

OPINION NO. 84-067**Syllabus:**

1. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) unless it has made demand that all receivables due to the board be paid immediately.
2. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) even though all receivables due to the board have not been paid.
3. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) unless it has requested approval of the court of common pleas of the county in which the school district is located to transfer to the general fund of the subdivision any unexpended permanent improvement fund money which is available for such transfer under R.C. 5705.14(B).

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 16, 1984

I have before me your request for my opinion concerning your duties under R.C. 3313.483. That section sets forth the events which must occur before a school district may apply for a loan from the emergency school advancement fund. One such event is the determination by the Auditor of State that the board of education will be financially unable to open on the date set forth in its adopted school calendar, or to remain open on all days set forth in its adopted school calendar, and pay all obligated expenses. Your question relates to the findings that the Auditor of State must make in connection with such a determination.

R.C. 3313.483 states in part:

A board of education, upon the adoption of a resolution stating that it may be financially unable to open on the day or to remain open for instruction on all days set forth in its adopted school calendar and pay all obligated expenses, or the superintendent of public instruction upon the issuance of written notification under division (C) of section 3313.489 of the Revised Code, shall request the auditor of state to determine whether such situation exists. The auditor shall deliver a copy of each request from the board of education to the superintendent of public instruction. The auditor shall not issue his finding under this section until written notification is received from the superintendent pursuant to 3313.487 of the Revised Code.

If the auditor of state finds that the board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it except those authorized by section 5705.21 of the Revised Code, he shall certify that finding to the superintendent of public instruction and the state board of education and shall certify the operating deficit the district will have at the end of the fiscal year if it commences or continues operating its instructional program in accordance with its adopted school calendar and pays all obligated expenses.

. . . .

Upon receipt of any certification of an operating deficit from the auditor of state, a board of education shall make application to a commercial lending institution for a loan in an amount sufficient to enable the district to open or remain open for instruction on all days set forth in its adopted school calendar but not to exceed the amount of the deficit certified. If a school district is denied a loan by a commercial lending institution, it shall make application to the superintendent of public instruction under section 3317.63 of the Revised Code for a loan from the emergency school advancement fund. (Emphasis added.)

Your question concerns the requirement that, "[i]f the auditor of state finds that the board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it except those authorized by [R.C. 5705.21], he shall certify that finding. . . ."¹ You have asked whether, in order to avail itself to the fullest extent of all lawful revenue sources available to it, a school district must: (1) demand from other purchasers or public entities that all receivables be paid immediately and, if so, receive this money before the statutory requirement of availing itself of lawful revenue sources will be met; or (2) transfer unappropriated permanent improvement fund money in accordance with R.C. 5705.14(B), if such amount would eliminate the debt.

It is my understanding that the receivables with which you are concerned are amounts currently due and payable to the school district, such as amounts due for vocational education services which have been provided to other school districts pursuant to R.C. 3313.90. The possible transfer of funds about which you have inquired is authorized by R.C. 5705.14(B), as follows:

No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

. . . .

(B) The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.

You are concerned with a situation in which there are unexpended funds from a specific permanent improvement fund, other than a bond fund, which are not required to meet the obligations payable from the sinking fund or bond retirement fund of the subdivision and may be available, with the approval of the court of common pleas, for transfer to the general fund of the subdivision.

I note that R.C. 3313.483 delegates to you the task of finding whether, on particular facts, a board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it, except those authorized by R.C. 5705.21. I am able, in this opinion, to set forth general conclusions and principles of law, but the making of the final determination as to whether a particular school district has satisfied the statutory requirement, and the exercise of any judgment which may be required in making that determination, remain your responsibility. See State ex rel. Commissioners of Franklin County v. Guilbert, 77 Ohio St. 333, 83 N.E. 80 (1907) (under statute providing that state auditor may not draw a warrant for any claim unless he finds the claim legal, the auditor is not bound in making that determination by the finding of a county

¹ R.C. 5705.21 provides for a special election to levy a tax in excess of the ten-mill limitation for school district current expenses, library purposes, or permanent improvements, and authorizes the issuance of tax anticipation notes after the approval of such a levy.

prosecutor who certified the claim). See generally State ex rel. Copeland v. State Medical Board, 107 Ohio St. 20, 140 N.E. 660 (1923) (if determination of facts is necessary on matter assigned by statute to the state medical board, the board must make such determination). In light of this general principle, I find that your question is, in essence, whether you may find that a board of education has not attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) unless it has undertaken the steps described in your request.

