

OPINION NO. 66-082**Syllabus:**

The provision of Section 3501.29, Revised Code, that a board of education must make available necessary space in a schoolhouse for use as a polling place without charge except for janitor service, prevails over the provision of Section 3313.77, Revised Code, which would authorize a board of education to charge a fee for the use of such building as a polling place.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, April 27, 1966

I have your request of February 8, 1966, for my opinion wherein you inquire whether Section 3313.77, Revised Code, limits the right of a board of elections to use public schoolhouses as polling places as authorized by Section 3501.29, Revised Code.

Section 3313.77, Revised Code, provides:

"The board of education of any city, exempted village, or local school district shall, upon request and the payment of a reasonable fee, subject to such regulation as is adopted by such board, permit the use of any schoolhouse and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following reasons:

"(A) Giving instructions in any branch of education, learning, or the arts;

"(B) Holding educational, religious, civic, social, or recreational meetings and entertainments, and for such other purposes as promote the welfare of the community; provided such meetings and entertainments shall be nonexclusive and open to the general public;

"(C) Public library purposes, as a station for a public library, or as reading rooms;

"(D) Polling places, for holding elections and for the registration of voters, or for holding grange or similar meetings."

Section 3501.29, Revised Code, provides, in part:

"* * *The board shall utilize, in so far as practicable, rooms in public schools and other public buildings for polling places. Upon application of the board of elections, the authority which has the control of any building or grounds supported by taxation under the laws of this state, shall make available the necessary space therein for the purpose of holding elections and adequate space for the storage of voting machines, without charge for the use thereof. A reasonable sum may be paid for necessary janitor service. * * *"

Sections 3313.77 and 3501.29, supra, appear to be inconsistent insofar as Section 3313.77, supra, would require a board of elections to pay a reasonable fee for the use of a schoolhouse as a polling place, and Section 3501.29, supra, is mandatory that a board of education shall make available necessary space for holding elections without charge except the payment for necessary janitor service. The history of these sections becomes important in the determination whether a board of education may charge a fee for the use of a schoolhouse as a polling place.

The 100th General Assembly, in 1953, amended Section 3501.29, supra, to include the following language:

"Upon application of the board of elections, the authority which has the control of any building or grounds supported by taxation under the laws of this state, shall make available the necessary space therein for the purpose of holding elections without charge for the use thereof. A reasonable sum may be paid for necessary janitor service." (Emphasis added)

Prior to 1953 and during the 100th General Assembly, Section 3313.77, supra, contained the following language:

"The board of education of any city, exempted village, or local school district shall, upon request and the payment of a reasonable fee, * * *for any of the following reasons:

"* * * * *"

"(D) Polling places, for holding elections and for the registration of voters, or for holding grange or similar meetings."

It is apparent that the amendment to Section 3501.29,

supra, is the later enactment and the language of Section 3313.77, quoted in part, supra, is the earlier enactment. I must follow the established rule of statutory construction that a later legislative enactment of the General Assembly, inconsistent with an earlier enactment, repeals by implication such earlier enactment. This rule was clearly enunciated by the Ohio Supreme Court in the first paragraph of the syllabus of Western & Southern Indemnity Co. v. Chicago Title & Trust Co., 128 Ohio St., 422:

"1. Where two sections of the General Code contain inconsistent provisions relating to the same subject-matter, the later enactment must prevail and the earlier is repealed by implication."

Accordingly, it is my opinion that the provision of Section 3501.29, Revised Code, that a board of education must make available necessary space in a schoolhouse for use as a polling place without charge except for janitor service, prevails over the provision of Section 3313.77, Revised Code, which would authorize a board of education to charge a fee for the use of such building as a polling place.