

OPINION NO. 67-081**Syllabus:**

A joint Board of Education may make a cooperative agreement with a joint Recreation Commission for the lease, rental, or use of school buses to transport students taking part in a summer recreation program. Such cooperative agreement is sanctioned by the provisions of Sections 755.12 to 755.16, inclusive, Revised Code, and Section 3313.59, Revised Code.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, August 11, 1967

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

"South Euclid and Lyndhurst are each Charter Cities. Rather than having separate school boards, there is one Board of Education, known as the South Euclid-Lyndhurst Board of Education, for the two cities.

"Many years ago, pursuant to Section 755.12-16, inclusive, of the Ohio Revised Code, the City of South Euclid, the City of Lyndhurst and the South Euclid-Lyndhurst Board of Education entered into a contract creating the South Euclid-Lyndhurst Recreation Commission.

"This Commission has its headquarters in the Administrative Building of the Board of Education. It operates the playgrounds of the two Cities, and runs a summer recreation program in each of the Cities. The Recreation Commission prepares its own budget each year, which it then submits for approval to the City of South Euclid, the City of Lyndhurst, and the combined Board of Education. After approval of the Budget, each City and the Board of Education transfer funds to the Recreation Commission so that it may operate.

"This year, the Recreation Commission desires to transport students taking part in its summer program to such places as the Art Museum, History Museum, etc. This program would be carried out during summer recess from regular school attendance.

"The question I am asked, is whether or not the Board of Education may lease one or more of its regular buses to the Recreation Commission, to be used for this purpose. This lease would only be valid during summer recess from school. Or, since the Board of Education is actually one-third of the membership of the Recreation Commission, is a lease necessary? Could the Recreation Commission use a school bus during summer recess without renting or leasing it?"

Section 755.14, Revised Code, provides for the organization of a recreation board and authorizes the board to equip, operate, and maintain recreational facilities. Section 755.14, Revised Code, reads as follows:

"If the legislative authority of a municipal corporation determines that the power to equip, operate, and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or recreation centers shall be exercised by a recreation board, it may establish such a board, which shall possess all the powers and be subject to all the responsibilities of the respective local authorities under sections 755.12 to 755.18, inclusive, of the Revised Code. Such board shall consist of five persons, two of whom shall be members of the board of education of the city or village school district or members appointed by such board. The other members of the board shall be appointed by the mayor or manager as executive of such municipal corporation with the consent of its council. All members of the board shall serve for terms of five years, except that members first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. Members of such board shall serve without pay. Vacancies in the board, occurring otherwise

than by expiration of term, shall be for the unexpired term and shall be filled in the same manner as original appointments."

Section 755.16, Revised Code, provides for the joint acquisition and maintenance of recreational facilities:

" Any two or more municipal corporations, or any municipal corporation, or any municipal corporation and county, or any municipal corporation and school district may jointly acquire property for and operate and maintain any playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, and any school district may provide by the erection of any school building or school premises, or the enlargement, addition thereto, or reconstruction or improvement thereof, for the inclusion of any such recreational facilities to be jointly acquired, operated, and maintained with any municipal corporation. Any school district may join with any municipal corporation, township, or county in equipping, operating, and maintaining such recreational facilities, and may appropriate money therefor."

(Emphasis added.)

It will be noted that by the provisions of the above quoted statutes that municipalities are authorized to operate the program described in your request letter. It should also be pointed out that any school district, pursuant to Section 755.16, supra, may join with any municipal corporation in equipping, operating, and maintaining such facilities. That the legislature had in mind the closest cooperation between the municipality and the school district is further evidenced by the provision in Section 755.14, supra, that a recreation board shall have in its membership two members of the school board.

Cooperation of public officials in matters pertaining to recreational activities is specifically provided for in Section 3313.59, Revised Code, quoted below:

"Boards of education of city, exempted village, or local school districts may cooperate with boards of county commissioners, boards, or other public officials having the custody and management of public parks, libraries, museums, and public buildings and grounds of whatever kind in providing for educational, social, civic and recreational activities, in buildings and upon grounds in the custody and under the management of such boards of county commissioners, boards, or other public officials.

"Such cooperation may consist of the contribution of funds, equipment, or personnel, and the beneficiaries of same may be extended to include a corporation not for profit maintaining and operating a museum for the use and

benefit of the general public and which is available to the pupils of such contributing school district."

(Emphasis added.)

It would appear to me, therefore, very clear that the legislature intended that the municipality might enter into some arrangement with the school board for cooperation in equipping, operating, and maintaining such facilities. Joint action necessarily presupposes action by two parties just as the making of a contract necessarily contemplates at least two parties to the agreement.

Several of my predecessors have had occasion to consider questions of a similar nature in connection with Sections 4065-1 - 4065-5, General Code (now 755.12-755.16, Revised Code).

In Opinion No. 1327, Opinions of the Attorney General for 1929, page 1975, Syllabus 1, it was held:

"The manner by which a school district may cooperate with other public officials in the maintenance of recreational activities as authorized by Sections 4065-5 and 7622-6, General Code, is within the discretion of the authorities so cooperating, and may lawfully be the subject of an agreement between them."

(Emphasis added.)

In Opinion No. 814, Opinions of the Attorney General for 1933, at page 696, the then Attorney General again discussed the statutory provisions to which reference has been made, and said:

* * * * *

"Upon consideration of the powers extended to boards of education by virtue of the statutes noted above, it will be seen that those powers are very broad, both as to the conduct of recreational activities independently, and in cooperation with other officials. Boards of Education do not have the power to join with the local authorities of a city or village or county in acquiring playgrounds and similar property for recreational purposes, but the power to cooperate in the equipping, maintaining and operating of these properties is practically unlimited, nor is this power limited as to time so as to prevent its exercise during the time school is not in session.

* * * * *

(Emphasis added.)

Within the text of this opinion he quoted the language of the 1929 Opinion, No. 1327, *supra*, to the effect that the manner of cooperation between these subdivisions is within the discretion of the authorities so cooperating and may lawfully be the subject of agreement between them.

Accordingly, in specific answer to your question it is my

opinion that: A joint Board of Education may make a cooperative agreement with a joint Recreation Commission for the lease, rental, or use of school buses to transport students taking part in a summer recreation program. Such cooperative agreement is sanctioned by the provisions of Sections 755.12 to 755.16, inclusive, Revised Code, and Section 3313.59, Revised Code.