

OPINION NO. 81-005**Syllabus:**

1. A board of county commissioners is required by R.C. 3319.19 to provide and equip offices for the county superintendent of schools and for programmatic personnel who assist the superintendent, as members of his staff, in fulfilling his duties and responsibilities as the chief executive officer of the county board of education. (1958 Op. Att'y Gen. No. 3051, p. 695, approved and expanded.)

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2. Because the superintendent's offices are, pursuant to R.C. 3319.19, to be used by the county board of education when it is in session, and because the board's meetings are required by R.C. 121.22 to be open to the public, the duty of the board of county commissioners to provide and equip offices includes the duty to provide some type of conference facility; there is, however, no requirement that the county commissioners provide a conference facility which is also suitable for use as a training facility.
3. A board of county commissioners has no duty to create and maintain a library facility for the use of area schools.

To: William F. Schenck, Greene County Pros. Atty., Xenia, Ohio
By: William J. Brown, Attorney General, March 13, 1981

I have before me a request from your predecessor for my opinion in response to the following three questions:

1. Does R.C. 3319.19 require a board of county commissioners to provide offices for certain programmatic personnel in the employ of a county board of education, such as: (1) elementary, secondary and EMR consultants; (2) speech, language and hearing therapists; (3) learning disabilities consultants; (4) the director of the severe behavioral disorders program; and (5) psychologists?
2. Does the commissioners' obligation under R.C. 3319.19 extend to providing a training and conference facility?
3. Does the commissioners' obligation under R.C. 3319.19 extend to providing and equipping a library facility?

R.C. 3319.19 provides as follows:

The board of county commissioners shall provide and equip offices in the county for the use of the county superintendent of schools, and shall provide heat, light, water, and janitorial services for such offices. Such offices shall be the permanent headquarters of the superintendent and shall be used by the county board of education when it is in session. Such offices shall be located in the county seat or upon the approval of the county board of education may be located outside the county seat.

As indicated in the request, one of my predecessors has construed this statute to require that the county commissioners provide offices for those assistants and clerical employees of a county superintendent of schools who constitute his staff. 1958 Op. Atty Gen. No. 3051, p. 695. This opinion was based on the following reasoning, set forth at 696:

It will be noted that the statute uses the word "offices," not "office." Certainly the offices of the county superintendent may include more than one room, and may include an extensive suite of rooms if the number of his assistants and clerical staff demands it. The purpose of providing him with offices is not merely for his personal comfort, but rather that he may have the facilities for performing the duties and fulfilling the responsibilities incident to his office.

I concur in my predecessor's reasoning and agree that the obligation of a board of county commissioners under R.C. 3319.19 extends to providing offices for the assistants and clerical employees of a county superintendent of schools who constitute his staff.

R.C. 3319.01 provides that the superintendent shall be the executive officer of the county board of education. As executive officer, the county superintendent of schools has the responsibility, with regard to local school districts under the supervision of the county board, of "assign[ing] teachers and other employees of the schools. . . , assign[ing] the pupils of the schools. . . to the proper schools and grades. . . , and perform[ing] such other duties as the board determines." R.C. 3319.01. Included within the superintendent's responsibility of assigning pupils to proper schools and grades is his responsibility of assigning those students in need of special educational instruction to the proper special education classes and programs in the schools under his supervision. See R.C. 3323.04 ("state board shall require the board of education of each school district to place each handicapped child of compulsory school age residing within the district in an appropriate education program in accordance with section 3319.01 of the Revised Code, which may include instruction in regular classes, a special education program, or any combination thereof"). In directing and overseeing the special education classes and programs under his supervision, it may be necessary for the superintendent to employ qualified special education specialists to assist him. In fact, according to R.C. 3317.11 the county board of education must provide proper supervision of all educational instruction under the county board's jurisdiction. R.C. 3317.11 states, in pertinent part, that "[e]very local school district shall be provided supervisory services by its county board of education as approved by the state board of education." The county superintendent, as chief executive officer of the county board of education, is responsible for assuring that such required supervision is provided.

