

OPINION NO. 80-053**Syllabus:**

1. R.C. 3313.53 authorizes a board of education of a city, exempted village, or local school district to employ noncertificated athletic trainers, provided that individuals already certified under one of the divisions of R.C. 3319.22 do not first accept the offered positions.
2. R.C. 3313.53 authorizes the State Board of Education to set standards to assure the competence and good moral character of athletic trainers employed by boards of education of city, exempted village, or local school districts; however, the Board does not have the authority to certify athletic trainers.

To: Franklin B. Walter, Superintendent, Department of Education, Columbus, Ohio
By: William J. Brown, Attorney General, September 10, 1980

I have before me your request for an opinion concerning the certification of athletic trainers in which you ask: "Does Section 3319.22 of the Revised Code, more specifically Divisions (D) or (K), authorize the certification of athletic

trainers?" As you note, the recent amendment of R.C. 3313.53 must be interpreted in conjunction with R.C. 3319.22 in determining whether the State Board of Education is authorized to certify athletic trainers. By "certify" I assume you mean to issue a certificate (valid throughout the state for the performance of specified teaching or other school-related duties) upon demonstration that certain criteria are met, as is presently the case with teaching and certain other personnel pursuant to R.C. 3319.22 through R.C. 3319.31. See generally R.C. 3319.09 ("[t]eacher" defined for R.C. 3319.06-.18 to include "all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the state board of education requires certification").

Since school boards are created by statute, their powers are limited to those provided by statute. State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921). Hence, it is necessary to review the relevant statutory sections to determine if the State Board of Education has been granted the authority to certify athletic trainers.

Pursuant to R.C. 3319.22 through R.C. 3319.31, the State Board of Education is authorized to certificate certain categories of persons employed by local school districts. R.C. 3319.22 provides that "[t]eachers' certificates of state-wide validity shall be issued pursuant to sections 3319.22 to 3319.31 of the Revised Code, or in accordance with standards, rules, and regulations authorized by law." (Emphasis added.) Hence, if the State Board of Education has the authority to certify athletic trainers, it must be found in R.C. 3319.22 through R.C. 3319.31 or in rules or regulations which implement some other statute that authorizes the certification of athletic trainers.

You have specifically asked whether R.C. 3319.22(D) or (K) authorizes the certification of athletic trainers. R.C. 3319.22(D) describes one of the types of certificates that may be issued: "Special, valid for teaching any subject named in such certificate in all grades of the elementary and high schools, or in such other fields as are included in the public school curricula." In a document attached to your request the functions of an athletic trainer are described. The functions include administration of first aid, establishment of conditioning and rehabilitation programs, selection of equipment, facility planning, and preventive and curative bandaging, all of which are performed in connection with interscholastic sports. Nowhere does the information you have provided indicate that an athletic trainer would be teaching a subject included in the public school curricula. Hence, it is clear that athletic trainers may not be certified pursuant to R.C. 3319.22(D).

R.C. 3319.22(K) describes another type of certificate that may be issued: "Pupil-personnel workers, including school psychologists, valid for the conduct of all home-school-community relations incident to the adjustment of pupils to the facilities available for their education." While the precise meaning of this language is not readily apparent, I do not believe that it can reasonably be interpreted to include an athletic trainer of the sort you have described. This provision was interpreted by one of my predecessors in 1962 Op. Atty Gen. No. 2995, p. 330, in connection with the question whether school nurses might be certified pursuant thereto. My predecessor stated at 333:

Though its meaning is not overly clear to one not familiar with school terms, nevertheless I venture to state that it authorizes the state board of education to grant a certificate to pupil-personnel workers, and that it defines such persons as personnel workers who help the pupils make adjustments to the facilities available for the pupil's education. Nurses, on the other hand, are engaged in helping persons adjust to good health, and in preventing the spread of ill health between persons. This is far different from "adjustment of pupils to facilities available for their education." (Emphasis in original.)

Even as the focus of a nurse's efforts are toward the adjustment to good health, the focus of an athletic trainer's efforts are toward the adjustment to physical well-

being. While being healthy clearly helps a pupil adjust to any educational environment, it does not seem to be the sort of specific adjustment to educational facilities which the statute contemplates. It might be argued that extracurricular activities, including interscholastic sports, contribute to a pupil's education, see, e.g., R.C. 3777.01(B) (where the General Assembly has defined educational facilities for higher education to include any "facility. . .and equipment. . .to be used for or in connection with the conduct or operation of an educational institution, including but not limited to, . . . gymnasiums, . . . physical education, [and] athletic facilities. . ." (emphasis added)); 1963 Op. Att'y Gen. No. 157, p. 249 (where the value of extracurricular activities in a pupil's education is noted), and that, since an athletic trainer helps pupils adjust to such athletic facilities, he comes within the purview of R.C. 3319.22(K). I do not, however, find such argument persuasive, particularly in light of the recent amendment of R.C. 3313.53.

