

## OPINION NO. 66-030

## Syllabus:

1. The term "other public calamity" used in Section 3317.01, Revised Code, must be interpreted by applying the generally accepted meaning of the words to a situation which exists or has existed in a community; this term does not have such an exact legal meaning that it could be ruled as a matter of law as to what emergency conditions would or would not amount to an "other public calamity."

2. Boards of education of city, exempted village, and local school districts are by statute vested with the duty to control and manage the schools in their districts, and such boards have the duty, in the exercise of their sound discretion, to make the initial determination that a condition constituting an "other public calamity" within the meaning of Section 3317.01, Revised Code, exists in the school district and that it is necessary to close the schools or a school in such district.

3. The Superintendent of Public Instruction is charged by Section 3317.01, Revised Code, with the duty to waive certain requirements of that section where he finds that "it had been necessary" for a school to be closed; therefore, it is within his discretion to determine the amount and kind of evidence he requires to show that a board of education did not abuse its discretion and that a condition amounting to "other public calamity" in fact existed.

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

By: William B. Saxbe, Attorney General, February 3, 1966

Your request for my opinion reads:

"This office recently forwarded to superintendents of all school districts in the state an abstract of Attorney General's Opinion No. 65-198,

together with a discussion of Section 3317.01 (B), Revised Code, containing my views on calamity days, a copy of which is enclosed. Considerable discussion has arisen concerning the meaning of 'calamity' as used in that section.

"I would appreciate receiving your opinion concerning 'other public calamity' as that term is used in Section 3317.01 (B), Revised Code:

"1. What constitutes an 'other public calamity'?

"2. Who may determine when an 'other public calamity' has occurred?

"3. Does an 'other public calamity' exist when a superintendent determines it is unsafe for school buses to travel the roads due to an accumulation of ice or snow?

"4. What evidence of an 'other public calamity' may be required by the Superintendent of Public Instruction before he may waive the 180 day requirement contained in Section 3317.01 (B), Revised Code?"

Subdivision (B), Section 3317.01, Revised Code, as amended effective August 16, 1965, reads:

"(B) Beginning July 1, 1966, the school year next preceding the fiscal year for which such payments are authorized consisted of not less than one hundred eighty-two days during which the schools of the district were actually open for instruction, including such days, not exceeding two, for the professional meetings of teachers when such days occurred during a regular school week and the schools were not in session, except that this requirement shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed because of disease epidemic, temporary circumstances rendering the school building unfit for school use, or other public calamity, provided the number of days the school was actually open for instruction with pupils in attendance is not less than one hundred seventy-five."

The General Assembly has not defined the term "other public calamity" or that of "public calamity." Webster's Third New International Dictionary shows that the word "calamity" refers to "a state of deep distress or misery connected with major misfortune or loss" or "an extraordinarily grave event marked by great loss and lasting distress and affliction" and mentions both flood and drought.

You have inquired specifically concerning situations caused by ice or snow. I have no doubt that ice or snow, as well as other weather conditions, could create a state of public calamity in any community, but, manifestly, snow, ice, rain or wind would not in every instance amount to such a catastrophe. Also, there is nothing in Section 3317.01, supra, which suggests to me that a condition constituting an

"other public calamity" can result only from weather conditions; in my opinion, the possible causes are limitless.

Whether or not a community has suffered a "calamity" or "other public calamity" would in every case be a question of fact depending upon the then-existing conditions in the area affected. These terms used by the legislature do not lend themselves to such exact legal definition that I could define them as a matter of law and rule that one happening would create a calamitous condition while another would not.

You have next inquired as to the responsibility for determining that the schools or a school in a district must or should be closed because of the emergency conditions existing. Section 3313.48, Revised Code, directs each board of education to provide free schools for the school-age children in the district and establishes minimum requirements both as to the number of days during which the schools shall be open for instruction in each school year and the number of hours in each school day. Section 3313.63, Revised Code, authorizes boards of education to dismiss their schools on the holidays designated therein.

