

OPINION NO. 98-002**Syllabus:**

1. Any expenditures from the school district's general revenue fund for student activity program expenses, except those expenses authorized by R.C. 3313.53, are to be included in calculating the spending limitation established by R.C. 3315.062(A).
2. Because expenditures of a school district's general fund moneys for student activity program expenses are subject to the requirements of R.C. Chapter 5705, board of education members, as officers of the school district, are subject to the duties and liabilities imposed upon them by R.C. 5705.41 and R.C. 5705.45, in addition to those imposed by R.C. 5705.412, with respect to such expenditures.
3. Should a board of education fail to comply with any of the requirements of R.C. 5705.01-.47 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.45.
4. Should a board of education fail to comply with the certification requirements of R.C. 5705.412 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.412.

To: Rebecca J. Ferguson, Preble County Prosecuting Attorney, Eaton, Ohio

By: Betty D. Montgomery, Attorney General, January 21, 1998

You have requested an opinion concerning R.C. 3315.062, which, in part, limits the amount of money a board of education may spend for certain programs. You ask whether a board of education's expenditures of school district funds for specific items are to be included in calculating whether the board has exceeded the limitation established by R.C. 3315.062.¹ You also ask whether there are instances in which a board of education may spend school district funds "in support of student activities" without including such expendi-

¹The specific items include, "press box, fence around the district football field; refrigerator for concession stand; cost of propane at football games; the costs of transportation to games; professional leaves to sports clinics; expenses related to the employment of ticket takers and site managers; the costs of soccer, football, and basketball uniforms; track hurdles; soccer goals; the costs of grounds keepers for sports fields; band uniforms."

tures in the figure subject to the limit established by R.C. 3315.062. Finally, you ask "what is the liability of the board as an entity, and the board members individually, if the expenditures from the five-tenths of one percent of the entire budget limit is exceeded?"

Let us begin by examining R.C. 3315.062, part of which establishes the limitation about which you ask, as follows:

(A) The board of education of any school district *may* expend moneys from its *general revenue fund* for the operation of such student activity programs included in the program of each school district as authorized by its board of education. *Such expenditure shall not exceed five-tenths of one per cent of the board's annual operating budget.* (Emphasis added.)

R.C. 3315.062(A) thus authorizes a board of education to use general revenue fund moneys, up to a maximum of five-tenths of one percent of the school board's annual operating budget, for the operation of properly authorized student activity programs.² While R.C. 3315.062(A) provides authority for a board of education to expend a limited amount of general revenue fund moneys for such activities, it does not require that all expenditures for student activity programs be made from general revenue fund moneys. Rather, R.C. 3315.062(A) simply imposes a limit on the amount of general revenue fund moneys that a board of education may use for student activity program expenses. If a board of education pays for student activity expenses from sources available to it for those purposes, other than the general revenue fund,³ such expenditures are not included in calculating the spending

²There is no statutory or administrative definition of the term "student activity program," as used in R.C. 3315.062. Moreover, this opinion will not attempt to establish such a definition. We must alert you, however, to the possibility that activities that occur outside of normal school hours and without academic credit may be viewed differently from activities that occur during school hours as part of the curriculum.

³For example, R.C. 3315.062(B) requires a board of education to establish a student activity fund when "more than fifty dollars a year is received through a student activity program." R.C. 3315.062(B) further requires a board of education to adopt regulations, including appropriate accounting procedures, governing the establishment and maintenance of student activity funds. *See generally* 2 Ohio Admin. Code 117-2-22 (guidelines for developing policies for student activity programs). All expenditures from the student activity fund are subject to approval by the board of education. R.C. 3315.062(B). The money in these funds is derived from private sources through fund-raising activities, admission fees, participation fees, and the like. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-013 (funds derived from school activities conducted by a class to be used for the benefit of the class); 1984 Op. Att'y Gen. No. 84-083 (admission fee for athletic events); 1982 Op. Att'y Gen. No. 82-014 (fee for participation in extracurricular athletics). Because student activity fund moneys are not part of the school district's general revenue fund, should moneys from a student activity fund be used to pay for any expenses related to a student activity program, such expenditures are not to be included in determining whether the board has reached the spending limit imposed by R.C. 3315.062(A). *See also, e.g.*, 1990 Op. Att'y Gen. No. 90-030 (syllabus) ("[t]he proceeds of a special tax levy for permanent improvements, to wit, 'renovating, remodeling, improving, furnishing and equipping buildings for school purposes and improving their sites,' must be credited to a special fund which may be used for the stated purpose of the levy only"); 1980 Op. Att'y Gen. No. 80-070 (syllabus, paragraph two) ("[i]n the event that the purpose statement in a bond resolution authorizes a board of education to expend bond proceeds for site improvements and does not restrict the board to any particular type of improvements, a

