

OPINION NO. 92-056**Syllabus:**

The public schools, grades kindergarten through twelve, that are maintained by each school district pursuant to R.C. 3311.29 are not governmental properties as defined by R.C. 3304.28(C).

**To: Robert L. Rabe, Administrator, Rehabilitation Services Commission,
Columbus, Ohio**

By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion addressing the question of whether elementary and secondary schools serving local communities¹ are "governmental properties" as defined in R.C. 3304.28(C). As you mentioned in your letter, the Bureau of Services for the Visually Impaired is the state agency charged with the implementation of R.C. 3304.28-.34. R.C. 3304.29. These statutes create a comprehensive scheme for the establishment and licensing of vending facilities to be operated by blind licensees.

Background and Applicable Statutory Provisions

1975-1976 Ohio Laws, Part I 189 (Am. S.B. 86, eff. Aug. 19, 1976) restructured the law with respect to the establishment and management of vending facilities operated by blind persons. Prior to the enactment of Am. S.B. 86, R.C. 3304.16(K) authorized the Rehabilitation Services Commission to "license blind persons to operate vending stands under commission supervision on state, county,

¹ By use of the term "elementary and secondary schools serving local communities," it is assumed that you are referring to the public schools, grades kindergarten through twelve, that are required to be maintained by each school district pursuant to R.C. 3311.29.

municipal, or other property, or federal property pursuant to the provisions of the 'Randolph Sheppard Act,' 49 Stat. 1559 (1936), 20 U.S.C. §107, as amended."² Am. S.B. 86 repealed R.C. 3304.16(K) and simultaneously enacted R.C. 3304.28-.34. Whereas former R.C. 3304.16(K) permitted the Rehabilitation Services Commission to license blind persons to operate vending stands under its supervision, R.C. 3304.29 now *mandates* that the Bureau of Services for the Visually Impaired "[s]urvey suitable vending facility concession opportunities for blind persons on governmental property." R.C. 3304.30 gives the Director of Services for the Visually Impaired the authority to determine whether governmental property to be substantially renovated, or newly acquired, leased, or rented will be a satisfactory site for a suitable vending facility.³ Pursuant to R.C. 3304.28-.34, the Bureau of Services for the Visually Impaired and its Director have broad authority to establish and manage vending facilities to be operated by blind persons. The Bureau provides the equipment for the vending facility and an initial stock of supplies, R.C. 3304.30, and retains the right to make an inventory of the facility. *Id.* The Bureau may deny, revoke, or suspend a license or otherwise discipline a licensee for various reasons. R.C. 3304.31.⁴

R.C. 3304.30, which is of particular relevance to your question, provides as follows:

Every person in charge of governmental property to be substantially renovated or who is responsible for the acquisition, lease, or rental of such property shall consult with the director of the bureau of services for the visually impaired prior to such renovation,

² The Randolph Sheppard Act, 20 U.S.C.S. §§107-107f (1992), provides, *inter alia*, for the licensing of blind persons to operate vending facilities on federal property.

³ R.C. 3304.32 provides for an administrative hearing if a dispute concerning the establishment of a suitable vending facility arises.

⁴ Although the Bureau of Services for the Visually Impaired and its Director have comprehensive authority with respect to vending facilities pursuant to R.C. 3304.28-.34, the statutes do not manifest an intention of the General Assembly to divest other state agencies of the authority to provide food services where such services are a logical function of the agency. For example, R.C. 3304.28(C) excludes from the definition of governmental property "any institution under the management of the department of rehabilitation and correction pursuant to [R.C. 5120.05], or under the management of the department of youth services created pursuant to [R.C. 5139.01]." The Department of Rehabilitation and Correction has, pursuant to R.C. 5120.05, the authority to "maintain, operate, manage, and govern all state institutions for the custody, control, training, and rehabilitation of persons convicted of crime and sentenced to penal or reformatory institutions." The service of food is a necessary incident of that responsibility. *See also* R.C. 5139.03 (requiring the Department of Youth Services to maintain food service operations). Thus, although R.C. 3304.28-.34 evince the intention of the General Assembly to promote the establishment of vending facilities operated by blind persons, these statutes are not evidence of an intention to require the placement of such vending facilities where food service operations are otherwise required by statute. *See Coleman v. Rehabilitation Services Comm.*, 8 Ohio App. 3d 132, 133, 456 N.E.2d 506, 508 (Franklin County 1982) ("the purpose of this legislation is to do what is necessary and proper to encourage the visually impaired to operate suitable vending facilities rather than, in effect, establish government-operated vending facilities").

acquisition, lease, or rental to determine if sufficient numbers of persons will be using such property to support a suitable vending facility. If the director determines that such property would be a satisfactory site for a suitable vending facility, provision shall be made for electrical outlets, plumbing fixtures, and other requirements for the installation and operation of a suitable vending facility.

