

OPINION NO. 91-004**Syllabus:**

It is within the discretion of the State Board of Education to determine whether privately produced television programming, used on a daily or regular basis, which contains commercial advertising satisfies the minimum standards promulgated by the State Board of Education pursuant to R.C. 3301.07.

To: Franklin B. Walter, Superintendent of Public Instruction, Columbus, Ohio
By Anthony J. Celebrezze, Jr., Attorney General, January 11, 1991

I have before me your request for my opinion with respect to the following questions:

1. May privately produced television programming which contains commercial advertising be used within the context of the regular school day and counted as a portion of the minimum standards for

elementary and secondary schools promulgated by the State Board of Education pursuant to R.C. 3301.07?

2. May television programming containing commercial advertising be used in the classroom on a daily or regular basis?

Your letter included the information that these questions arose as a result of the existence of a private television company that offers to schools a daily (five days per week) twelve-minute news broadcast that contains two minutes of commercial messages. The company offers the school district the use of a certain amount of video equipment in return for the school district's promise to show each daily news broadcast, including commercials, to its pupils.

As a preliminary matter, I note that the State Board of Education (hereinafter "state board") is established by art. VI, §4 of the Ohio Constitution, which provides that "[t]he respective powers and duties of the board...shall be prescribed by law." Under this constitutional mandate, the General Assembly has set forth the powers of the state board in R.C. 3301.07, which provides in relevant part as follows:

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

....

(D) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality....

Your first question asks whether privately produced television programming which contains commercial advertising may be used within the context of the regular school day and counted as a portion of the minimum standards for elementary and secondary schools promulgated by the state board pursuant to R.C. 3301.07. The General Assembly has expressly delegated the authority to prescribe minimum requirements for curriculum and instructional materials for elementary and secondary schools to the state board. R.C. 3301.07. Further, the state board has the authority to determine whether such standards have been met. R.C. 3301.16. The minimum standards promulgated by the state board appear at 3 Ohio Admin. Code Chapter 3301-35. In general, these standards govern the educational programs for elementary and secondary schools and the educational resources used to implement such programs. A minimum amount of time for planned instruction in various subjects is required for kindergarten through grade twelve. Additionally, the state board has established requirements for the resources used to implement the educational program.¹

The question of whether privately produced television programming containing commercial advertising which is used during the course of the school day satisfies the minimum standards promulgated by the state board is a question which may be answered more appropriately by the state board. *See, e.g.*, 1990 Op. Att'y Gen. No. 90-032 (the Attorney General has no authority to make a decision on behalf of the Department of Liquor Control where the authority to make such decision has been conferred upon the Department); 1988 Op. Att'y Gen. No. 88-001 (the determination of whether released-time religious instruction may satisfy the minimum standards is a question for the state board).²

¹ I note that none of the minimum standards specifically address the question of television programming. It is, however, within the reasonable discretion of the State Board of Education (hereinafter "state board") to promulgate such rules. R.C. 3301.07.

² Although it is within the discretion of the state board to determine whether television programming containing commercial advertisements may

The determination by the state board as to whether privately produced television programming which contains commercial advertising may be used to satisfy the minimum standards depends upon whether it complies with Ohio Admin. Code 3301-35-03(B). This section provides, in relevant part, that "[i]nstructional materials and equipment shall support attainment of objectives specified in courses of study."³ Thus, the state board must determine that in order to satisfy these minimum standards the television programming and commercial advertisements are used to achieve specific objectives within a course or courses of study.

Your second question asks whether television programming containing commercial advertising may be used in the classroom on a daily or regular basis. Since the frequency of the use of any particular type of instructional material is not relevant to the determination of whether it satisfies the minimum standards, I do not offer a separate answer to your second question.

Accordingly, it is my opinion, and you are hereby advised that it is within the discretion of the State Board of Education to determine whether privately produced television programming, used on a daily or regular basis, which contains commercial advertising satisfies the minimum standards promulgated by the State Board of Education pursuant to R.C. 3301.07.

be used to satisfy the minimum standards promulgated by the board, it is the responsibility of the district school board, with the advice and assistance of its own counsel, to determine whether the acquisition and use of such programming is in accordance with R.C. 3313.061, which addresses the authority of the district board to secure television programming for its classes. For this reason, I do not address the applicability of R.C. 3313.061 in this opinion.

³ Although I do not offer an opinion as to whether commercial television advertising may satisfy the minimum standards promulgated by the state board pursuant to R.C. 3301.07, I note that the California State Superintendent of Public Instruction recently determined that watching televised commercial advertisements was not an "educational activity" and, in fact, that the value of the instructional time lost by engaging in such an activity would amount to approximately \$29,765,408 annually for grades nine through twelve. Memorandum of Bill Horig, California Superintendent of Public Instruction, August 1, 1989. *But see* 1990 Op. Att'y Gen. Ky. No. 90-42, at 101 (Kentucky Attorney General stated "that the two minutes of advertisements, from a legal point of view, may be considered *de minimus*").