

OPINION NO. 72-049

Syllabus:

1. A joint vocational school district's eligibility for payments under Chapter 3317, Revised Code, is limited to those allowances set forth in Section 3317.16, Revised Code, and is further qualified by the nature of the class units for which funds are sought.

2. A joint vocational school district is not eligible under Section 3317.06, Revised Code, or any other Section in Chapter 3317, Revised Code, for reimbursement of the costs incurred in the transportation of educable mentally retarded children to special classes.

To: Daniel T. Spittler, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, June 7, 1972

I have before me your request for my opinion concerning the Penta County Vocational High School's eligibility for allocation of State funds under the Foundation Program provided for in Chapter 3317, Revised Code. Your first question is concerned in particular with Section 3317.02 (C), Revised Code, which provides for payments to school districts based on, among other things, the units of educable mentally retarded pupils in the district. Your second question asks whether the Penta County Vocational High School is eligible for reimbursement, under Section 3317.06 (A), Revised Code, of costs incurred in the transportation of educable mentally retarded children to class.

Your letter indicates that the Penta County Vocational High School plans to conduct classes for educable mentally retarded children from school districts which are members of the joint vocational school district. In addition, the passages cited suggest that you are referring to these Sections as they read prior to changes enacted in 1971.

With respect to both questions, I would first cite Section 3317.01, Revised Code, which reads in part as follows

"Unless otherwise specified, 'school district,' for purposes of Chapter 3317. of the Revised Code, means city, exempted village, and local school district."

Therefore, in the absence of a specific provision, making a section applicable, joint vocational school districts are not eligible for payments to "school districts" under Chapter 3317, supra. Section 3317.16, Revised Code, is such a specific provision, and it defines the extent to which joint vocational school districts may qualify for funds under this Chapter. It states that:

"Payments to each joint vocational school district shall be the sum of:

"(A) The total salary allowance for the teachers employed in the joint vocational school district for units approved annually by the state board of education, such allowance to be computed in the manner prescribed in section 3317.02 of the Revised Code for school districts.

"(B) Fifteen per cent of such salary allowance and an amount for adult technical and vocational education and specialized consultants;

"(C) Four thousand dollars times the number of teachers of approved vocational units, for the unit operating allowance." (Emphasis added.)

You have cited Section 3311.19, Revised Code, however, which you suggest entitled a joint vocational school district to the same treatment under Chapter 3317, supra, as a city school district. Section 3311.19, supra, reads in part as follows:

"* * * A joint vocational school district board of education shall have the same powers, duties, and authority for the management and operation of such joint vocational school district as is granted by law to a board of education of a city school district, and shall be subject to all the provisions of law that apply to a city school district."

This is, however, a general rule of law, and the special provisions in Sections 3317.01 and 3317.16, supra, must be read as an exception to the general rule according to Section 1.51, Revised Code, which provides that:

"If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

Therefore, under the special rules adopted in Sections 3317.01 and 3317.16, supra, joint vocational schools do not participate in foundation funds under Chapter 3317, supra, in the same manner as city school districts, but are limited to the allowances set forth in Section 3317.16, supra.

Under Section 3317.16, supra, eligibility for funds for the proposed classes depends on the nature of the class units and whether the units have been approved by the State Board of Education. Consequently, in order to receive a "unit operation" allowance", as provided in Section 3317.16 (C), supra, these classes must qualify as vocational units.

However, Section 3317.16 (A), supra, contains no such specific limitation of eligibility to vocational units. The Sub-section merely states that a salary allowance is available for teachers of "units approved annually by the state board of education." Since the allowance provided by Section 3317.16(B), Revised Code, is determined as a percentage of the salary allowance in Subsection (A), supra, it, too, is qualified only by the need for approval of the class units by the State Board of Education. Therefore, it is possible for a joint vocational school district to be eligible for a salary allowance for special units for educable mentally retarded, provided that a joint vocational school district has the authority to offer these special classes, and provided the units have been approved by the State Board of Education.

Section 3311.01, Revised Code, states that:

"The school districts of the state shall be styled: 'city school districts,' 'local school districts,' 'exempted village school districts,' 'county school districts,' 'joint high school districts,' and 'joint vocational school districts.'"

A reading of this Section, in conjunction with the general grant of authority in Section 3311.19, supra, makes it apparent that in the absence of a specific provision to the contrary, as in Chapter 3317, supra, a joint vocational school district is subject to the same restrictions and the same grants of authority as a city school district. In light of this, Section 3323.01, Revised Code, and Section 3323.04, Revised Code, apply to the question of special classes. Section 3323.01, supra, states that:

"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. * * *" (Emphasis added.)

Section 3323.04, supra, provides that:

"Upon petition by the parents or guardians of eight educable mentally retarded children, in any school district, of the age named in section

3323.01 of the Revised Code, the board of education of such district shall apply to the state board of education for permission to establish a special class for such children, and if such is granted shall establish such class not later than the beginning of the following school year, upon standards prescribed under section 3323.02 of the Revised Code. * * * (Emphasis added.)

It would appear, therefore, that a joint vocational school district does have authority to establish special classes for educable mentally retarded children. In determining whether these authorized special classes are "approved units" under Section 3317.16 (A), supra, Section 3317.05, Revised Code, would apply. It states in part that:

"For the purpose of calculating payments under sections 3317.02 and 3317.16 of the Revised Code the following shall be determined for each school district.

* * * * *

"(C) The number of special education classes or fraction thereof including those for educable mentally retarded defined as children with an intelligence quotient of at least fifty and not more than eighty and for speech handicapped children approved annually by the state board of education on the basis of standards, rules, and regulations adopted by the board;

* * * * *

In answer, then, to your first question, the extent of a joint vocational school district's right to payments under Chapter 3317, supra, for special classes for educable mentally retarded, is limited by Section 3317.16, supra. Under that Section, a joint vocational school district may qualify for allowances for special units under Subsections (A) and (B) of Section 3317.16, supra, only, and such units must be approved by the State Board of Education pursuant to guidelines set forth in Section 3317.05, supra.

Your second question, which asks whether the Penta County Vocational High School is eligible for reimbursement, under Section 3317.06 (A), supra, of costs incurred in the transportation of the educable mentally retarded to class, can be answered by referring again to Section 3317.01, supra, which defined the term "school districts" to exclude joint vocational school districts, "unless otherwise specified", for the purposes of Chapter 3317, supra. Section 3317.06, supra, contains no such provision making joint vocational school districts eligible for these reimbursements.

In addition, as stated in answer to your first question, the scope of a joint vocational school district's right to payments under Chapter 3317, supra, is detailed in Section 3317.16, supra. That Section makes no provision for any reimbursement or allowance to joint vocational school districts for costs incurred in transporting children to class. Conse--

quently, a joint vocational school district is not eligible, under Section 3317.06, supra, or any other Section in Chapter 3317. supra, for reimbursement of costs incurred in the transportation of educable mentally retarded children to special classes.

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

1. A joint vocational school district's eligibility for payments under Chapter 3317, Revised Code, is limited to those allowances set forth in Section 3317.16, Revised Code, and is further qualified by the nature of the class units for which funds are sought.

2. A joint vocational school district is not eligible under Section 3317.06, Revised Code, or any other Section in Chapter 3317, Revised Code, for reimbursement of the costs incurred in the transportation of educable mentally retarded children to special classes.