limit established by R.C. 3315.062(A).⁴

An additional exception to the spending limitation imposed by R.C. 3315.062(A) is found in R.C. 3313.53, which states in pertinent part:

The board of education of any city, exempted village, or local school district may establish and maintain in connection with the public school systems:

(A) Manual training, industrial arts, domestic science, and commercial departments;

(B) Agricultural, industrial, vocational, and trades schools.

Such board *may pay* from the public school funds, as other school expenses are paid, the expenses of establishing and maintaining such departments and schools and of *directing, supervising, and coaching the pupil-activity programs* in *music*, language, arts, speech, government, *athletics*, and any others directly related to the curriculum. (Emphasis added.)

Thus, R.C. 3313.53 expressly authorizes a board of education to use public school funds to pay the expenses of directing, supervising, and coaching various student activity programs, including music and athletics.

As concluded in 1980 Op. Att'y Gen. No. 80-060 (syllabus, paragraph one), "[t]he amount expended from the general fund under R.C. 3313.53 for directing, supervising and coaching student activities should *not* be included in calculating the amount of money expended from the general fund for the support of student activities for the purpose of conforming to the limitation of R.C. 3315.062." (Emphasis added.) The rationale behind this conclusion is set forth in Op. No. 80-060, as follows:

R.C. 3313.53 provides that general funds may be utilized for the compensation of supervisory personnel, and that such expenses are to be paid as other school expenses ...

Although R.C. 3313.53 does not restrict the amount which may be spent, it does restrict the purpose for which money may be expended. The board's authority to expend public funds for pupil activity programs is strictly limited to costs arising *from supervising those pupil activities* which are expressly enumerated in the statute, or which are directly related to the curriculum. R.C. 3313.53. The board of education has no authority under R.C. 3313.53 to expend any public funds for the payment of other costs, such as costs of supplies and

board of education may expend bond proceeds for site improvements on land that was owned by the school district at the time the bonds were issued or purchased with the bond proceeds, or on land that was acquired subsequent to the issuance of the bonds and not acquired with bond proceeds"); 1961 Op. Att'y Gen. No. 2479, p. 528 (syllabus) ("[a] board of education of a city, exempted village, or local school district may, under [R.C. 3313.37 and R.C. 3313.39], expend money to improve its athletic field; and such a subdivision may, pursuant to [R.C. 135.18 and R.C. 5705.19], submit to the electors of the subdivision the question of issuing any bonds and levying of any tax for the purpose of providing the necessary funds therefor").

⁴Your letter does not ask about, and this opinion does not address, the proper categorization of expenses that might benefit both student activities and a school's course offerings. Arguably, to the extent an expenditure benefits the school's curriculum, it need not be included in calculating the spending limit established by R.C. 3315.062(A), even if the expenditure also benefits a student activity.

equipment, arising from the maintenance of student activity programs. See 1963 Op. Att'y Gen. No. 157, p. 249.

In contrast, R.C. 3315.062 does not restrict the purposes for which general revenue may be spent. The activities subsidized under that section need not relate directly to the curriculum, and the money expended need not be for costs of compensating supervisory personnel....

