by the state through the guarantee?

4. May city, exempted village, and local school districts which do not, under state standards, have a sufficient number of pupils (i.e. deaf, blind, crippled) alone to qualify for an entire class combine to receive state approval for a classroom unit funded to a county district? Similarly, may such districts combine to qualify for a child study, speech and hearing, or a special education supervisory unit funding through a county district?

It is clear that school districts may cooperate for the benefit of handicapped pupils. R.C. 3323.01 provides in part as follows:

The state board of education may grant permission to any board of education to establish and maintain classes for the instruction of deaf or blind persons over the age of three, and physically, emotionally, or mentally handicapped persons over the age of five; and to establish and maintain child study, counseling, adjustment, and special instructional services, including home instruction, for persons over the age of five whose learning is retarded, interrupted, or impaired by physical, emotional, or mental handicaps. * * *

R.C. 3323.011 reads in pertinent part as follows:

Approval of state funds for the operation of programs and services provided pursuant to section 3323.01 of the Revised Code shall be contingent upon a comprehensive plan for special education approved by the state board of education no later than July 1, 1973. The state board of education shall not approve a school district's plan unless the plan proposed meets the educational needs of handicapped children in that school district and other school districts in the same general area.

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In approving the organization of special education, the state board of education shall provide that no school district be excluded from the state-wide plan. A school district having a plan providing for a cooperative arrangement with one or more other school districts to provide classes or other suitable programs of instruction or training for all physically, emotionally, or mentally handicapped children who are residents of such school district, or which contracts with another school district for such classes, and which meets the standards established by the state board of education pursuant to section 3323.02 of the Revised Code, is in compliance with this section. (Emphasis added.)

In addition, R.C. 3313.92 states that:

(A) The boards of education of any two or more school districts may, subject to the approval of the superintendent of public instruction, enter into agreements for the joint or co-operative construction, acquisition, or improvement of any building, structure, or facility benefiting the parties thereto, including, without limitation, schools and classrooms for the purpose of Chapter 3323. of the Revised Code, and for the management, operation, occupancy, use, maintenance, or repair thereof, or for the joint or co-operative participation in programs, projects, activities, or services in connection with such buildings, structures, or facilities.

(B) Any agreement entered into under authority of this section shall, where appropriate, provide for:

* * * * *

(3) The management or administration of any such programs, projects, activities, services, or joint exercise of powers, which may include management or administration by one of said boards of education;

(4) The manner of apportionment or sharing of all of the costs, or specified classes of costs, including without limitation costs of planning, construction, acquisition, improvement, management, operation, maintenance, or repair of such buildings, structures, or facilities, or of planning and conducting such programs or projects, or obtaining such services, which apportionment or sharing may be based on fixed amounts, or on ratios or formulas, or effected through tuitions to be contributed by the parties or in such manner therein provided.

(C) Any agreement entered into under authority of this section may provide for:

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(7) Designation of the applicants for or recipients of any state, federal, or other aid, assistance, or loans available by reason of any activities conducted under the agreement;

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See also R.C. 3323.10 and 3323.11, which discuss the payment of costs related to the attendance at special classes in one school district of a child who is a school resident of another school district.

As indicated in a recent Opinion, the term "school district", in the absence of a specific provision to the contrary, generally means city school districts, local school districts, exempted village school districts, county school districts, joint high school districts, and joint vocational school districts. See R.C. 3311.01 and Opinion No. 72-049, Opinions of the Attorney General for 1972. On the other hand, county school districts are excluded from the benefits of the Foundation Program, R.C. Chapter 3317, unless specifically included. R.C. 3317.01. Until recently, foundation payments to county districts, whose function is largely administrative, were limited to salaries and travel expenses of supervisory and special teaching personnel. R.C. 3317.11.