Subject to these requirements, however, it is the board of education which determines the length of each school term, including the designation of the beginning and ending dates and the number of days within that period which shall be vacation days. The General Assembly, by Section 3313.47, Revised Code, places upon the board of education of each city, exempted village and local board of education the duty to manage and control the schools of its district. Section 3313.20, Revised Code, authorizes such boards to adopt the rules and regulations necessary for its government and that of the employees and pupils of the school.

Section 3317.01, Revised Code, which is part of the school foundation law of Ohio, establishes certain requirements which must be met in any district which participates in the distribution of funds under that program. In order to be eligible to receive an allocation of funds, the board of education must establish a school year which complies with the directions therein. After establishing the number of days necessary for a qualifying school year, that section directs:

"\* \* \*except that this requirement shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed\* \* \*." (Emphasis added)

I do not interpret this language as requiring you to make the initial determination that it is necessary for a school to be closed on a specific day or days for any of the reasons included in Section 3317.01, Revised Code. The use of the words "had been" suggests to me that the act has been completed, that is, the schools have been closed before the question of waiver comes to your attention. Also, quite apparently, a condition amounting to an "other public calamity" is one which might arise without warning and require an immediate decision that the schools must be closed. Section 3317.01, Revised Code, does not by its express terms remove this decision from the board of education of the district, and I am unable to conclude that there is any language in that section which does so by implication. In addition, that section does not require that the schools be open for instruction on any specific days; in my opinion a board of education may, after determining that the schools must be closed on certain days, substitute other days for those during which emergency conditions existed and thur:

meet the requirements of the said section. In such a situation, it would not be necessary for you to determine whether or not it was necessary to close the schools and to exercise the power of waiver granted to you.

In your letter you have referred specifically to conditions making it unsafe to operate the school buses in a district. Section 3317.01, Revised Code, requires only that the schools of the district be open for instruction. I am not persuaded that in every instance it would be necessary, or even proper, to close the schools of a district because it would not be wise to have all or part of the school buses in operation. This, in my opinion, is also a matter to be determined by the board of education in the exercise of its sound discretion.

By Section 3317.01, Revised Code, and within the limits of that section, you are charged with the duty to waive the requirement that the schools of a district be open for the entire number of days specified by the legislature. I do not, however, look upon this language as requiring you to act without any review of the events which prompted a board of education to close one or more schools in its district. It is my conclusion that you may decline to waive the requirements of the said section where you determine, after review of the existing facts, that a board of education abused its discretion in reaching the conclusion that a school must be closed. This, in every instance, is a factual question to be resolved when you are called upon to exercise the duty imposed upon you by Section 3317.01, supra.

You have further inquired as to what evidence you should require as to the necessity for closing a school or schools. This, too, in my opinion, is a question of fact to be resolved by you in each instance. The kind and degree of proof may well vary from situation to situation. In some cases the existing conditions could be such a matter of public knowledge that you would find no need for supporting evidence; in others, I would assume, you may find it necessary to ask boards of education to furnish evidentiary material as proof of situations which caused them to find it necessary to close the schools.

As you have mentioned, in Opinion No. 65-198, Opinions of the Attorney General for 1965, issued November 12, 1965, I found that a school must be open not less than 175 days in a school year in order to qualify for school foundation funds.

It is, therefore, my opinion and you are advised:

1. The term "other public calamity" used in Section 3317.01, Revised Code, must be interpreted by applying the generally accepted meaning of the words to a situation which exists or has existed in a community; this term does not have such an exact legal meaning that it could be ruled as a matter of law as to what emergency conditions would or would not amount to an "other public calamity."
2. Boards of education of city, exempted village, and local school districts are by statute vested with the duty to control and manage the schools in their districts, and such boards have the duty, in the exercise of their sound discretion, to make the initial determination that a condition constituting an "other public calamity" within the meaning of Section 3317.01, Revised Code, exists in the school district and that it is necessary to close the schools or a school in such district.
3. The Superintendent of Public Instruction is charged by Section

§317.01, Revised Code, with the duty to waive certain requirements of that section where he finds that "it had been necessary" for a school to be closed; therefore, it is within his discretion to determine the amount and kind of evidence he requires to show that a board of education did not abuse its discretion and that a condition amounting to "other public calamity" in fact existed.