Such an analysis of the two sections leads to the conclusion that R.C. 3313.53 and R.C. 3315.062 serve a common purpose and together were intended to provide a total scheme for the funding of student activity programs. Both sections were enacted in recognition of the value of student activity programs as part of the educational program of public schools, and of the necessity to provide funding for such programs. R.C. 3313.53, which was amended in 1945, provides the funds necessary to compensate supervisory personnel, whereas R.C. 3315.062, which was enacted in 1967, provides other funding necessary to commence and maintain operation of such activity programs.⁵

A harmonious construction of the sections indicates that although the legislature intended the sections to operate together, it did not intend for R.C. 3315.062 to restrict expenditures under R.C. 3313.53. Such a conclusion is supported by the plain language of R.C. 3313.53. R.C. 3313.53 contains its own restrictions on expenditures, which expressly limits the purpose of the expenditures, but not the amount.

Op. No. 80-060 at 2-234 through 2-235 (footnote added; various citations omitted). See generally *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995, 998 (1995) (“[a]ll statutes relating to the same general subject matter must be read *in pari materia*, and in construing these statutes *in pari materia*, this court must give them a reasonable construction so as to give proper force and effect to each and all of the statutes”).

⁵The amendment to R.C. 3313.53 (formerly G.C. 4836-4) which authorized the expenditure of school funds for supervisory personnel for student activity programs occurred in 1945-1946 Ohio Laws 619, 622 (H.B. 63, filed July 13, 1945). R.C. 3315.062 was enacted in 1967-1968 Ohio Laws, Parts II-III, 2568 (Am. H.B. 279, eff. Dec. 11, 1967), text at 1967-1968 Ohio Laws, Part I, 1042. Prior to the enactment of R.C. 3315.062, several Attorney General opinions concluded that boards of education were without authority to expend school district funds for various expenses related to student activities. See, e.g., 1954 Op. Att'y Gen. No. 3920, p. 302 (syllabus) (“[b]oards of education are without authority to purchase from funds raised by taxation, band uniforms for the use of pupils playing in the school band”); 1948 Op. Att'y Gen. No. 3293, p. 279 (syllabus) (“[w]here a board of education establishes football practice and playing among the students in its schools, as a part of its physical education program, and permits the organization of groups or teams for that purpose, it may not lawfully use public funds to purchase such items of equipment as helmets, shoulder pads and uniforms to be worn by the students participating”); 1947 Op. Att'y Gen. No. 1661, p. 109 (syllabus) (“[u]nder the provisions of [G.C. 4855, *et seq.*], boards of education are authorized to permit their school buses to be used for the purpose of transporting the athletic teams and other pupils of their respective schools to and from inter-school athletic contests, but are not authorized to pay the expense of operating such buses while so engaged”). *But see* 1939 Op. Att'y Gen. No. 582, vol. I, p. 733 (syllabus) (“[a] board of education may in its discretion provide flood lights so as to make the playgrounds and athletic field under its control available to the pupils and the community, for night use”).

Thus, expenses of student activity programs paid under authority of R.C. 3313.53 for compensating supervisory personnel are a type of student activity expenditure that is not to be included in calculating the limitation established by R.C. 3315.062(A), even though such expenditures may be made from the school district's general revenue fund. In answer to your first two questions, it is our opinion that any expenditures from the school district's general revenue fund for student activity program expenses, except those expenses authorized by R.C. 3313.53, are to be included in calculating the spending limitation established by R.C. 3315.062(A).⁶

Your final question concerns the potential liability of the board of education and its individual members in the event the board exceeds the spending limit imposed by R.C. 3315.062(A). It is not possible to determine the potential liability of the board and its members for exceeding the spending limit imposed by R.C. 3315.062(A) without knowledge of the circumstances in which the board made such excess expenditures. It may be useful, however, to discuss general principles of liability applicable to a board of education and its members in the handling of school district moneys.

