

OPINION NO. 65-143**Syllabus:**

1. Since the authority of a board of education is limited strictly to such powers as are expressly granted by statute or clearly implied, a board of education cannot participate in the financing of a community planning program unless a contractual relationship pursuant to Section 3315.061, Revised Code, is present.

2. A village board of trustees of public affairs is restricted in its actions to those specifically authorized by statute or implied by necessity, and such a board cannot contribute funds to finance a community planning program since there is no statutory authorization for such action.

3. The Department of Public Service of a city may expend funds only as authorized, and may participate in financing a community planning program if the legislative authority of that city has specifically granted this power to the Department of Public Service.

**To: F.P.Neuenschwander, Director, Ohio Department of Development,
Columbus, Ohio**

By: William B. Saxbe, Attorney General, August 5, 1965

I have before me your letter of June 25th in which you stated the following request for my opinion:

"As you know, this Department is responsible for the administration of the Urban Planning Assistance Program whereby communities and counties receive assistance through this Department in establishing community planning programs, and in receiving Federal grants for the purpose of carrying out the activities of those programs. These grants are made available on a matching basis whereby the local communities must share in a substantial portion of the cost.

"Representative of several communities have requested personnel of our staff as to whether village or city boards of public affairs or district school boards may share a portion of the local cost of a planning program if such boards are willing to participate. The portion of the cost which would be requested or provided for by these boards would represent funds which would be used in assisting in the financing of the portion of the study which relates to the specific duties and objectives of these boards. For example, the funds of the school board would be used to finance the portion of the cost of the study for long-range planning for school activities, sites, needs, etc.

"In conjunction with the above, we hereby request your opinion on the following: 'Can village or city boards of public affairs and/or school boards participate in financing a community planning program when these funds would be financing a portion of the study which directly relates to the specific duties of these boards?'"

The core of your question is whether or not a village or city board of public affairs or a school board can expend funds in the manner described in your letter. A board of education is, by statute, a body politic and corporate in law, invested with certain corporate powers, and charged with the performance of certain public duties. These powers are to be exercised, and these duties discharged, in the manner prescribed by law. See McCortle v. Bates, 29 Ohio St., 419. The authority of a board of education is derived solely from the statutes, both

duties and authority being clearly defined by legislation, and is limited strictly to such powers as are expressly granted or clearly implied. See Board of Education v. Ferguson, 68 Ohio App., 614. Therefore, before any expenditure of public funds may be made by such a body, there must be specific authorization for that action in the creating statute. The construction of statutory authorization has been especially strict when a financial transaction is involved, as shown by the following statement from Opinion No. 5846, Opinions of the Attorney General for 1943, page 108:

"It is equally well settled that the authority of administrative boards such as boards of education, to act in financial transactions must be clearly and distinctly granted and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the political subdivision for which the board acts.

"State, ex rel. v. Menning, 95
O.S. 97;
State, ex rel. v. Pierce, Auditor,
96 O.S. 44;
Peter v. Parkinson, Treasurer,
83 O.S., 36."

The pertinent sections of the Ohio Revised Code are Chapter 3313, Revised Code, "Boards of Education", and Chapter 3315, Revised Code, entitled "School Funds". The general corporate powers of a school board are prescribed in Section 3317.17, Revised Code, as follows:

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."

Section 3313.37, Revised Code, states in part:

"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 schoolrooms, either within or without the district, and provide the necessary apparatus and make all necessary provisions for the schools under its control." (Emphasis added)

Section 3313.37, supra, was the subject of a question similar to the one at hand, Opinion No. 2456, Opinions of the Attorney General for 1961, page 472. In reference to that statute, my predecessor made the following statement at page 476:

"It would be unreasonable to presume that these words referred to the authority of a board of education of a city, local or exempted village school district to contract for a comprehensive school survey including building-related studies; and to adopt such an interpretation of Section 3313.37, Revised Code, would be to go against the commonly accepted rule in this state as set out in the second paragraph of the syllabus in State ex rel. Clark v. Cook, 103 Ohio St., 465:

"Boards of education and other similar government bodies are limited in the exercise of their powers to such as are clearly and distinctly granted."