The recent amendment to R.C. 3317.11, to which you refer, now specifically provides for foundation payments to county school districts for the operation of special education units for the handicapped. That Section reads in part as follows (amending language emphasized):

Annually, on or before a date designated by the state board of education, each county board of education shall prepare a budget of operating expenses for the ensuing year for the county school district on forms prepared and furnished by the state board of education and shall certify the same to the state board of education, together with such other information as the board may require. Such budget shall consist of two parts. Part (A) shall include the cost of the salaries, employers retirement contributions, and travel expenses of supervisory teachers and special instruction teachers approved pursuant to divisions (D) and (E) of section 3317.05 of the Revised Code by the state board of education. The amount derived from the calculation for such units in part (A) of the county board of education budget shall be the sum of:

(1) The sum of the minimum salaries calculated pursuant to section 3317.13 of the Revised Code, for each approved certificated employee of the county board of education;

(2) An additional salary allowance proportional to the length of the extended term of service not to exceed two months for each supervisory and child study teacher whose term of service in any year is extended beyond the terms of service of regular classroom teachers;

(3) The required per cent of the total approved salary allowance allocated, for the employers contribution to the teachers retirement fund pursuant to sections 3307.53 and 3307.54 of the Revised Code;

(4) An allowance for necessary travel expenses, for each of the personnel approved in part (A) of the budget, limited to sixty dollars per month, or six hundred dollars per year per person employed, whichever is the lesser. Part (B) shall include the cost of all other lawful expenditures of the county board of education. The state board of education shall review such budget and may approve, increase, or decrease such budget.

The county board of education shall be reimbursed by the state board of education from state funds for the cost of part (A) of the budget. * * *

Special education units for deaf, blind, emotionally disturbed, crippled, neurologically handicapped, and educable mentally retarded may be operated by a county board of education which shall be eligible for funding under division (C)(3) of section 3317.02 of the Revised Code.

* * * * *

I think it clear that county school districts are authorized to establish special education units which may serve pupils in city and exempted village school districts, and that a reading of R.C. 3313.92 in conjunction with R.C. 3317.11 indicates that such units may become eligible for funding under R.C. 3317.02 (C)(3). In answer to your first question, then, special education units may be approved for county school districts and may serve pupils of city and exempted village school districts.

Your second question asks whether a city, exempted village, or local school district, which receives minimum state support under the Foundation Program's formula, as set out in R.C. 3317.15, may transfer its handicapped pupils to the county school district's special education unit without sacrificing any of its minimum state support. Provision for the calculation of school foundation payments to be made to school districts is made in R.C. 3317.02, which reads in pertinent part as follows:

Payments to school districts shall be as provided in this section and in sections 3317.04 and 3317.06 of the Revised Code.

Out of the moneys appropriated by the general assembly for distribution to Chapter

3317. of the Revised Code for each fiscal year, each eligible school district shall be allocated the amount of money derived from the calculation in either division (A) or (B) following, whichever is greater, plus the amount in divisions (C) and (D).

(A) The amount derived by the following calculation of a basic program calculation to be the sum of the following calculations:

(1) Multiply the kindergarten average daily membership by three hundred dollars. The average daily membership shall not include any pupils counted in division (C) of this section.

(2) Add the product obtained by multiplying the average daily membership in grades one to twelve, inclusive, including twenty-five per cent of the pupils residing in the district and attending a joint vocational school by six hundred dollars. The average daily membership used to make this calculation shall not include any pupils counted in division (C) of this section.

(3) For each approved unit for child study, occupational or physical therapy, speech and hearing, special education supervisors, and special education coordinators, add an amount derived from the minimum salary schedule in section 3317.13 of the Revised Code based upon the teacher's training level and years of experience, plus fifteen per cent of such allowance, plus six hundred dollars;

* * * * *

(8) Subtract an amount equal to twenty-two and one-half multiplied by the total value of the district's tax duplicate.

(B) The amount derived by multiplying the appropriate amount from the following table by the sum of the average daily membership used in making the calculations in divisions (A)(1) and (A)(2) of this section minus one-half the average daily membership in division (A)(1). Valuation per pupil, for the purpose of making such calculation, is the value of the tax duplicate used in division (A)(8) of this section divided by the sum of the average daily membership calculated in divisions (A)(1) and (A)(2) minus one-half of the average daily membership in division (A)(1) of this section.

