

OPINION NO. 78-051**Syllabus:**

- 1) A board of trustees of a technical college district is without authority under the terms of R.C. 3357.09 to construct a branch campus outside the district.
- 2) A board of trustees of a technical college district is authorized by R.C. 3357.09(L) to conduct technical college courses outside the district. Where the nature of such courses and the availability of facilities within the district require the provision of facilities outside the district, R.C. 3357.09(L) authorizes the board of trustees to acquire interests in real property outside the district.

To: William Coulter, Acting Chancellor, Ohio Board of Regents, Columbus, Ohio
By: William J. Brown, Attorney General, August 25, 1978

I have before me your predecessor's request for my opinion which raises the following question:

Does the board of trustees of a technical college have the legal authority to purchase or lease real estate outside of the technical college district in order to construct or establish a "branch" campus?

In order to answer your question, an understanding of the structure and function of a technical college district is essential.

Technical colleges are created under the terms of R.C. Chapter 3357. The term "technical college district" is defined specifically in R.C. 3357.01(B) as follows:

"Technical college district" means a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of a city school district or a county, or two or more contiguous school districts or counties, which meets the standards prescribed by the Ohio Board of Regents pursuant to §3357.02 of the Revised Code, and which is organized for the purpose of establishing, owning, and operating one or more technical colleges within the district. (Emphasis added.)

If the creation of a technical college has been approved by the voters of the proposed district (R.C. 3357.02), trustees are to be selected within ninety days (R.C. 3357.05). Prior to commencement of operations, the trustees must submit an "official plan" to the Ohio Board of Regents pursuant to R.C. 3357.07. The relevant portion of that section is as follows:

The board of trustees of a technical college district shall prepare an official plan for a technical college within the district. Such official plan shall include, but not be limited to, a demonstration of need and prospective enrollment, a description and location of lands, buildings, facilities, and improvements proposed to be occupied by such college; a proposed schedule of acquisition of such lands or improvements, and for operation of the college; estimates of cost of lands and improvements;

. . . .

Upon completion of the official plan, the board of trustees of the technical college district shall file a copy thereof with the Ohio Board of Regents which may approve or disapprove any provisions thereof. . . if the Ohio Board of Regents approves the official plan, it shall certify a copy of its action to the board of trustees of the technical college district and issue a charter creating the technical college. . . The official plan shall be appended to and shall become a part of such charter, and such charter shall not thereafter be changed except by charter amendment with the approval of the Ohio Board of Regents. . . (Emphasis added.)

Under the terms of R.C. 3357.01 and 3357.07, the college or colleges operated by a technical college district are to be located within the district. R.C. 3357.07 further requires that the proposed college's lands and improvement be approved by the Board of Regents.

The powers and duties of the board of trustees of a technical college district are set forth in R.C. 3357.09. The relevant portions of that section are as follows:

The board of trustees of a technical college district may:

- (A) Own and operate a technical college, pursuant to an official plan prepared and approved in accordance with section 3357.07 of the Revised Code;
- (B) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use, and sell, real and personal property as necessary for the conduct of the program of the technical college on whatever terms and for whatever consideration may be appropriate for the purposes of the institution;
- (C) Accept gifts, grants, bequests, and devices [sic] absolutely or in trust for support of the technical college;
- (D) Appoint the president, faculty, and such other employees as necessary and proper for such technical college, and fix their compensation;
- (E) Provide for a technical college necessary lands, buildings, or other structures, equipment, means, and appliances;

. . . .

(L) Enter into contracts and conduct technical courses outside the technical college district;

Under the terms of R.C. 3357.09(L), therefore, the board of trustees of a technical college district is authorized to enter into contracts and conduct technical courses outside the district. Your question thus requires an analysis of whether the power to establish branch campuses outside the district may be said to be necessarily implied from the authority to conduct courses outside the district.

Understandably, there is no case law which touches upon this precise question. However, in Sterkel v. Mansfield Board of Education, 172 Ohio St. 231 (1961), the Supreme Court faced an analogous problem. In Sterkel, the board of education of the Mansfield city schools sought to take realty outside of the district through eminent domain. The Board relied upon R.C. 3313.37 which allows boards of education to purchase realty "...either within or without the district..." No similar provision exists in R.C. 3313.19, which grants eminent domain powers to boards of education. The court ultimately reached the conclusion that the board had no condemnation powers outside of the district. In so deciding the issue they cited Board of Education v. Akron Rural Cemetery, 110 Ohio St., 430(1924) for the proposition that:

When the power to make an appropriation is granted only in general terms, land exempt from appropriation cannot be taken under such general power. Power to take land must be expressly granted in order to authorize such appropriation. Sterkel, at p. 233.

The significance of Sterkel is, I think, twofold. Clearly, in the absence of express authority no subdivision of this state may take property outside of its geographical boundaries by eminent domain. No such authority has been granted to the trustees of a technical college district, and therefore they may not take property outside of their district in such a fashion. More important, however, is the fact while the General Assembly has specifically conferred upon boards of education the authority to purchase or lease property outside of their districts, no similar authority has been conferred upon the trustees of a technical college district. The implication is that the General Assembly did not intend for the trustees to exercise such a power, for otherwise it would have used language similar to that of R.C. 3313.37.

To conclude that a board of trustees of a technical college district lacks the authority to establish a branch campus outside the district is not, however, to imply that the trustees are under all circumstances without the authority to acquire an interest in real property located outside the district. Under the terms of R.C. 3357.09(L), the trustees are authorized to conduct courses outside the district. Thus, where the nature of the technical courses offered and the limitations of the district require, the authority to provide facilities outside the district through the purchase or lease of real property may be necessarily implied from the authority vested in the board of trustees under R.C. 3357.09. As an example, in order to effectively conduct technical courses in aviation mechanics, it would be necessary to have a teaching facility at or near an airport. If the best such facility is located outside the district, I am of the opinion that the terms of R.C. 3357.09(L) would authorize the trustees to provide such a facility. Similarly, there may be instances where the facilities available within the district for providing relevant practical experience in the course of a technical program are so limited as to require the provision of additional facilities outside the district.

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

- 1) A board of trustees of a technical college district is without authority under the terms of R.C. 3357.09 to construct a branch campus outside the district.

- 2) A board of trustees of a technical college district is authorized by R.C. 3357.09(L) to conduct technical college courses outside the district. Where the nature of such courses and the availability of facilities within the district require the provision of facilities outside the district, R.C. 3357.09(L) authorized the board of trustees to acquire interests in real property outside the district.