

**OPINION NO. 71-026****Syllabus:**

The use of the joint vocational school facilities on occasion for the preparation, serving and management of meals and banquets to organizations in the community is justified as a part of the training in the vocational food service program which is offered in the school curriculum.

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**To: Richard E. Bridwell, Muskingum County Pros. Atty., Zanesville, Ohio**  
**By: William J. Brown, Attorney General, May 27, 1971**

Your request for my opinion reads as follows:

"I have been requested by the Muskingum Area Joint Vocational School and Technical Institute to solicit your opinion concerning the legality of a current operation of their banquet facilities at the Vocational School.

"It appears that for sometime they have been using the public facilities on occasions to serve meals and banquets to organizations in the Community. On such occasions I understand they pay from the proceeds of the banquets, custodial and utility fees to the Board of Education and the profits have been placed in a separate fund called the 'Banquet Fund', which is not a part of public funds and which has been handled similar to the athletic activity funds, of which all schools have been possessed.

"The School feels that this banquet serving is a part of its training program of its vocational food service program which trains the students and instructors in the preparing, serving and management of banquets and meals. This is a part of their curriculum and they feel that most Joint Vocational Schools throughout Ohio have been so conducting.

"The State Examiner's Office has felt that 1938 O.A.G. 3486 would limit the use of the public facilities for this type of activity. The Vocational School, however, feels that the opinion did not contemplate the training of students in the vocational aspect of banquet serving. They point out R.C. 3113.91 [3313.91] allows the Board to contract with private individuals for Vocational Education and feel that this type training should have precedence over R. C. 3113.11 [3313.81-3313.811] wherein the sale of foods is not permitted.

"Your opinion will be greatly appreciated by all

such schools in Ohio and in the event that additional factual information is needed, we will be glad to provide the same."

The two statutes cited in your letter appear to be typographical mistakes. I have substituted in brackets the sections I feel you intended to cite.

Although vocational education programs were optional with school districts prior to 1967 (Section 3313.53, Revised Code; see also Sections 3311.16 to 3311.21, Revised Code), the enactment in that year of Section 3313.90, Revised Code, made such programs mandatory. Opinion No. 67-063, Opinions of the Attorney General for 1967; Opinion No. 69-166, Opinions of the Attorney General for 1969. Section 3313.90, supra, as amended in 1969, provides:

"Each school district shall establish and maintain a vocational education program adequate to prepare a pupil enrolled therein for an occupation which program shall meet standards adopted by the state board of education.\* \* \*

"In meeting standards established by the state board of education, school districts, where practicable, shall provide vocational programs in high schools. \* \* \*

"Approval of state funds for the construction and operation of vocational facilities in any school district shall be contingent upon a comprehensive vocational program plan approved by the state board of education \* \* \*. Such plan shall contain:

"(A) The organization for vocational education pursuant to the requirements of this section;

"(B) Vocational programs to be offered in the respective comprehensive high schools, in specialized schools or skill centers, and in joint vocational schools;

"(C) Remodeled, additional and new vocational facilities at the respective locations.

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Furthermore, the next section of the Code, Section 3313.91, Revised Code, provides:

"Any public board of education may contract with any public agency, board, or bureau, or with any private individual or firm for the purchase of any vocational education \* \* \* service \* \* \* and may pay for such services with public funds. Any such vocational education \* \* \* service \* \* \* shall meet the same requirements, \* \* \* as those required of the public schools and be approved by the state department of education."

The supervisory authority of the State Board of Education over the vocational training program, established in the above statutes, is, of course, consonant with the general supervision granted to the Board over the entire system of public education in Ohio. 48 O. Jur. 2d 702. Section 3301.07, Revised Code, provides:

"The state board of education shall exercise under the acts of the legislature general supervision of the system of public education in the state of Ohio. In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:

"(A) It shall exercise policy forming, planning and evaluative functions for the public schools of the state, \* \* \*.

"(B) It shall exercise leadership in the improvement of public education in Ohio, \* \* \*.

\* \* \* \* \* \* \* \*

"(D) It shall formulate and prescribe minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality. Such standards shall provide adequately for: a curriculum sufficient to meet the needs of pupils in every community; \* \* \*.

\* \* \* \* \* \* \* \*

"(J) It may adopt such rules and regulations as are necessary for the carrying out of any function imposed on it by law, \* \* \*.

\* \* \* \* \* \* \* \*

The Supreme Court has held that the authority conferred upon a board of education to adopt rules and regulations to carry out its statutory functions vests in the board a wide discretion, Greco v. Roper, 145 Ohio St. 243, 249 (1945); provided, of course, that specific statutory limitations on the board's authority are not exceeded, Verberg v. Board of Education, 135 Ohio St. 246 (1939). "The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933).