Liability of board of education members for the improper expenditure of school district moneys may arise from the board's failure to perform the duties imposed upon boards of education by R.C. Chapter 5705 in making such expenditure. Pursuant to R.C. Chapter 5705, subdivisions, including city, local, exempted village, cooperative education, and joint vocational school districts and county school financing districts, R.C. 5705.01(A), must follow specific procedures in handling the funds of the school district. R.C. Chapter 5705 prescribes procedures for, among other things, the levying and use of taxes, the establishment of proper funds, the adoption of a tax budget, proper certification of available revenues, and the adoption of an annual appropriation measure. In addition, R.C. Chapter 5705 imposes various restrictions upon a subdivision's expenditure of its funds. *See, e.g.*, R.C. 5705.41(C) (prohibiting a subdivision from making any expenditure "except by a proper warrant drawn against an appropriate fund"); R.C. 5705.41(D)(1) (prohibiting a subdivision, with certain exceptions, from making any contract or giving any order for the expenditure of funds without attaching a certificate of available funds). As expenditures of school district moneys, expenditures from a school district's general revenue fund for student activity program expenses are subject to the requirements and restrictions imposed upon school district expenditures by R.C. Chapter 5705.

Liability for failure to comply with the provisions of R.C. Chapter 5705 is imposed by R.C. 5705.45, which states, in pertinent part:

Any *officer*, employee, or other person who issues any order contrary to [R.C. 5705.41], or who expends or authorizes the expenditure of any public funds, or who authorizes or executes any contract contrary to [R.C. 5705.01-47], unless payments thereon are subsequently ordered as provided in [R.C. 5705.41], or expends or authorizes the expenditure of any public funds on any such void contract, obligation, or order, unless subsequently approved as provided in that section, or issues a certificate under the provisions thereof which contains any

⁶You are also concerned with the options the board may pursue in the event that it has exceeded the spending limit imposed by R.C. 3315.062(A). Such a determination involves many questions of fact, *e.g.*, the circumstances in which such excess expenditures came about and the availability of other funds for payment of the excess expenditures. Therefore, the evaluation of available options cannot be made by means of an Attorney General opinion, but may more appropriately be addressed by persons with knowledge of the facts. It may also be helpful to seek additional assistance from the office of the Auditor of State.

false statements, shall be liable to the political subdivision for the full amount paid from the funds of the subdivision on any such order, contract, or obligation. Such *officer*, employee, or other person shall be jointly and severally liable in person and upon any official bond that he has given to such subdivision, to the extent of any payments of such void claim. The prosecuting attorney of the county, the city director of law, or other chief law officer of the subdivision shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the municipal corporation, county, or subdivision. If the prosecuting attorney, city director of law, or other chief law officer of the subdivision fails upon the written request of any taxpayer, to institute action for the enforcement of the liability, the taxpayer may institute suit in his own name in behalf of the subdivision. (Emphasis added.)

Board of education members are officers of the school district. See *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929) (syllabus, paragraph one) (“[m]embers of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given”). Thus, should a board of education fail to comply with any of the requirements of R.C. 5705.01-.47 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.45.

In addition, we must consider R.C. 5705.412, part of which governs the expenditure of money specifically by school districts. See generally *Empire Gas Corp. v. Westerville Bd. of Education*, 102 Ohio App. 3d 613, 619, 657 N.E.2d 790, 795 (Franklin County 1995), *discretionary appeal not allowed*, 73 Ohio St. 3d 1453, 654 N.E.2d 988 (1995) (“as to contracts with school boards, the provisions of R.C. 5705.412 control over those contained in R.C. 5705.41”); *CADO Business Systems of Ohio, Inc. v. Bd. of Education*, 8 Ohio App. 3d 385, 457 N.E.2d 939 (Cuyahoga County 1983), *motion to certify overruled*, No. 83-791 (Ohio Sup. Ct. Oct. 26, 1983) (same). The primary requirement of R.C. 5705.412 is that, with limited exceptions, each contract, order involving the expenditure of funds, and salary schedule increase be accompanied by a certificate of sufficient operating revenues. R.C. 5705.412 further provides:

Every contract made, order given, or schedule adopted or put into effect without such a certificate shall be *void*, and *no payment of any amount due thereon shall be made*. The auditor of state shall be responsible for determining whether school districts are in compliance with this section. This provision shall not preclude any court from making a determination regarding compliance with this section. If noncompliance is determined, the provisions of [R.C. 117.28]⁷ shall have effect. (Emphasis and footnote added.)