Valuation Per Pupil	Amount Per Pupil
Under \$20,000	\$ 179.00
\$ 20,000-20,999	171.00
21,000-21,999	163.00
22,000-22,999	155.00
23,000-23,999	147.00
24,000-24,999	139.00
25,000-25,999	131.00
26,000-26,999	123.00
27,000-27,999	115.00
28,000-28,999	107.00
29,000-29,999	99.00
30,000-30,999	91.00
31,000-31,999	83.00
32,000 and over	75.00

(C) For special needs programs and transportation calculate the sum of the following:

* * * * *

(3) For each teacher of an approved unit for a deaf, blind, emotionally disturbed, crippled, neurologically handicapped, or educable mentally retarded class in the district, an amount derived from the minimum salary schedule in section 3317.13 of the Revised Code, plus fifteen per cent of such allowance, plus four thousand dollars.

* * * * *

A formula to be used in making the above calculation is set forth in R.C. 3317.15. Line 3 and Line 9 of the formula, which are pertinent here, read as follows:

3. Approved child study, occupational or physical therapy, speech and hearing, supervisors and coordinators of special education units, (units) ... (salary allowances + 15% + \$600) \$.....
9. Minimum state support for basic program (total ADM lines 1 and 2 minus 1/2 kindergarten line 1 X the amount per pupil used under division (B) of section 3317.02 of the Revised Code) \$.....

If the Line 9 computation is used as the level of basic state support, the district does not receive any payments under Line 3, because the district's computations under Lines 1 through 8 of the formula total less than the minimum state support calculated under Line 9. In the question you have posed, the city, exempted village, or local school district receives foundation payments under Line 9, and, therefore, not under Line 3. Your question is whether the district must sacrifice some of its payments under Line 9 when it transfers its handicapped pupils to the special education unit of a county school district.

Computations of the minimum foundation payment to a district under subsection (B) of R.C. 3317.02 and Line 9 of R.C. 3317.15 in no way reflect the average daily membership in special education units in a school district's program of services. Subsections (A)(1) and (A)(2), which are used in subsection (B), specifically exclude units provided for in subsection (C), and subsection (B) makes no reference at all to the special education units described in subsection (A)(3). The only other factor used in the computation under subsection (B) is the amount of payment per pupil, which is based along a sliding scale on the valuation per pupil, as taken from the district's tax duplicate. The effect, then, of R.C. 3317.02 (B), as it stands now, is simply to provide a base level of state funding for each school district, irrespective of that district's policy regarding special education.

As has been stated in answer to your first question, the Code authorizes a county school district to operate special education units, such as those described in R.C. 3317.02 (A)(3), in cooperation with other school districts, and R.C. 3317.11 authorizes state reimbursement to the county school district based on such special units. This is termed "part (A)" of the county school district's budget in R.C. 3317.11, and I find nothing in that Section which would qualify this reimbursement where the units in question serve students who are school residents of another district. The Section merely speaks of the units as being approved pursuant to R.C. 3317.05 (D) and (E), which may be set out as follows:

(D) The number of units for child study and occupational, physical, and speech and hearing therapy or fraction thereof approved annually by the state board of education on the basis of standards, rules, and regulations adopted by the board.

(E) The number of units for special education supervisors and special education coordinators approved annually by the state board of education on the basis of standards, rules, and regulations adopted by the board.

Nor can I find any provision which would restrict the minimum state payment authorized in R.C. 3317.02 (B) for city and exempted village school districts, when the district receiving that payment has been served by special education units operated by a county school district. By way of contrast, R.C. 3317.11 directs that "part (B)" of the county school district's budget, up to a certain amount, is to be apportioned by the state board among the local school districts in the county school district. The amounts so apportioned are to be deducted by the state board from funds allocated to the districts under R.C. 3317.02.