Certain of the programmatic personnel involved in the instant request are certified by the State of Ohio as special education instructors or teachers. In particular, EMR consultants; speech, language and hearing therapists; learning disabilities consultants; director of the severe behavioral disorders program; and psychologists are so certified. See R.C. 3319.22. The remaining personnel listed in the question, elementary and secondary consultants, serve as supervisors of elementary and secondary instruction in the schools under the county board's jurisdiction. Further, the Greene County Superintendent's Office has informed my staff that all the programmatic personnel involved in this request serve in supervisory capacities, assisting the superintendent in fulfilling his duties and responsibilities in overseeing and directing all educational instruction under the county board's jurisdiction.

Of additional significance is R.C. 3319.02, which provides the superintendent with the authority to nominate such personnel as those involved in this request for employment by the county board of education. R.C. 3319.02 reads, in pertinent part, as follows: "On nomination of the county superintendent of schools a county board of education may employ supervisors, special instruction teachers, and special education teachers." It is reasonable to conclude that the superintendent has been given statutory authority to nominate supervisors and special instruction and education teachers because of the superintendent's need for such personnel to assist him in fulfilling his duties and responsibilities as chief executive officer of the county board of education.

Based upon the fact that all the programmatic personnel involved in this request are either supervisors, special education specialists, or both, upon the superintendent's need for such personnel to assist him in fulfilling his responsibilities in the area of special education as well as for all other educational instruction under the county board's jurisdiction, and upon the fact that the legislature has provided the authority, in R.C. 3319.02, for the superintendent to nominate such personnel for employment with the county board of education, it is apparent that the superintendent employs such programmatic personnel to assist him as members of his staff. Thus, it is my opinion that the programmatic personnel to which the question relates, all of whom are either special education specialists or supervisors nominated by the superintendent for employment and acting as supervisors in the educational system under the jurisdiction of the county board of education, are "assistants" to the superintendent, as that word is used in

1958 Op. No. 3051, and constitute a part of his working staff. Accordingly, the office space they require as members of the superintendent's staff is included in the "offices" the county commissioners are required to provide for the superintendent pursuant to R.C. 3319.19.

With regard to conference facilities, the subject of the second question, I note that R.C. 3319.19 uses the term "offices" and does not expressly mention any type of training or conference facilities. The statute does, however, state that such offices "shall be used by the county board of education when it is in session." A county board of education is comprised of five members. R.C. 3311.052. All of its meetings are required to be open to the public. R.C. 121.22. Because of the size of the board and its duty to hold open meetings, it would appear to be essential to include some type of conference facility within the offices provided under R.C. 3319.19. While it may be beneficial to use such a conference facility as a training facility as well, the board of county commissioners has no duty under R.C. 3319.19 to specifically size or equip a facility for this dual purpose.

The third question asks whether the county commissioners have an obligation under R.C. 3319.19 to provide library facilities. It is my understanding that the library facility in question would contain films and books which would be available to area schools for temporary use in their academic programs. The library would serve as a general depository for print and media resources, enabling each school to have access to a wide variety of material. A board of county commissioners has no express or necessarily implied duty under R.C. 3319.19 to provide such a facility. The statutory duty to provide and equip offices for a county superintendent of schools in no way imposes an obligation to create a library for the use of county schools. This conclusion is bolstered by R.C. 3375.14, which governs the establishment, control and maintenance of school libraries, and R.C. 3375.18, which enables a board of education to render library service to the inhabitants of a school district, and confers these powers specifically upon "[t]he board of education of any city, exempted village, or local school district." These statutes, however, do not mention a county board of education.

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

1. A board of county commissioners is required by R.C. 3319.19 to provide and equip offices for the county superintendent of schools and for programmatic personnel who assist the superintendent, as members of his staff, in fulfilling his duties and responsibilities as the chief executive officer of the county board of education. (1958 Op. Att'y Gen. No. 3051, p. 695, approved and expanded.)
2. Because the superintendent's offices are, pursuant to R.C. 3319.19, to be used by the county board of education when it is in session, and because the board's meetings are required by R.C. 121.22 to be open to the public, the duty of the board of county commissioners to provide and equip offices includes the duty to provide some type of conference facility; there is, however, no requirement that the county commissioners provide a conference facility which is also suitable for use as a training facility.
3. A board of county commissioners has no duty to create and maintain a library facility for the use of area schools.