On the basis of this reasoning, it is my opinion that Section 3313.37, supra, does not authorize a school board to participate in financing a community planning program even though the study relates to the specific duties and objectives of the board.

Section 3315.061, Revised Code, states:

"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, and needs for improved or additional services that may be rendered by such board. The board of education of any school district may publish reports prepared in connection with such activities."

Prior to 1963, Section 3315.061, supra, referred to "a county board of education" instead of the "board of education of any school district". In 1963, Section 3315.061, supra, was amended "to authorize the board of education of any school district to conduct studies or surveys". 130 Ohio Laws, at page 1610. The question remains whether this provision as it now stands is sufficient authorization to enable a board of education to contribute funds to a community planning program. It is important here to note the development of Section 3315.061, supra. Before the 1963 amendment, there was no mention of a contract in that section. However, the power to contract had been implied before 1963. In Opinion No. 2456, Opinions of the Attorney General for 1961, page 471, the following statement appears at page 477:

"* * *it will be noted that Section 3315.061, supra, does not give specific authority to a county board of education to contract for surveys, but such may be reasonably implied from the specific authority to expend funds for surveys and from the specific authority to contract as set out in Section 3313.17, Revised Code."

The necessity of this implication was alleviated in 1963 when the statute was amended to read that funds could be expended "* * *for the purpose of conducting, or entering into contracts for * * *", studies or surveys. It now appears that a school board may choose either one of two alternatives: first, to conduct its own survey or study or, second, to enter into a contract calling for the performance of the survey or study by an outside party. There is no authorization present to allow a board of education to simply contribute funds toward the financing of a community planning program. Such an action would be neither conducting its own survey or study nor entering into a contractual relationship to insure performance. The "participation" must take place on a strict contractual basis if the requirements of Section 3315.061, supra, are to be satisfied. The "portion of the study which directly relates to the specific duties and objectives of the boards" will have to be defined sufficiently to allow the formation of a contract between the board of education and the community planning program. Otherwise the board of education would be stepping outside of its statutory authorization to expend public funds. Therefore, it is my opinion that a board of education cannot participate in financing a community planning program unless a contract is entered into between the board and the planning program which is sufficient to demonstrate the relationship involved, and define the obligations present.

Provision is made by statute for a board of trustees of public affairs in villages in Section 735.28, Revised Code. The powers and duties of such a board are, gen-

erally, to manage, conduct, and control the public utilities of the village. See Section 735.29, Revised Code. Since a village board of trustees of public affairs is an administrative board, such a body is restricted in its actions to those specifically authorized by statute or implied by necessity, especially in the case of a financial transaction. I can find no provision in the Revised Code, which might be so interpreted as to authorize the contribution by a village board of trustees of public affairs to a community planning program. A creature of statute cannot act except as authorized by statute. Therefore, a village board of trustees of public affairs cannot contribute funds to finance a community planning program.

The city counterpart of the village board of trustees of public affairs is the Department of Public Service. This office is the subject of sections 735.01 to 735.02, Revised Code. Section 735.02, supra, provides in part:

"* * *He shall have the management of all other matters provided by the legislative authority of the city in connection with the public service thereof."

The legislative authority of the city derives its power of self-government from Section 3, Article XVIII, Ohio Constitution:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

(Emphasis added)

Thus, it appears that a city director of public service has the power that the legislative authority of his city grants him. I can find no provision which would prohibit the granting by the legislative authority of the power to expend funds of the public service department in the manner described in your request letter. Without this authority, however, no such action could be taken.

Therefore, a public service department of a city may expend funds to participate in financing a community planning program if the legislative authority of that city has specifically granted this authority to the public service department.

In view of the foregoing, it is my opinion and you are advised that:

1. Since the authority of a board of education is

limited strictly to such powers as are expressly granted by statute or clearly implied, a board of education cannot participate in the financing of a community planning program unless a contractual relationship pursuant to Section 3315.061, Revised Code, is present.

2. A village board of trustees of public affairs is restricted in its actions to those specifically authorized by statute or implied by necessity, and such a board cannot contribute funds to finance a community planning program since there is no statutory authorization for such action.

3. The Department of Public Service of a city may expend funds only as authorized, and may participate in financing a community planning program if the legislative authority of that city has specifically granted this power to the Department of Public Service.