With respect to a local school district, its foundation payment under R.C. 3317.02 may be reduced when supervisory services are provided by the county board of education. R.C. 3317.11 reads in part as follows:

Every local school district shall be provided supervisory services by its county board of education as approved by the state board of education, by not to exceed one supervisory teacher for the first fifty

classroom teachers calculated under division (A) (5) of section 3317.02 of the Revised Code and one supervisory teacher for every additional one hundred such classroom teachers so calculated. Reimbursement for such supervisory services shall be a deduction by the state board of education from the payment to the local school district under section 3317.02 of the Revised Code. Such deduction shall be apportioned among local school districts within the county by the state board of education on the basis of the total number of pupils in each school district.

Aside from the above, there is no specific provision which would affect the minimum state payment to local school districts because those districts are being served by special education units operated by a county school district. It is true that R.C. 3317.08 provides for the payment of tuition when pupils, who are school residents of one district, attend classes in another school district. But this has no application to units operated by a county school district, since there is nothing to override the provision in R.C. 3317.01 that, unless otherwise specified, "school district" for the purposes of R.C. Chapter 3317 means city, exempted village, and local school district.

In answer to your second question, I must conclude that a city, exempted village, or local school district's right to contract with a county school district for the operation by the county district of a special education unit which will serve both districts, does not reduce the minimum state payment to the city, exempted village, or local school district provided by R.C. 3317.02 (B) and reflected in Line 9 of R.C. 3317.15.

Your third question concerns the transfer of special education units to a county school district where the level of foundation payments to a city, exempted village, or local school district is guaranteed under either R.C. 3317.04 or Section 40 of Amended Substitute House Bill No. 475. R.C. 3317.04 provides a guarantee of payments in the following language:

The amount paid to school districts in each fiscal year under divisions (A) to (C) of section 3317.02 of the Revised Code shall not be less than the following:

(A) In the case of a district created under section 3311.26 or 3311.37 of the Revised Code, the amount paid shall not be less, in any of the three succeeding fiscal years following the creation, than the sum of the amounts allocated under Chapter 3317. of the Revised Code to the districts separately in the year of the creation.

(B) In the case of a school district which is transferred to another school district or districts, pursuant to section 3311.22, 3311.231, or 3311.38 of the Revised Code, the amount paid to the district accepting the transferred territory shall not be less, in any of the three succeeding fiscal years following the transfer, than the sum

of the amounts allocated to the districts separately in the year of the consummation of the transfer.

(C) In the case of any school district, the amount paid to the district in the fiscal year of distribution shall not be less than that paid in the preceding fiscal year, if in the calendar year ending the thirty-first day of December preceding the fiscal year of distribution, the county auditor completed reassessment of all real estate within his county, or the tax duplicate was increased by the application of a uniform taxable value per cent of true value pursuant to a rule or order of the board of tax appeals and the revised valuations were entered on the tax list and duplicate. Notwithstanding sections 3311.22, 3311.231, 3311.26, 3311.37, and 3311.38 of the Revised Code, this minimum guarantee is applicable only during the fiscal year immediately following the reassessment or application.

Notwithstanding sections 3311.22, 3311.231, 3311.26, 3311.37, and 3311.38 of the Revised Code, the minimum guarantees prescribed by divisions (A) and (B) of this section shall not affect the amount of aid received by a school district for more than three consecutive years.

And Section 40 of Amended Substitute House Bill No. 475 provides a guarantee as follows:

Section 40. Notwithstanding Chapter 3317. of the Revised Code:

(A) A city, local, or exempted village school district which is eligible to receive payments under section 3317.02 of the Revised Code for fiscal year 1971-72 or 1972-73, or both, shall be paid in each of these years for which the district is eligible, an amount equal to the payments calculated for such district in fiscal year 1970-71 under former section 3317.02 of the Revised Code or the amount calculated under divisions (A) through (F), inclusive, of section 3317.02, or section 3317.04 of the Revised Code, whichever is greater.

(B) No school district which would not be eligible to receive payments in fiscal year 1971-72 or fiscal year 1972-73 under former section 3317.02 of the Revised Code shall receive any payments under this act in either of such years.