I consider, first, whether, in order to find that a board of education has attempted to avail itself to the fullest extent authorized by law of all revenue sources available to it (except those authorized by R.C. 5705.21), you may find that the board must demand from other purchasers or public entities that all receivables be paid immediately and, if so, whether you may find that the district has satisfied the statutory requirement even though the money which it has demanded has not been paid.

The word "revenue" is not defined by statute for purposes of R.C. 3313.483. In its ordinary meaning, "revenue" is a broad term, encompassing income of all sorts: "1. the income of a government from taxation, excise duties, customs, or other sources, appropriated to the payment of the public expenses. . . . 4. the return or yield from any kind of property, patent, service, etc.; income. . . . 6. a particular item or source of income." The Random House Dictionary of the English Language 1226 (unabridged ed. 1973). Thus, the word "revenue" is generally used to encompass income of all sorts. Applying this definition, I find that the term "revenue sources," as used in R.C. 3313.483, means all sources of income, of whatever nature, that a board of education may have. See generally Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946) (in the absence of a definition, words used in a legislative enactment will be given their common, ordinary and accepted meaning). In relation to your question, the "revenue sources" referenced by R.C. 3313.483 thus clearly may include receivables due to a school district, since those are sources of income available to it.

I assume that you give the word "demand" its ordinary meaning, as follows: "to ask for with authority; claim as a right: He demanded payment of the debt." The Random House Dictionary of the English Language 383 (unabridged ed. 1973). See Black's Law Dictionary 386 (5th ed. 1979) (defining "demand" as meaning "[t]o claim as one's due; to require"). You are, thus, asking whether, before you make a determination that a school district will have an operating deficit, you may require that the district ask its debtors to pay to it the money that they owe.

R.C. 3313.483 requires that, in order to certify that a school district will have an operating deficit, you must find that the board of education has attempted to avail itself to the fullest extent authorized by law of revenue sources available to it. The words "fullest extent authorized by law" indicate that a school district is to take all steps available to it to gather its resources together. The attempt to collect amounts due to it may clearly be included as one of these steps. Whether the person owing such amounts is a public or private entity is irrelevant. Where there is a right to receivables, it is reasonable to impose a duty to attempt to collect them. The making of a demand for payment due is a clearly lawful action, see generally Bank of Columbia v. Hagner, 26 U.S. (1 Pet.) 455 (1828), and in carrying out your duty of making findings under R.C. 3313.483, it is reasonable that you should decline to find that a board of education has attempted to avail itself to the fullest extent authorized by law of revenue sources available to it unless it has taken this step.²

² I note that some questions may arise which will require you to exercise judgment in applying the requirement that demand be made for the payment of receivables. Since R.C. 3313.483 does not specify a procedure for the making of demands, you may need to determine whether actions taken by a particular board of education constitute adequate demand in a variety of different situations, including instances in which the debt has been owed for a long time, or in which the debtor has previously admitted his inability to pay or indicated a refusal to pay. See generally Watson v. Dunn, Wright 741 (1834).

I do not, however, think that it follows that you may not find that the board of education has fulfilled this requirement until the money owed it is in fact received. R.C. 3313.483 specifically indicates that the finding which you are to make is whether the board "has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it except those authorized by [R.C. 5705.21]" (emphasis added). The statute does not require that all amounts due to the school district have, in fact, been received, but only that the district has made the attempt to gather all revenues available to pay its obligations. It is an unfortunate fact that in our society some amounts due are not paid, or at least are not paid promptly. It would make no sense to require a district to wait indefinitely for the payment of funds when such payment is not within its control.

It is, therefore, my determination that you may, in the exercise of your duty to make findings under R.C. 3313.483, conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all revenue sources available to it, except those authorized by R.C. 5705.21, unless the board of education has demanded that all receivables be paid immediately, and, further, that you may conclude that a board of education has met this requirement even though all amounts due to it have not in fact been paid.

