

OPINION NO. 84-046

Syllabus:

The purchase of a telephone system by a board of education of a local school district which is to be installed in the district's school buildings must be accomplished through competitive bidding as provided by R.C. 3313.46 where the cost of the telephone system will exceed the statutory maximum provided in R.C. 3313.46.

To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 31, 1984

I have before me your request for my opinion as to whether the purchase of a completely new telephone system by the Cloverleaf Local School District must be accomplished through competitive bidding pursuant to R.C. 3313.46 or whether such purchase is exempt from competitive bidding requirements by virtue of R.C. 3313.37(B)(5).

R.C. 3313.46, to which you refer in your request, requires certain competitive bidding and contract award procedures to be followed whenever a board of education of any school district "determines to build, repair, enlarge, demolish, or furnish a schoolhouse, or make any improvements or repairs, the cost of which will exceed fifteen thousand dollars, except in cases of urgent necessity, or for the security and protection of school property" (emphasis added). It is my understanding that the Board of Education of the Cloverleaf Local School District intends to purchase and have installed a completely new and upgraded telephone system for all of the school buildings in the district. The cost of such system will exceed the statutory maximum of fifteen thousand dollars set forth in R.C. 3313.46.

R.C. 3313.37 is an enabling statute, authorizing a board of education to provide, repair and furnish schoolhouses. R.C. 3313.37 provides in this regard as follows:

(A) The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights-of-way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable school rooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. . . .

(B)(5) As used in this division, "office equipment" includes but is not limited to typewriters, copying and duplicating equipment, and computer and data processing equipment. A board of education may acquire the necessary office equipment for the schools under its control by purchase, by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to

purchase. If the purchase price is to be paid over a period of time, the contract setting forth the terms of such purchase shall be considered a continuing contract pursuant to section 5705.41 of the Revised Code, and such payments shall not extend for a period of more than five years. Costs relating to the acquisition of necessary apparatus may be paid from funds available to the school district for operation purposes. (Emphasis added.)

The provisions of R.C. 3313.37(B)(5), to which you refer in your request, expressly vest a board of education with authority to acquire office equipment by methods other than direct purchase. Neither division (B)(5), nor any other provision of R.C. 3313.37, makes any mention of the specific procedures to be followed in exercising the authority granted therein. Thus, the provisions of R.C. 3313.37 neither conflict with the provisions of R.C. 3313.46 nor exempt a board of education from any requirements of R.C. 3313.46 which are otherwise applicable to its exercise of authority pursuant to R.C. 3313.37. Rather, the provisions of R.C. 3313.37 and R.C. 3313.46 are complementary. R.C. 3313.37 provides a board of education with the necessary authority to acquire furnishings and apparatus for its schoolhouses and specifies the types of transactions through which such acquisitions may be made. R.C. 3313.46 provides procedures to be followed in exercising such authority. Thus, in determining whether the proposed purchase of a telephone system must be accomplished through competitive bidding, the provisions of R.C. 3313.37 and R.C. 3313.46 must be read in *pari materia* since both address the furnishing and equipping of schoolhouses. See Eggleston v. Harrison, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900) ("acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts").

A review of the provisions of R.C. 3313.37 leads to the conclusion that the board of education has the authority to make the proposed purchase. R.C. 3313.37(A) authorizes a board of education to "furnish the necessary schoolhouses" and to "provide the necessary apparatus and make all other necessary provisions for the schools under its control." Webster's Dictionary defines "furnish" as "to supply, provide, or equip with whatever is necessary or useful." Webster's New World Dictionary 566 (2d college ed. 1978). In State ex rel. Dunn v. Freed, 10 Ohio C.C. 294, 298 (1895), the court, in interpreting R.S. 3987, the predecessor of R.C. 3313.37, defined the term "apparatus" to include anything necessary to equip a school "so as to make it convenient and fit, in such general sense, to be occupied and used for general school purposes."

There is no question but that a telephone system is necessary, useful and/or convenient to the operation of a school. See 1978 Op. Att'y Gen. No. 78-042 (telephone equipment is essential office equipment for a county superintendent of schools). Accordingly, it must be concluded that the board of education is authorized pursuant to R.C. 3313.37(A) to obtain a telephone system through any of the methods specified therein.¹ However, whether such purchase must be accomplished through competitive bidding is dependent upon whether such purchase comes within the provisions of R.C. 3313.46.

The provisions of R.C. 3313.46 are applicable whenever a board of education determines to "furnish a schoolhouse, or make any improvements" the cost of which will exceed the statutory maximum. As previously discussed, Webster's Dictionary defines "furnish" as "to supply, provide, or equip with whatever is necessary or useful." Webster's New World Dictionary 566 (2d college ed. 1978). In State ex rel. Bryce Furnace Co. v. Board of Education, 4 Ohio N.P. 44 (1896), the court, in interpreting R.S. 3988, the predecessor of R.C. 3313.46, held that the term "furnish" is a very broad and comprehensive word, including not only desks and

¹ Additionally, it should be noted that the provisions of division (B)(5) of R.C. 3313.37 authorizing a board of education of a school district other than a county school district to "acquire the necessary office equipment for the schools under its control" may authorize the board to purchase the proposed telephone system. See 1978 Op. Att'y Gen. No. 78-042 (telephone equipment is essential office equipment for a county superintendent of schools).

furniture but also fixtures upon the buildings. Additionally, the term "improvement" is defined as "an addition or change that improves something." Webster's New World Dictionary 707 (2d college ed. 1978).

On the basis of the foregoing definitions, it must be concluded that the purchase and installation of a new and upgraded telephone system for the district's school buildings constitute both furnishing and improving a schoolhouse as those terms are used in R.C. 3313.46.

Thus, it is my opinion, and you are so advised, that the purchase of a telephone system by a board of education of a local school district which is to be installed in the district's school buildings must be accomplished through competitive bidding as provided by R.C. 3313.46 where the cost of the telephone system will exceed the statutory maximum provided in R.C. 3313.46.