

## OPINION NO. 903

**Syllabus:**

1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education of a city, exempted village, or local school district may charge a single fee to students for materials other than textbooks used in a course of instruction, and may enforce the payment of such fee by withholding the grades and credits of students; provided that a student may elect to purchase the necessary materials from another source.
2. Under Section 3313.642, Revised Code (as amended effective 9-16-63), materials used in a course of instruction may be furnished free of charge to such students as are determined to be in serious financial need of such materials.
3. A board of education is not authorized to use uncertified persons as substitute teachers in the absence of regular teachers irrespective of whether such uncertified persons are paid for their services.

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**To: James K. Leedy, Wayne County Pros. Atty., Wooster, Ohio**  
**By: William B. Saxbe, Attorney General, March 6, 1964**

I have before me your request for an opinion which reads as follows:

"1. Due to the failure of an operating levy, the Board of Education must effect many economies, Although continuing to furnish free textbooks to pupils as required by law, the Board is charging an 'operating fee' to all students to cover the cost of mimeograph and hectograph paper used in tests, and for art and construction paper, and for other such uniform school supplies and instructional material items consumed in the classroom.

"(a) Is such an 'operating fee' legal?

"(b) If legal, may a Board of Education withhold credits and promotion in case the fee is not paid? (Hardship cases excepted.)

"2. In order to save money, substitute teachers are not employed for short periods of time when a teacher is ill. Instead, room mothers or other uncertified persons take over the classroom. It is a volunteer service and they are not paid by the Board or by anyone.

"(a) Is this legal?"

The syllabi of Opinion No. 153, Opinions of the Attorney

General for 1963, issued April 17, 1963, state:

"1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education may establish a single fee for pencils, tablets and other items furnished students. However, the students could not be required to pay such fee if they elected to obtain these items elsewhere.

"2. Such fee would not be a tax and would, therefore, not constitute double taxation.

"3. A special rotary fund would be required for receipts.

"4. Such fee would have to be charged to all students receiving these items and could not be waived in hardship cases."

At the time of issuance of the above cited opinion, Section 3313.642, Revised Code, stated:

"Notwithstanding the provisions of sections 3313.48 and 3313.64 of the Revised Code, the board of education of a city, exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge pursuant to the provisions of sections 3329.06 of the Revised Code. Boards of education may adopt rules and regulations prescribing a schedule of fees for such materials and prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library material, textbooks required to be furnished without charge, and for damage to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned."

The Legislature has amended Section 3313.642, Revised Code, effective September 16, 1963. This section now states:

"Notwithstanding the provisions of sections 3313.48 and 3313.64 of the Revised Code, the board of education of a city, exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge pursuant to section 3329.06, of the Revised Code. The board, may, however, make provision by appropriations transferred from

the general fund of the district or otherwise for furnishing free of charge any materials used in a course of instruction to such pupils as it determines are in serious financial need of such materials. Boards of education may adopt rules and regulations prescribing a schedule of fees for such materials and prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library materials, textbooks required to be furnished without charge, and for damage to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned."

As a result of the legislative change, the fourth syllabus of Opinion No. 153, cited above, is not now a correct expression of the law.

In answer to your first question, it is my opinion that, pursuant to the provisions of Section 3313.642, Revised Code, a single fee may be charged for materials other than textbooks used in a course of instruction and that payment for such materials can be enforced by withholding grades and credits. The authorities cited and reasoning used in Opinion No. 153, supra, support this conclusion. The recent amendment to Section 3313.642, Revised Code, supra, permits the waiving of such fee in hardship cases.

Boards of education are creatures of statute. As such, they have only such powers as are clearly granted or clearly implied and necessary for the execution of the powers expressly granted. See 48 Ohio Jurisprudence 2d, Schools, Section 78, pages 481 to 482.

Section 3319.09, Revised Code, states in pertinent part:

"As used in sections 3319.08 to 3319.18, inclusive, of the Revised Code:

"(A) Teacher means 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 employing board requires certification."

Section 3319.10, Revised Code, states in pertinent part:

"Teachers may be employed as substitute teachers for terms not to exceed one year for assignment as services are needed to take the place of regular teachers absent on account of illness or on leaves of absence or to fill temporarily positions created by emergencies; such assignment to be subject to termination when such services no longer are needed."

The definition of "teacher" as set forth in Section 3319.09, Revised Code, supra, refers only to certified personnel. Section 3319.10, Revised Code, supra, specifically authorizes employment of substitute teachers to take the place of teachers absent on account of illness. With specific authority to employ teachers on a temporary basis to replace teachers absent due to illness and no clearly implied statutory authority to use uncertified personnel, it is my opinion that the use of such uncertified personnel would be illegal.

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

1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education of a city, exempted village, or local school district may charge a single fee to students for materials other than textbooks used in a course of instruction, and may enforce the payment of such fee by withholding the grades and credits of students; provided that a student may elect to purchase the necessary materials from another source.

2. Under Section 3313.642, Revised Code (as amended effective 9-16-63), materials used in a course of instruction may be furnished free of charge to such students as are determined to be in serious financial need of such materials.

3. A board of education is not authorized to use uncertified persons as substitute teachers in the absence of regular teachers irrespective of whether such uncertified persons are paid for their services.