The guarantee in R.C. 3317.04 (A) and (B) was, prior to the enactment of House Bill No. 950 in 1965, set out in similar language in R.C. 3317.02. And prior to the enactment of House Bill No. 708 in 1961, the language in R.C. 3317.02 read as follows:

Whenever school districts are consolidated as a result of the creation of a new school

district or the transfer of territory from one or more school districts to another district or districts, pursuant to Chapter 3311. of the Revised Code, the total apportionment of funds to the affected districts under sections 3317.02 and 3317.05 of the Revised Code for the year in which such consolidation takes place shall not be reduced on account of such consolidation during the next succeeding three years.

(Emphasis added.)

Thus, the guarantee was enforced to protect school districts from loss of foundation payments as a result of the consolidation pursuant to R.C. Chapter 3311. See State, ex rel. Board of Education of Kenton City School District v. State Board of Education of Ohio, 174 Ohio St. 257 (1963); Opinion No. 2175, Opinions of the Attorney General for 1961, at page 229. Throughout this period, R.C. 3311.22, 3311.231, 3311.26, 3311.37 and 3311.38 spoke of the guarantee in language that was essentially the same as that currently used in those sections as well as R.C. 3317.04. See 128 Ohio Laws, 510 (eff. 7-28-59). Yet, at that time the minimum payment guarantee was computed with reference to loss of payments as a result of consolidation. With this in mind, and in light of the fact that the minimum state payments provided for in R.C. 3317.04 (A) and (B) are limited to the creation of new districts or the transfer of territory, I must conclude that the guarantee relates only to loss of foundation payments occasioned by consolidation.

R.C. 3317.04 (C) guarantees the level of foundation payments when there has been a reassessment of real estate within the county or where the application of a uniform taxable value per cent of true value has resulted in an increased tax duplicate. While there appear to be no cases interpreting this guarantee, it appears to be similar in nature to that in R.C. 3317.04 (A) and (B). That is, it is restricted to specific situations and its computation relates back to a point in time prior to when these circumstances arose. I conclude, therefore, that this guarantee, like those provided in R.C. 3317.04 (A) and (B), must be read as protecting the district from losses in payments which were a result of the changes described in R.C. 3317.04 (C).

Section 40 of Amended Substitute House Bill No. 475, while it relates the guarantee to the level of payments for the 1970-71 fiscal year, is unlike R.C. 3317.04 in that it does not restrict the minimum payment provisions to specific situations, such as the consolidation of school districts. Rather, it is a flat guarantee that the amount received by an eligible school district in 1971-72 and 1972-73 shall be equal to the amount received in 1970-71 under the former R.C. 3317.02, or the amount calculated under divisions (A) through (F) of R.C. 3317.02, or the amount authorized under R.C. 3317.04, whichever is greater. In my opinion, therefore, the guarantee under Section 40 of Amended Substitute House Bill No. 475, is not affected by a school district's transfer of special education units to another district.

The answer already given to your first question is, I believe, dispositive of your fourth question. As discussed above, R.C. 3323.01 and 3313.02 authorize such joint efforts, and a reading of those sections in conjunction with R.C.

3317.11 indicates that such units, when operated by a county school district, are eligible for funding under the Foundation Program.

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

1. County school districts may establish and operate special education units, including classes for blind, deaf, and crippled children, as well as child study, speech and hearing, or special education supervisory units, which may also serve city and exempted village school districts. The county school district may be eligible for funding of these units pursuant to R.C. 3317.02 and 3317.11.

2. A city, exempted village, or local school district's right to contract with a county school district for the operation by the county school district of a special education unit which will serve both districts, does not reduce the minimum state payment to the city, exempted village, or local district provided by R.C. 3317.02 (B) and reflected in Line 9 of R.C. 3317.15.

3. The guarantees set out in R.C. 3317.04 protect school districts from losses of foundation payments which are a result of one of the changes specified in that Section. The guarantee provided by Section 40 of Amended Substitute House Bill No. 475, is an unqualified guarantee that is not affected by a school district's transfer of special education units to another district.