Thus, a board of education must comply with the certification requirements of R.C. 5705.412 whenever it enters into a contract or gives an order for the expenditure of funds for student activity or any other purposes.

⁷R.C. 117.28 sets forth the notification and collection procedures for those situations in which an audit report shows that “any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated.”

Specifically concerning the liability of persons for failure to comply with the foregoing certification requirements, R.C. 5705.412 states:

Any *officer*, employee, or other person who *knowingly* expends or authorizes the expenditure of any public funds or *knowingly* authorizes or executes any contract, order, or schedule contrary to this section, *knowingly* expends or authorizes the expenditure of any public funds on the void contract, order, or schedule, or *knowingly* issues a certificate under this section which contains any false statements is liable to the school district for the full amount paid from the district's funds on the contract, order, or schedule. The *officer*, employee, or other person is *jointly and severally liable in person and upon any official bond* that he has given to the school district to the extent of any payments on the void claim, not to exceed twenty thousand dollars. However, no officer, employee, or other person shall be liable for a mistaken estimate of available resources made in good faith and based upon reasonable grounds. The prosecuting attorney of the county, the city director of law, or other chief law officer of the district shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the school district. If the prosecuting attorney, city director of law, or other chief law officer of the district fails, upon the written request of any taxpayer, to institute action for the enforcement of the liability, the taxpayer may institute the action in his own name in behalf of the subdivision. (Emphasis added.)

Thus, as officers of the school district, board of education members are subject to the requirements and liabilities set forth in R.C. 5705.412 in the expenditure of school district funds. See generally *CADO Business Systems of Ohio, Inc. v. Bd. of Education, supra* (discussing applicability of R.C. 5705.41 and R.C. 5705.412 to school districts); see also *Bd. of Education v. Maple Heights Teachers Ass'n*, 41 Ohio Misc. 27, 33, 322 N.E.2d 154, 158 (C.P. Cuyahoga County 1973) (construing the "additional certificate" language of R.C. 5705.412 as follows: "This must mean that as to any certificate specifically required by R.C. 5705.412, which is not required by R.C. 5705.41, the provisions of R.C. 5705.412 are mandatory and controlling. This certificate is the one required to be made by the clerk, president of the board, and superintendent, as set out in R.C. 5705.412"); 1987 Op. Att'y Gen. No. 87-069, n.8 at 2-437 through 2-438; Op. No. 80-060 at 2-238 through 2-239. Accordingly, should a board of education fail to comply with the certification requirements of R.C. 5705.412 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.412. In summary, because expenditures of a school district's general fund moneys for student activity program expenses are subject to the requirements of R.C. Chapter 5705, board of education members, as officers of the school district, are subject to the duties and liabilities imposed upon them by R.C. 5705.41 and R.C. 5705.45, in addition to those imposed by R.C. 5705.412, with respect to such expenditures.

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Any expenditures from the school district's general revenue fund for student activity program expenses, except those expenses authorized by R.C. 3313.53, are to be included in calculating the spending limitation established by R.C. 3315.062(A).
2. Because expenditures of a school district's general fund moneys for student activity program expenses are subject to the requirements of R.C. Chapter 5705, board of education members, as officers of the school district, are subject to the duties and liabilities imposed upon them by R.C. 5705.41 and R.C. 5705.45, in addition to those imposed by R.C. 5705.412, with respect to such expenditures.

3. Should a board of education fail to comply with any of the requirements of R.C. 5705.01-.47 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.45.
4. Should a board of education fail to comply with the certification requirements of R.C. 5705.412 in making an expenditure that exceeds the spending limitation imposed by R.C. 3315.062(A), the board members may be subject to liability for such expenditure in accordance with R.C. 5705.412.