

OPINION NO. 77-074**Syllabus:**

1. The term "chartered", as used in R.C. 3317.13 (A) (2), as amended by Am. H.B. No. 395 (eff. September 1, 1976), refers to charters issued to non-public schools by the State Board of Education, pursuant to R.C. 3301.16.
2. A teacher in a public school must be given credit for years of service, as that term is defined in R.C. 3317.13 (A) (2), for the service rendered in a non-public school while such school had a charter issued by the State Board of Education.

To: Franklin B. Walter, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William J. Brown, Attorney General, November 21, 1977

I have before me your request for my opinion as to the meaning of "chartered" with reference to a chartered non-public school. This language is incorporated in Am. H.B. 295, effective September 1, 1976, whereby the General Assembly amended R.C. 3317.13, which specifies minimum salary schedules for teachers. The pertinent language is as follows:

(A) As used in this section, 'years of service' includes the following:

. . .

(2) All years of teaching service in a chartered, non-public school located in Ohio as a teacher certified pursuant to Section 3319.22 of the Revised Code or in another public school, regardless of training level, with each year consisting of at least one hundred twenty days under a teacher's contract;

Your request indicates that your primary concern is that without clarification of the term "chartered" as used in the statute, individual school districts may give different interpretations to the statute with the result that teachers in one school district are not given the same credit for years of service as teachers in another district.

Specifically, you state the following factors which may lend to the confusion regarding the meaning of "chartered":

1. There is no provision in Am. H.B. 295 to indicate chartered by whom or beginning when.
2. As enacted in 1955, R.C. 3301.16 gave the State Board the authority to charter high schools but not elementary schools. This section was amended in 1967 to empower the State Board to charter school districts and was further amended in 1970 to extend the authority to charter school districts and individualized schools within the district.
3. The Ohio Education directory has listed private

and parochial high schools since 1956-57 and non-public elementary schools since 1961-62. By resolution of May 11, 1970 the State Board resolved that each school then within a chartered school district was chartered until such charter was revoked and directed that official list of chartered schools and districts be published annually in the Ohio Education Directory.

In order to address your concerns properly, it is necessary to first consider the powers of the State Board of Education as specified by R.C. 3301.07. In pertinent part, R.C. 3301.07 reads as follows:

The state board of education shall exercise under the acts of the legislature general supervision of the system of public education in the state of Ohio. In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:

. . .

(D) Formulate and prescribe the minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality . . .

In the formation and administration of such standards for nonpublic schools the board shall also consider the particular needs, methods, and objectives of said schools, provided they do not conflict with the provisions of a general education of a high quality . . .

The authority to charter schools is expressly given to the State Board of Education by the provisions of R.C. 3301.16. In so far as is pertinent, that section reads as follows:

Pursuant to standards prescribed by the state board of education as provided in division (D) of section 3301.07 of the Revised Code, such board shall classify and charter school districts and individual schools within each district. Such board shall revoke the charter of any school district or school which fails to meet the standards for elementary and high schools as prescribed by the board. In the issuance and revocation of school district or school charters, the state board of education shall be governed by the provisions of Chapter 119. of the Revised Code . . .

The court in Board of Education v. State Board of Education, 116 Ohio App. 515 (1962), held that control of schools, whether public or private, and the duty to provide elementary and secondary education for the youth of Ohio is reposed by the Constitution of Ohio in the General Assembly. The only limitations upon the General Assembly when it speaks on matters concerning education are those imposed by the Constitution. The General Assembly therefore has the power to authorize the State Board of Education to establish minimum standards and further to insure that these standards are met by establishing the chartering process.

As set forth above, R.C. 3301.16 specifically authorizes the State Board of Education to classify and charter school districts and individual schools within districts and to revoke charters when a school or district fails to meet minimum standards formulated pursuant to R.C. 3301.07. In response to this legislative mandate, the State Board of Education has established and published minimum

standards for Ohio elementary, junior high, and high schools. Additionally, the State Board of Education has established procedures which must be met before a charter will be granted. The State Board of Education was given the power to charter high schools effective January, 1956 through R.C. 3301.16. This section was subsequently amended by Am. Sub. S.B. No. 350, effective December 1, 1967, to enable the State Board to charter school districts which included elementary schools. R.C. 3301.16 was last amended effective June 1, 1970, by Am. S.B. No. 197 to permit the State Board to charter individual schools within a school district in addition to chartering school districts.

In light of these specific provisions relative to chartering, it is my opinion that the General Assembly, in amending R.C. 3317.13 by Am. H.B. 295 to provide credit for service in chartered non-public schools, was referring to service in schools chartered by the process which had been initiated by the State Board of Education pursuant to R.C. 3301.16.

Your second and third concerns, however, require an evaluation of the timing of the chartering procedures, as the determination of a teacher's credit for years of service in another school may vary depending upon when the school of prior service was chartered. It is evident from R.C. 3301.16 and its history that the State Board of Education was given the authority to charter various levels of schools at different times.

From the information you have supplied, it is my understanding that non-public elementary schools were in effect granted charters by a resolution of the State Board of Education of May 11, 1970. The resolution directed the Superintendent of Public Instruction to annually publish an official list of chartered schools, including non-public schools, which was to be included in the Ohio Educational Directory. Each school contained therein, if not already chartered, was deemed to be chartered by virtue of its inclusion in the directory. Therefore, non-public elementary schools were initially chartered as of the time of publication the official list of chartered schools containing their names. It is my understanding that schools chartered in such a manner have subsequently been subject to intensive inspection and that the charter so granted is subject to revocation for non-compliance with minimum standards.

R.C. 3317.13 (A) (2) defines "years of service" as all years of teaching service in a chartered, non-public school. R.C. 1.48 creates a presumption that a statute is intended to be prospective only in effect, unless expressly made retrospective. The language of R.C. 3301.16, in granting the State Board of Education authority to charter non-public schools, does not indicate that such charters are to be retrospective in effect. Accordingly, it must be concluded that such schools were for all purposes unchartered prior to a charter grant from the Board. As the previous discussion indicates, charters for non-public schools were granted at various times, depending on whether the school was an elementary or high school. A teacher serving in such an institution prior to the time it was chartered was not teaching in a chartered school. The teacher's service in the school after it received a charter is service in a chartered school. Accordingly, it is my opinion that the term "years of service" for the purpose of R.C. 3317.13 (A) (2) includes only the service performed in a non-public school while such school has a charter.

Therefore, it is my opinion, and you are so advised, that:

1. The term "chartered", as used in R.C. 3317.13 (A) (2), as amended by Am. H.B. No. 395 (eff. September 1, 1976), refers to charters issued to non-public schools by the state Board of Education, pursuant to R.C. 3301.16.
2. A teacher in a public school must be given credit for years of service, as that term is defined in R.C. 3317.13 (A) (2), for the service rendered in a non-public school while such school had a charter issued by the State Board of Education.