In this case the joint vocational school states that its curriculum includes a food service program which gives training in the preparation, serving and management of meals and banquets; that, as part of this program, the school facilities are used "on occasion" to serve meals and banquets to organizations in the community; and that most joint vocational schools throughout the state include the

same food service program in the curriculum. We have been informed by the Director of Vocational Education that the State Board of Education leaves it to the local boards to formulate their local curricula under the State Board's general guidance; that this particular part of the curriculum of the Muskingum Area Joint Vocational School and Technical Institute has been approved; and that similar food service programs appear in the curricula of other vocational schools throughout the state.

According to your letter, the state examiner feels that Opinion No. 3486, Opinions of the Attorney General for 1938, together with Sections 3313.81 and 3313.811, Revised Code, limit the use of public school facilities for this type of activity.

Opinion No. 3486, supra, in interpreting Section 4762-1, General Code, held that, while school lunchroom facilities could be used to serve meals or banquets to school organizations whose membership was limited strictly to the students or the faculty of the district, they could not be so used for organizations whose membership consisted partly or wholly of outsiders, such as parent-teachers associations, churches, or W.P.A. clubs. At that time, Section 4762-1, supra, which is the predecessor of Sections 3313.81 and 3313.811, supra, placed strict limits upon the use of school lunchroom facilities. It provided:

"The board of education of any school district, may provide facilities in the schools under its control for the preparation and serving of lunches to the pupils, the teachers, and to other employees therein, and may provide the management of such lunchrooms, which shall not be operated for profit;\* \* \*.

"No board of education, the principal or teacher of any school room or class organization of any school district will be permitted to sell \* \* \* foods \* \* \* for profit on the school premises except when the profit \* \* \* is to be used for school purposes or for any activity in connection with the school \* \* \*.

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\* \* \*

(Emphasis added.)

Opinion No. 3486, supra, read the term "lunches" broadly, but gave a strict interpretation to "pupils", "teachers", and "other employees".

In 1943, however, the General Assembly enacted a recodification and revision of the school laws. 120 Ohio Laws, 475-611. Section 4762-1, supra, was replaced by Section 4839-6 (120 Ohio Laws, 534-535, 609-610) with the following significant additions to the first paragraph:

"The board \* \* \* may provide facilities \* \* \* for the preparation and serving of lunches, and other meals or refreshments to the pupils, teachers, and to other employees therein, and to other persons taking

part in or patronizing any activity in connection with the schools.\* \* \*."

(Emphasis added.)

It seems obvious that this revision was designed to accept the broader reading of the original statute, and at the same time to reject the narrower one, given by my predecessor in Opinion No. 3486, supra. All of the essential language of this revision now appears in Section 3313.81, supra. The second paragraph of the original statute, Section 4762-1, General Code, now appears in Section 3313.811, supra.

Furthermore, it should be noted that Opinion No. 3486, supra, was concerned with the use of lunchroom facilities in connection with extracurricular activities, rather than with the use of school facilities in furtherance of a training program offered in the curriculum. When faced with the latter problem, the same Attorney General gave a quite different answer. The Superintendent of the State School for the Blind asked whether it would be proper to sell candy, tobacco and light refreshments to the public as part of the training of students to manage stands in Federal Buildings. In Opinion No. 2440, Opinions of the Attorney General for 1938, the answer given was that, under the applicable statutes:

"\* \* \* [A] vast discretion is given to the director of education and Superintendent of the State School for the Blind, in offering courses of study for the instruction and vocational education of the pupils at the State School for the Blind \* \* \*.

"\* \* \*

\* \* \*

\* \* \*

"Therefore, in specific answer to your question it is my opinion that, it is within the discretion of the director of education and the Superintendent of the State School for the Blind to offer as a course of study to the pupils of the State School for the Blind instruction in stand operations; and that, in order to effectively train such pupils in operating such stand the director of education and the Superintendent of the State School for the Blind, would have authority to erect and equip upon the campus of such school a model stand, erected and equipped in exact conformity with the type of stand adopted for use in federal buildings, wherein there would be sold or offered for sale merchandise, foods, candies, or like supplies to the public, for profit, and all profit derived from such sales would be used for the purposes of the State School for the Blind or for any activity in connection with such school."

In view of the foregoing, and in view of the further fact that there is statutory provision for extensive use of school facilities by community groups (Sections 3313.75 to 3313.79, Revised Code; Spayde, Ohio School Law (7th ed.), Text, 25.01-25.12), I conclude that the use of the joint vocational school facilities in the manner described in your letter is proper. I would caution, however, that the preparation and serving of such banquets should not go beyond what is reasonably necessary to fulfill the requirements of the curriculum (see Opinion No. 70-061, Opinions of the Attorney General for 1970).

In specific answer to your question, it is my opinion and you are advised that the use of the joint vocational school facilities on occasion for the preparation, serving and management of meals and banquets to organizations in the community is justified as a part of the training in the vocational food service program which is offered in the school curriculum.