

## OPINION NO. 75-037

## Syllabus:

A board of education has no authority to make a cash payment for unused personal leave (R.C. 3313.21) at the end of a school year. (1974 Op. Att'y Gen. No. 74-013 approved and followed.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, May 23, 1975

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

"May a school board, pursuant to R.C. 3313.21, 3319.08 or otherwise, lawfully adopt a policy authorizing cash payment for unused personal leave at the end of a school year?"

Boards of education are creatures of statute, and as such have only those powers expressly conferred by statute or necessarily implied from the express powers. Schwing v. McClure, 120 Ohio St. 335 (1929); Board of Education v. Best, 52 Ohio St. 138, 152 (1894); 1974 Op. Att'y Gen. No. 74-002.

In addition, the Ohio Supreme Court held in State, ex rel. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44 (1917), in the third branch of the syllabus, as follows:

"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."

Personal leave is granted by boards of education pursuant to R.C. 3313.21, under regulations promulgated by the board. 1973 Op. Att'y Gen. No. 73-084. To the same effect is R.C. 3319.08, which provides in part:

"Teachers must be paid . . . for time lost due to illness or otherwise for not less than five days annually as authorized by regulations which each board of education shall adopt."

There is no express authority, however, in these or any other statutes for a board of education to pay teachers for their unused personal leave at the end of a school year. Nor am I aware of any statutory language which implies authority to make such payment.

In a recent opinion I construed, R.C. 124.39, which now authorizes payment for part of a state employee's accumulated sick leave upon retirement. I concluded that an employee could

not be granted payment if he retired prior to the effective date of the amendment which first authorized such payment (August 1, 1973, S.B. No. 31). The reason was that prior to that date there was no statutory authority for payment for accumulated sick leave. 1974 Op. Att'y Gen. No. 74-013.

The same reasoning is applicable in the instant case. Because of the lack of statutory authority, and because of the strict construction which must be applied to grants of power to expend public funds, I conclude that the payment in question is unauthorized.

In specific answer to your question, it is my opinion and you are so advised that a board of education has no authority to make a cash payment for unused personal leave (R.C. 3313.21) at the end of a school year. (1974 Op. Att'y Gen. No. 74-013 approved and followed)