

OPINION NO. 66-095

Syllabus:

A board of education may expend public funds to pay the costs to the Division of Guidance and Testing, Ohio State Department of Education of pupils participating in a state-wide system of testing pupils in the public schools.

To: E. E. Holt, Superintendent of Public Instruction, Department of Education,
Columbus, Ohio

By: William B. Saxbe, Attorney General, May 20, 1966

Your request for my opinion reads as follows:

"A Division of the Department of Education, the Division of Guidance and Testing, administers a statewide system of testing pupils in the public schools for proficiency in specific subject areas.* * *

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"The Division of Guidance and Testing makes a charge of ten cents per participating pupil for the preliminary test and a charge of one dollar per pupil for the final test. There are other extremely nominal charges connected with the administration of the tests such as grading sheets at a cost of six cents each.

"It has been questioned whether boards of education may expend public funds to enable students to participate in this testing program. I would appreciate receiving your opinion on this question."

The powers and duties of a board of education are strictly limited by statute. Schwing vs. McClure, et al., Trustees, 120 Ohio St., 335, states in paragraph 1 of the syllabus, as follows:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

In view of the restrictions limiting the powers and duties of a board of education, it is necessary to analyse the testing program about which you inquire and its use by school authorities in order to determine if the statutory provisions governing the expenditure of public funds for school use will permit a board of education to make such expenditures.

Each year the Division of Guidance and Testing forwards to recognized high schools, information concerning the description and rules for a testing program. The courses covered in the program are approved graded courses of academic study. Individual schools elect whether or not they desire to participate in the program covering the courses of instruction offered in their own schools.

The entire testing program is divided into two series; a preliminary test and a final test. The preliminary tests are administered and scored by the local schools. Each school forwards the test results to the Division of Guidance and Testing where statewide norms are computed with the percentiles, by subject, being reported to each participating school.

Section 3313.642, Revised Code, provides:

" * * *the board of education of a city, exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge* * *"

(Emphasis added)

Section 3315.061, Revised Code, provides:

"The board of education of any school district may expend funds for the purpose of conducting or entering into contracts for, studies or surveys pertaining to school district organization and building needs, curriculum and instructional needs* * *"

(Emphasis added)

Section 3315.06, Revised Code, provides:

"The board of education of each county school district may provide programs, examinations, school records, diplomas, and other necessary supplies and equipment for the use of the county superintendent in furthering the in-

structional program of the county school district."

(Emphasis added)

The statutes permit a board of education to furnish examinations, materials pertaining to courses of instruction, and necessary items for curriculum and instructional needs. Therefore, it would seem appropriate that if a board of education made the decision that the preliminary testing program was to be considered as material pertinent to certain academic courses, or that the results were to be used to evaluate curriculum and instructional needs, the expense of such program would be a valid use of public funds. I am constrained to say that such a testing program would appear to be of value to the superintendent "in furthering the instructional program of the county school district." Such a program would reveal to school administrators a particular district's academic stature in certain subjects as compared to other schools; therefore, such knowledge would be valuable in planning future academic policies, so as to improve the educative process in that school district.

In consideration of the final testing aspect of your inquiry, I am not unmindful of the fact all students do not participate. However, I believe that this program has sufficient relationship to a graded course of study to justify the expenditure.

Therefore, it is my opinion and you are hereby advised that a board of education may expend public funds to pay the costs to the Division of Guidance and Testing, Ohio State Department of Education of pupils participating in a state-wide system of testing pupils in the public schools.