Thus, the Director of the Bureau of Services for the Visually Impaired must evaluate any governmental property to be acquired, leased, rented, or renovated to determine whether the property is a satisfactory site for a vending facility.

"Governmental property" is defined as follows:

[A]ny real property, building, or facility owned, leased, or rented by the state or any board, commission, department, division, or other unit or agency thereof, but does not include any institution under the management of the department of rehabilitation and correction pursuant to section 5120.05 of the Revised Code, or under the management of the department of youth services created pursuant to section 5139.01 of the Revised Code.

R.C. 3304.28(C).

A Board of Education Is Not A Board, Commission, Department, Division, or Other Unit or Agency of the State for Purposes of R.C. 3304.28(C)

Since the property of a school district is held by the board of education, R.C. 3313.17, whether the property which constitutes an elementary or secondary school is governmental property depends upon whether a board of education is a board, commission, department, division, or other unit or agency of the state for purposes of R.C. 3304.28(C). According to the rule of statutory construction that "the coupling of words together shows that they are to be understood in the same sense," *Myers v. Seaberger*, 45 Ohio St. 232, 236, 12 N.E. 796, 798 (1887), since R.C. 3304.28(C) refers to the "state or any board, commission, department, division or other unit or agency thereof, (emphasis added), these terms must be understood to refer to entities of the state.

Boards of education of school districts in Ohio have been referred to as "arms or agencies of the state for the promotion of education throughout the state." *Board of Education v. Volk*, 72 Ohio St. 469, 480, 74 N.E. 646, 648 (1905). Although a board of education may serve to promote generally the state's interest in education, it is not a board of the state within the meaning of R.C. 3304.28(C). A board of education is the instrumentality by which a school district is managed and controlled. R.C. 3313.47. School districts in Ohio are "independent locally controlled entities responsible for the education of the students within their boundaries." *Bronson v. Board of Education*, 578 F. Supp. 1091, 1097 (S.D. Ohio 1984). Many sections of the Revised Code recognize school districts as separate political subdivisions distinct from the state. See, e.g., R.C. 9.82(B) (insurance purchase by state and subdivisions); R.C. 3501.01(T) (election procedure); R.C. 4115.31(D) (products and services of the severely handicapped). See also 1955 Op. Att'y Gen. No. 5252, p. 240. 1972 Op. Att'y Gen. No. 72-035 generally defines a political subdivision as "a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the state, which is a public agency with state-wide authority" (syllabus). Since a board of education serves an independent, locally controlled school district, it is not a board, commission, department, division or other unit or agency of the state. Consequently, the public schools, grades kindergarten through twelve, that are required to be maintained by each school district pursuant to R.C. 3311.29, are not "governmental properties" within the meaning of R.C. 3304.28(C).

This analysis of R.C. 3304.28(C) is supported further by an examination of the specific powers granted to the board of education of each school district with respect to food service. In particular, a board of education "may establish food service, provide facilities and equipment, and pay operating costs in the schools under its control for the preparation and serving of lunches, and other meals or refreshments to the pupils, employees of the board of education employed therein, and to other persons taking part in or patronizing any activity in connection with the schools." R.C. 3313.81. The food service facilities "shall be under the management and control of the board." *Id.* Moreover, "[e]ach board of education shall adopt and enforce standards governing the types of food that may be sold on the premises of its schools, and specifying the time and place each type of food may be sold....No food may be sold on any school premises except in accordance with the standards adopted by the board of education." R.C. 3313.814. Thus, it is clearly the intention of the General Assembly that a board of education maintain control over all food service operations in the schools in its district.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the public schools, grades kindergarten through twelve, that are maintained by each school district pursuant to R.C. 3311.29 are not governmental properties as defined by R.C. 3304.28(C).