I turn now to the question whether, in order to attempt to avail itself to the fullest extent authorized by law of revenue sources available to it, a school district must transfer unappropriated permanent improvement fund money in accordance with R.C. 5705.14(B), if such amount would eliminate the debt. R.C. 5705.14(B), quoted above, authorizes the transfer of the unexpended balance in any specific permanent improvement fund (other than a bond fund) to the sinking fund or bond retirement fund of the subdivision, or, if money is not required in such funds, to a special fund for the acquisition of permanent improvements or, with the approval of the court of common pleas, to the general fund of the subdivision. Your question is, in essence, whether, in order to find that a board of education has attempted to avail itself to the fullest extent authorized by law of revenue sources available to it, you may require that the board of education apply to the court of common pleas for authority to transfer to its general fund the unexpended balance in a specific permanent improvement fund (other than a bond fund), if such money is not required to meet the obligations payable from the sinking fund or bond retirement fund, rather than keeping the money in a special fund for the acquisition of permanent improvements. I think that it is clear that you may impose such a requirement.

As discussed above, the term "revenue sources" is a broad one, which may include all types of income available to the school district. See R.C. 5537.01(E), 5538.22(E) (defining "revenues" for purposes of statutes relating to the Ohio Turnpike Commission and the State Underground Parking Commission to include "all [tolls or fees], rentals, gifts, grants, moneys, and all other funds and property coming into the possession or under the control of" the particular commission, except the proceeds from the sales of bonds). The unexpended balance in a permanent improvement fund constitutes revenue of the school district. Such money is, however, not available for the general operating expenses of the school district, with which R.C. 3313.483 is concerned, unless it is transferred to the general fund. Pursuant to R.C. 5705.14(B), such transfer may be made with the approval of the court of common pleas of the county in which the school district is located. Such transfer would permit the school district to use the money for its operating expenses; thus, the money so transferred may be considered a source of revenue for such purposes. See generally 1932 Op. Att'y Gen. No. 4422, vol. II, p. 769 (applying language of R.C. 5705.14(B) [then G.C. 5625-13(b)] to a situation in which a school district sought to transfer an unexpended balance in the library building fund to the general fund so that the schools would not be required to close early).

³ This is another area which may require an exercise of discretion on your part. See note 2, *supra*. You might require that a reasonable time pass after the making of a demand to permit the payment to be made. Alternatively, if the facts indicate that there is little likelihood that payment will be forthcoming, it may be reasonable to dispense with such a waiting period.

The concept that a school district is to attempt to avail itself to the fullest extent authorized by law of revenue sources available to it may clearly be construed as requiring that the school district approach the court to ask that moneys which it holds in a different fund be transferred to the general fund to be available for the operating expenses which it faces. Of course, the court may, in its discretion, disapprove the transfer. See generally In re Transfer of Funds of Eastern Local School District, 14 Ohio Op. 2d 209, 170 N.E.2d 94 (C.P. Meigs County 1960) (construing R.C. 5705.14(C), which pertains to transfer of the unexpended balance in the sinking fund or bond retirement fund of a subdivision).

I note that you have asked only whether such transfer may be required if the amount transferred would eliminate the debt. I am, however, aware of no reason why the transfer may not be required in any instance in which it would reduce the deficit calculated under R.C. 3313.483, even if it would not entirely eliminate such deficit. I determine, therefore, that, in the exercise of your duty to make findings under R.C. 3313.483, you may conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all revenue sources available to it, except those authorized by R.C. 5705.21, unless the board of education has requested approval of the court of common pleas of the county in which the school district is located to transfer to the general fund of the subdivision any unexpended permanent improvement fund money which is available for such transfer under R.C. 5705.14(B).

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

1. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) unless it has made demand that all receivables due to the board be paid immediately.
2. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) even though all receivables due to the board have not been paid.
3. In the exercise of the duty to make findings under R.C. 3313.483, the Auditor of State may conclude that a board of education has not attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it (except those authorized by R.C. 5705.21) unless it has requested approval of the court of common pleas of the county in which the school district is located to transfer to the general fund of the subdivision any unexpended permanent improvement fund money which is available for such transfer under R.C. 5705.14(B).