

**OPINION NO. 72-069****Syllabus:**

1. Section 3317.02 (A) (7), Revised Code, does not authorize the State Department of Education to certify school nurses per se. (Opinion No. 2995, Opinions of the Attorney General for 1962, and Opinion No. 900, Opinions of the Attorney General for 1959, approved and followed.)

2. Nurses certified under the provisions of Chapter 4723, Revised Code, and employed by a board of education pursuant to Section 3313.68, Revised Code, are "teacher personnel properly certified" for the position of school nurse under Section 3317.02 (A) (7), Revised Code.

3. For purposes of computations under Section 3317.02 (A) (7), Revised Code, educational service personnel funded under Section 3317.06 (F), Revised Code, or from federal sources, are not excluded.

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To: Martin W. Essex, Superintendent of Public Instruction, Department of Education, Columbus, Ohio  
By: William J. Brown, Attorney General, August 22, 1972

I have your request for my opinion, which reads as follows:

"The State Department of Education is required by Section 3317.02 to approve the employment distributions of 'educational service personnel.' Specifically, Section 3317.02 (A-7), states in pertinent part:

'educational service personnel' includes counselor, librarians, visiting teachers, and school nurses who are teacher personnel properly certified for such positions, the employment distributions of whom is approved by the State Department of Education.

"Pursuant to the provisions of Sections 3310.07 (J) and 3319.23, the State Board of Education has duly adopted standards for the certification of counselors, librarians and visiting teachers. The certification of nurses is governed by Chapter 4723 and according to 1962 O.A.G. 2995 of the State Board of Education is without authority to certificate school nurses per se. In practice, some nurses, certificated under Chapter 4723, have taken the necessary college work and have been certificated as teachers.

"To effectively administer the provisions of Section 3317.02 your opinion is requested on the following questions:

"1. Does Section 3317.02 (A-7), as modified by Am. Sub. H.B. 475, provide authorization for the State Department of Education to certificate school nurses per se?

"2. Shall nurses certificated under the provisions of Chapter 4723, and employed pursuant to Section 3313.68, be considered as 'teacher personnel properly certified for such position' under the provisions of Section 3317.02 (A-7)?

"3. In the administration of Section 3317.02 (A-7) shall the State Department of Education exclude those educational service personnel funded under Division (F) of Section 3317.06 of the Revised Code or from federal sources--as is mandated for the requirement of 35 classroom teachers per 1000 pupils under Section 3317.02 (A-6)?"

Section 3317.02 (A) (7), Revised Code, enacted by

Amended Substitute House Bill No. 475, effective December 20, 1971, reads as follows:

"If a school district does not employ full-time equivalent educational service personnel equal in number to five per cent of the full-time equivalent classroom teachers employed by the district, not to exceed thirty-five classroom teachers per one thousand pupils, on the first day of October of the fiscal year for which the payment is made under this division, a deduction shall be made as follows:

"(a) Divide the number of the district's full-time equivalent education service personnel employed on such date by one hundred seventy-five one hundred thousandths;

"(b) Subtract from the district's average daily membership the quotient thus obtained:

"(c) Multiply the difference thus obtained by thirty-two dollars.

"For purposes of this determination and calculation 'educational service personnel' includes counselors, librarians, visiting teachers, and school nurses who are teacher personnel properly certified for such positions, the employment distribution of whom is approved by the state department of education."

The above language refers to school nurses as "teacher personnel." Section 3319.23, Revised Code, reads in part as follows:

"The state board of education shall establish standards and courses of study for the preparation of teachers, shall provide for the inspection of institutions desiring to prepare teachers, shall approve such institutions as maintain satisfactory training procedures, and shall properly certificate the graduates of such approved courses and institutions."

It may be argued on the basis of these two Sections that the State Board of Education is authorized to certify school nurses. However, such a construction would conflict with the clear intent of the statutes relating to certification of teachers and nurses. As your request for my opinion points out, the certification of nurses is governed by Chapter 4723, Revised Code. I can find no indication that the legislature intended to require that nurses be certified by the State Board of Education as well, in order to practice nursing in schools.

In Opinion No. 2995, Opinions of the Attorney General for 1962, my predecessor held as follows:

Section 3319.22 (K), Revised Code, does not authorize the certification of registered nurses employed as school nurses under Section

3313.68, Revised Code, as pupil-personnel workers. (Opinion No. 900, Opinions of the Attorney General for 1959, page 613, approved and followed.)"

Section 3313.68, Revised Code, authorizes boards of education to employ school nurses. Section 3319.22, Revised Code, specifies the grades and types of teaching certificates. Division (K) of that Section, under which it was felt that school nurses could be fit, if anywhere, reads as follows:

"Pupil-personnel workers, valid for the conduct of all home-school-community relations incident to the adjustment of pupils to the facilities available for their education;

My predecessor's holding that school nurses could not be certified by the State Board of Education is dispositive of your first question. I see no need to discuss that Opinion in detail, and merely note that it is a correct statement of the law both then and now. In it, my predecessor explains the rationale behind teacher and nurse certification, as follows:

"Finally, it should be noted that the profession of nursing is regulated in its own right under Chapter 4723, Revised Code, by a state nursing board. Thus, a certified teacher and a registered nurse are like in that the competence of each is certified to by a state agency: more particularly, the certification is made by an agency competent to act in the particular field under its jurisdiction."

He further expresses a clarification which should be repeated:

"In passing, I call your attention to a sentence in my prior opinion reading (at page 616):

"'Nothing in this opinion should be construed, however, as preventing a board of education from hiring a school nurse on a part-time basis, and also from retaining the same person as a part-time pupil-personnel worker, provided, such person can otherwise meet the requirements established by the state board of education for certification for such position.'"

His Opinion was based on Opinion No. 900, Opinions of the Attorney General for 1959, which provides a lucid discussion of this matter.

The foregoing discussion answers your first and second questions. School nurses are certified by the Board of Nursing Education and Nurse Registration under Chapter 4723, not by the State Board of Education; and nurses so certified are "teacher personnel properly certified for such position" under Section 3317.02 (A) (7).

In response to your third question, Section 3317.02 (A) (6) expressly excludes from its computation teachers funded under Section 3317.06 (F), Revised Code, or from federal sources. But Section 3317.02 (A) (7), dealing with educational service personnel, contains no such exclusion. I conclude that the

legislature intended to apply such an exclusion only to Section 3317.02 (A) (6).

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Section 3317.02 (A) (7), Revised Code, does not authorize the State Department of Education to certify school nurses per se. (Opinion No. 2995, Opinions of the Attorney General for 1962, and Opinion No. 900, Opinions of the Attorney General for 1959, approved and followed.)
2. Nurses certified under the provisions of Chapter 4723, Revised Code, and employed by a board of education pursuant to Section 3313.68, Revised Code, are "teacher personnel properly certified" for the position of school nurse under Section 3317.02 (A) (7), Revised Code.
3. For purposes of computations under Section 3317.02 (A) (7), Revised Code, educational service personnel funded under Section 3317.06 (F), Revised Code, or from federal sources, are not excluded.