R.C. 3313.53, Am. H.B. 251, 113th Gen. A. (1979) (eff. March 14, 1980), now provides in pertinent part:

The board of education of any city, exempted village, or local school district may employ a noncertificated individual to direct, supervise, or coach a pupil-activity program pursuant to rules adopted by the state board of education setting forth standards to assure the individual's good moral character and competence to direct, supervise, or coach the pupil-activity program. The state board shall also adopt rules applicable to certificated individuals, setting forth standards to assure any such individual's competence to direct, supervise, or coach a pupil-activity program and that shall not be more stringent than the standards set forth in rules applicable to noncertificated individuals. A noncertificated individual who meets the standards adopted by the state board may be so employed only after the school district's board of education adopts a resolution stating that it has offered such position to those employees of the district who have a certificate of a type described in section 3319.22 of the Revised Code and no such employee qualified to fill the position has accepted it, and has then advertised the position as available to any individual with such a certificate who is qualified to fill it and who is not employed by the board, and no such person has applied for and accepted the position. A noncertificated individual so employed is a nonteaching employee and is not an educational aide as defined in section 3319.088 of the Revised Code. As used in the paragraph, pupil-activity program does not include any class or course required or offered for credit toward a pupil's promotion to the next grade or for graduation, or any activity conducted as a part of or required for such a class or course. A noncertificated individual employed under this section may perform only the duties of the director, supervisor, or coach of the pupil-activity program for which he is employed.

The board shall fix the compensation of the noncertificated individual so employed, which shall be the same amount as the position was offered to the district's certificated employees, and execute a written contract with him for a term not to exceed one year. The contract shall specify the compensation, duration, and other terms of employment, and the compensation shall not be reduced unless such reduction is a part of uniform plan affecting the entire district. No contract issued under this section shall be terminated or suspended except pursuant to the procedure established by division (C) of section 3319.081 of the Revised Code. (Emphasis added.)

Under this section, a board of education of any city, exempted village, or local school district is permitted to employ and compensate a noncertificated individual to direct, supervise, or coach a pupil-activity program, provided that the board has first offered the position to those employees of the district who are already certified under one of the divisions of R.C. 3319.22 and no such employee qualified to fill the position has accepted it, and has then advertised the position as available

to any individual with such a certificate who is not employed by the board, and no such person who is qualified has applied for and accepted the position. As ascertained from the document attached to your request, the functions of an athletic trainer are clearly included within the scope of directing, supervising, or coaching a pupil-activity program, which, as defined in R.C. 3313.53, includes interscholastic sports. Hence, pursuant to R.C. 3313.53, the State Board of Education is authorized to adopt rules setting forth standards to assure the competence and good moral character of a noncertificated athletic trainer. In addition, the Board is also authorized to adopt rules applicable to those individuals already certified under one of the divisions of R.C. 3319.22 setting forth standards to assure their competence as athletic trainers, but these standards cannot be more stringent than those set forth for noncertificated individuals.

Because the General Assembly has expressly authorized the Board to establish standards to assure the competence of directors, supervisors, or coaches of pupil-activity programs (evidently including athletic trainers) without also expressly authorizing the Board to certify them, and because the General Assembly was previously silent on the subject of certification of athletic trainers, it is my opinion that the recently-enacted grant of authority for the employment of noncertificated individuals as directors, supervisors, or coaches of pupil-activity programs evidences a legislative intent that the Board not have the authority to certify athletic trainers.

In sum, it is my opinion, and you are advised, that:

1. R.C. 3313.53 authorizes a board of education of a city, exempted village, or local school district to employ noncertificated athletic trainers, provided that individuals already certified under one of the divisions of R.C. 3319.22 do not first accept the offered positions.
2. R.C. 3313.53 authorizes the State Board of Education to set standards to assure the competence and good moral character of athletic trainers employed by boards of education of city, exempted village, or local districts; however, the Board does not have the authority to certify athletic trainers.