

OPINION NO. 89-041

Syllabus:

The board of education of a local school district is required to compute tuition as provided in R.C. 3317.08 for situations that are covered by that provision; it has no authority to establish a different tuition rate to apply to such situations.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 8, 1989

I have before me your request for an opinion regarding the computation of

the tuition to be charged by a local school district¹ pursuant to R.C. 3317.08. R.C. 3317.03 states, in part:

A board of education may admit to its schools a child if it is not required by section 3313.64 or 3313.65 of the Revised Code to admit, if tuition is paid for the child.

Unless otherwise provided by law, tuition shall be computed in accordance with this section. A district's tuition charge for a school year shall be the quotient obtained by dividing:

(A) The district's total taxes charged and payable for current expenses for the tax year preceding the tax year in which the school year begins as certified under division (A)(3) of section 3317.021 of the Revised Code, by

(B) The district's average daily membership less one-half the kindergarten average daily membership certified pursuant to section 3317.03 of the Revised Code for the preceding school year. (Emphasis added.)

R.C. 3313.64 and 3313.65 set forth circumstances in which a board of education is required to admit a child to its schools, with or without the payment of tuition. *See, e.g.*, R.C. 3313.64(B)(1), (C) (a child shall be admitted to the schools of the school district in which his parent resides and no tuition shall be charged); R.C. 3313.64(B)(2), (C) (a child who is in the legal or permanent custody of a government agency or a person other than his natural or adoptive parent shall be admitted to the schools of the district in which he resides, but tuition must be paid by another school district); R.C. 3313.64(F)(2) (a married child under eighteen may attend school free in the child's district of residence and no other school district is required to pay tuition); R.C. 3313.64(F)(6), (7) (a child may attend school free for a period of time while his parent is having a new house built in the school district or is waiting upon the closing date of the mortgage loan for the purchase of a house in the district, and no other school district is required to pay tuition); R.C. 3313.65(C), (D) (a child shall be admitted to the schools of the district in which the child resides if his parents are in a residential or correctional facility, but tuition must be paid by another school district). R.C. 3313.64 also sets forth circumstances in which a board of education is permitted to admit a child to its schools without the payment of tuition. *See, e.g.*, R.C. 3313.64(E) (a board of education may enroll a child free of any tuition obligation for a period not to exceed sixty days when an adult resident has initiated legal proceedings for custody of the child); R.C. 3313.64(G)(1) (a board of education may waive tuition for foreign exchange students). Your question relates to the amount of tuition to be charged pursuant to R.C. 3317.08 in circumstances in which tuition is paid pursuant to that provision.² *See, e.g.*, R.C. 3327.06(B) (when the board of education of a local school district admits a pupil who is not entitled to admission under R.C. 3313.64(B), R.C. 3313.645, or R.C. 3313.65 and whose tuition is not an obligation of the school board of another district within the state "such board shall collect tuition for the attendance of such pupil from the parents or guardian of the pupil," in the amount prescribed by R.C. 3317.08; when neither the pupil nor his parents reside in this state, tuition for a child who does not receive special education is to be computed at the rate established unde.

¹ The county prosecutor's duty to advise a local school district is established by R.C. 3313.35, which states, in part: "Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving." *Cf.* R.C. 309.10 (a local school board may employ counsel other than the prosecuting attorney, but such counsel must be paid by the school board from the school fund). *See generally* R.C. 309.08-.09; 1983 Op. Att'y Gen. No. 83-038.

² This opinion does not consider the question of when the payment of tuition is required. *See generally, e.g.*, 1987 Op. Att'y Gen. No. 87-041; 1981 Op. Att'y Gen. No. 81-052; 1962 Op. Att'y Gen. No. 2766, p. 43. It should, however, be noted that if tuition is not collected when required, the attendance of a child is considered to be unauthorized and the child is not considered to be enrolled by that school district for purposes of payment of state aid to the school district. *See* R.C. 3317.03(F); R.C. 3327.06.

R.C. 3317.081³). *See generally State ex rel. Henry v. Madison Plains Local Board of Education*, 20 Ohio App. 3d 185, 485 N.E.2d 732 (Madison County 1984).

The situation with which you are concerned involves the Kelleys Island Local School District. When the tuition rate for that district is computed in accordance with R.C. 3317.08, it exceeds \$10,000 per year. Tuition rates for other districts in the county are in the range of \$2,100 to \$2,300 per year. The disparity results from the fact that the Kelleys Island Local School District has comparatively few students. The question is whether that school district may establish a tuition rate that is less than the amount established by computation under R.C. 3317.08.

R.C. 3317.08 is clear on this point. It states that, "[u]nless otherwise provided by law, tuition shall be computed in accordance with this section." Various provisions of the Revised Code deal with tuition to be charged in different circumstances. *See, e.g.*, R.C. 3313.64; R.C. 3313.645; R.C. 3313.65; R.C. 3317.08; R.C. 3317.081; R.C. 3323.13; R.C. 3323.14; R.C. 3323.141; R.C. 3323.142; R.C. 3327.06. There is, however, no statutory provision that permits tuition to be computed at a different rate in the circumstances that you have described. *See generally* 1962 Op. Att'y Gen. No. 2766, p. 43.

A board of education, as a creature of statute, has only such powers as it is given by statute. *See, e.g., State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 134 N.E. 655 (1921); 1986 Op. Att'y Gen. No. 86-031; 1939 Op. Att'y Gen. No. 1267, vol. III, p. 1867. Particularly in financial matters, a board of education may not act unless its authority is clear. *See State ex rel. Clarke v. Cook; State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916); 1939 Op. No. 1267. There is no statutory authority for a board of education to establish a tuition rate for use in circumstances covered by R.C. 3317.08 by any means other than the computation set forth in R.C. 3317.08.

R.C. 3317.08 states that tuition "shall" be computed as provided therein, and the use of the word "shall" indicates that compliance with that provision is mandatory. *See generally Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). A board of education thus lacks authority to establish a different rate, even if the rate established pursuant to R.C. 3317.08 appears to be unreasonably high.

If the General Assembly chooses to modify the requirements set forth in R.C. 3317.08, it may do so by appropriate legislation. *See* 1982 Op. Att'y Gen. No. 82-010. *See generally* Op. No. 86-031. Neither a board of education nor an opinion of the Attorney General has the power to make any such statutory change. *See generally State ex rel. Clarke v. Cook*; Op. No. 82-010; 1980 Op. Att'y Gen. No. 80-011.

It is, therefore, my opinion, and you are hereby advised, that the board of education of a local school district is required to compute tuition as provided in R.C. 3317.08 for situations that are covered by that provision; it has no authority to establish a different tuition rate to apply to such situations.

³ R.C. 3317.081 establishes a tuition rate for nonresidents of the state that "shall equal the attendance district's tuition rate computed under section 3317.08 of the Revised Code plus the per pupil amount received by that district pursuant to sections 3317.022 [state aid], 3317.023 [adjustments to state aid under R.C. 3317.022], and 3317.025 to 3317.028 [recomputed state aid payments] of the Revised Code during the preceding school year."