

OPINION NO. 73-106**Syllabus:**

1. R.C. 3319.081 regulates the employment contracts of the regular nonteaching employees of a joint vocational school district.

2. R.C. 3319.081 regulates the employment contracts of the regular nonteaching employees of a city school district when the city charter excludes the employees of a city school district from the jurisdiction of the city civil service commission.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, October 25, 1973

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

In the Syllabus of Opinion 73-062, dated June 25, 1973, it was held:

A city civil service commission has no jurisdiction over the personnel of a joint vocational school district, whose facilities are located in the city, but whose territory extends over six counties.

In view of the fact that noncertificated personnel of a joint vocational school district may not be covered under Chapter 143., Revised Code, Civil Service, may any and/or all joint vocational school districts, under its authority to contract found in Section 3313.17, Revised Code, contract with its employees as provided in Section 3319.081, Revised Code, and would such a contract be a valid contract?

Along this same line of thinking, we find charter cities in Ohio whose charter excludes the city board of education from the jurisdiction of the city civil service commission. Under these circumstances may a city school district who has been excluded from the jurisdiction of a city civil service commission due to a charter limitation under its authority to contract found in Section 3313.17, Revised Code, contract with its noncertificated employees as provided in Section 3319.081, Revised Code, and would such a contract be a valid contract?

Your first question concerns the authority of the board of education of a joint vocational school district to contract with its nonteaching employees under R.C. 3319.081. R.C. 3313.17, which contains the corporate powers of a board of education, provides as follows:

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting, and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

R.C. 3313.47, which vests the management and control of schools in a board of education, reads as follows:

Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution.

R.C. 3313.17 and 3313.47 grant to a board of education the authority to hire nonteaching employees. Fahl v. Board of Education, 23 Ohio N.P. (n.s.) 409 (1920); 2. Baker, Trury's Ohio School Guide, n. 74, Section 3.73 (3d ed. 1972).

R.C. 3319.081, which provides for contracts for nonteaching employees, reads, in part, as follows:

Except as otherwise provided in division (G) of this section, in all school districts wherein the provisions of sections 143.01 to 143.48, inclusive, of the Revised Code, do not apply, the following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:

(A) Newly hired regular nonteaching school employees, including regular hourly rate and per diem employees, shall enter into written contracts for their employment which shall be for a period of not more than one year. If such employees are rehired, their subsequent contracts shall be for a period of two years.

(B) After the termination of the two-year contract provided in division (A) of this section, if the contract of a nonteaching employee is renewed, the employee shall be continued in employment, and the salary provided in the contract may be increased but not reduced unless such reduction is a part of a uniform plan affecting the nonteaching employees of the entire district.

(C) The contracts as provided for in this section may be terminated by a majority vote of the board of education. Such contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance. In addition to the right of the board of education to terminate the contract of an employee, the board may suspend an employee for a definite period of time or denote the employee for the reasons set forth in this division. The action of the board of education terminating the contract of an employee or suspending or denoting him shall be served upon the employee by registered mail. Within ten days following the receipt of such notice by the employee, the employee may file an appeal, in writing, with the court of common pleas of the county in which such school board is situated. After hearing the appeal the common pleas court may affirm, disaffirm, or modify the action of the school board. (Emphasis added.)

In Opinion No. 73-062, Opinions of the Attorney General for 1973, I considered the civil service statutes, R.C. 143.01 to 143.48, which apply to city school districts, together with R.C. 3311.19, which provides that all provisions of law that apply to a city school district shall also apply to a joint vocational school district. I concluded that an interpretation of R.C. 3311.19 which would permit a city civil service commission to exercise jurisdiction over the personnel of a joint vocational school district would be impractical and could not have been the intent of the General Assembly. Thus, none of the personnel of a joint vocational school district are covered by R.C. Chapter 143.

The purpose of R.C. Chapter 143. is to provide employment

security to the employees covered by its provisions. State ex rel. Puckman v. Munson, 141 Ohio St. 319 (1943); Curtis v. State ex rel. Morgan, 108 Ohio St. 292 (1923). R.C. 3319.081 provides similar protection to regular nonteaching employees who are not covered by R.C. Chapter 143. See Opinion No. 72-058, Opinions of the Attorney General for 1972, and Opinion No. 71-021, Opinions of the Attorney General for 1971. The court in Gates v. Board of Education, 8 Ohio App. 2d 76 (1966), aff'd 11 Ohio St. 2d 83 (1967), stated at 78 that " * * * we feel that the legislative intent in enacting Section 3319.081, Revised Code, was to provide employment security to the employees covered by this statute." Since nonteaching employees, other than those employed by a board of education of a city school district, are not protected by the civil service statutes, it appears that the General Assembly intended R.C. 3319.081 to provide protection to such employees by the contract system established therein.

R.C. 3319.081 applies to all school districts in which R.C. Chapter 143. is not applicable. Since joint vocational school districts are classified as "school districts" in R.C. 3311.01, and R.C. Chapter 143. is not applicable to personnel employed by the board of education of a joint vocational school district (Opinion No. 73-062, supra), I must conclude that R.C. 3319.081 is applicable to the contracts of nonteaching employees of a joint vocational school district.

However, it should be noted that the employment contract system established in R.C. 3319.081 shall apply only for employees whose contracts are not otherwise provided by law. R.C. 3319.081. See Public School Employees v. Board of Education, 28 Ohio St. 2d 58 (1971) (educational aides not covered); State ex rel. Board of Education v. Miller, 102 Ohio App. 85 (1956) (clerk of board of education not covered).

Your second question concerns the authority of the board of education of a city school district to contract with its nonteaching employees under R.C. 3319.081, when such school district has been excluded from the jurisdiction of the city civil service commission by a provision of the city charter. Since R.C. 3319.081 applies to all school districts to which R.C. Chapter 143. is not applicable, the board of education of such city school district may contract with its nonteaching employees pursuant to that section.

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

1. R.C. 3319.081 regulates the employment contracts of the regular nonteaching employees of a joint vocational school district.
2. R.C. 3319.081 regulates the employment contracts of the regular nonteaching employees of a city school district when the city charter excludes the employees of a city school district from the jurisdiction of the city civil service commission.