

## OPINION NO. 71-068

**Syllabus:**

1. Through the implementation of vocational education programs authorized under Section 3313.90, Revised Code, a school may engage and compete in private enterprise, even at a profit, so long as such program is reasonably necessary to fulfill the requirements of the school's curriculum.

2. A school with vocational education programs involving the retail sale of goods, whether purchased with public funds or otherwise, is subject to the Sales Tax Act on the transfer of such goods to another and must obtain a vendor's license as provided in Section 5739.17, Revised Code.

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To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, October 13, 1971

I am in receipt of your request for my opinion, which you state, in part, as follows:

"1. May a board of education, as part of its curriculum, operate with student participation, a 'Service Station Training Center,' either under federal 'Project Emerge' or as its own program using and paying for the products and facility of a well-known national gasoline company?

"2. May a board of education, as part of its carpentry and electrical class curriculum and as a class project, contract with private individuals or companies to furnish student labor for the construction of a house?

"3. May a board of education, as part of its student beautician training program, operate a licensed school of cosmetology which is open to its employees and in some instances to the general public, charge for the services \* \* \*?

"4. May a board of education receiving federal money through grant-in-aid assistance, construct, equip, and operate a motel-restaurant open to the general public at a service charge, which will serve as a training facility for its students in motel management and operations?

"5. May a board of education include in its curriculum an auto mechanics course for repairing and servicing cars and/or farm tractors belonging to private individuals and make a charge for parts previously bought through a purchase order with public funds and for service?

"If the answer to the aforementioned is in the affirmative, must the school purchase a vendor's license?"

"6. May a board of education, as part of its curriculum and with student participation, include in a horticulture program the raising and selling of potted plants and trees to the general public?"

"It should be understood that students performing the services herein described receive classroom credit and are graded on the work. Further, school board of education includes city, exempted village, local, and joint vocational."

In 1967, the enactment of Section 3313.90, Revised Code, made vocational education programs mandatory. Section 3313.90, supra, as amended in 1969, provides, in part, as follows:

"Each school district shall establish and maintain a vocational education program adequate to prepare a pupil enrolled therein for an occupation which program shall meet standards adopted by the state board of education. \* \* \*

"Approval of state funds for the construction and operation of vocational facilities in any school district shall be contingent upon a comprehensive vocational program plan approved by the state board of education \* \* \*. Such plan shall contain:

"(A) The organization for vocational education pursuant to the requirements of this section;

"(B) Vocational programs to be offered in the respective comprehensive high schools, in specialized schools or skill centers, and in joint vocational schools;

"(C) Remodeled, additional and new vocational facilities at the respective locations."

Furthermore, the next Section of the Code, Section 3313.91, Revised Code, provides:

"Any public board of education may contract with any public agency, board, or bureau, or with any private individual or firm for the purchase of any vocational education \* \* \* service \* \* \* and may pay for such services with public funds. Any such vocational education \* \* \* service \* \* \* shall meet the same requirements \* \* \* as those required of the public schools and be approved by the state department of education."

The supervisory authority of the State Board of Education over the vocational training program, established in the above statutes, is, of course, consonant with its general supervision in Ohio. 48

O. Jur. 2d 702. Section 3301.07, Revised Code, provides, in part, as follows:

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

"(A) It shall exercise policy forming, planning and evaluative functions for the public schools of the state, \* \* \*.

"(B) It shall exercise leadership in the improvement of public education in Ohio. \* \* \*

\* \* \* \* \* \* \* \*

"(D) It shall formulate and prescribe minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality. Such standards shall provide adequately for: a curriculum sufficient to meet the needs of pupils in every community; \* \* \*

\* \* \* \* \* \* \* \*

"(J) It may adopt such rules and regulations as are necessary for the carrying out of any function imposed on it by law, \* \* \*."

(Emphasis added)

Recently, in Opinion No. 71-026, Opinions of the Attorney General for 1971, I stated that:

"The Supreme Court has held that the authority conferred upon a board of education to adopt rules and regulations to carry out its statutory functions vests in the board a wide discretion, Greco v. Roper, 145 Ohio St. 243, 249 (1945); provided, of course, that specific statutory limitations on the board's authority are not exceeded, Verberg v. Board of Education, 135 Ohio St. 246 (1939). 'The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation.' 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933)."

The last few years have evidenced great expansion in the field of vocational education. Generally, the programs designed enable high school students to develop saleable skills in an industry or trade where employment opportunities are unlimited, motivate students to complete their high school training, and develop attitudes

necessary in the work-a-day world. As expressed in the 1970-1971 Faculty and Staff Directory of the Department of Education's Division of Vocational Education:

"For Vocational Education to continue to be a viable effort in the preparation of people for jobs it must not only be sensitive to the needs for training in all occupations, but develop a positive relationship between instructional programs and job performance."

Under the authority of Section 3313.90, supra, various local programs have been approved by the Division of Vocational Education in the State Department of Education. One of these is Diversified Co-operative Trades (DCT), which permits enrolled students to further their education with one-half day class instruction and one-half day vocational experience in a particular area. A similar program entails ten weeks of vocational training followed by ten weeks of classroom instruction. It is important to note that the students in all these programs are graded on their work by an accredited supervising teacher and receive classroom credit upon satisfactory completion of the course. The teacher remains in continual contact with the student-employee and employer to insure adequate performance by the student.

With the increased expansion of these programs have come complaints of unwarranted public interference with private enterprise and industry. In order to deter any unlimited competitive interference, certain guidelines have been formulated restricting the use of vocational education programs to those things reasonably necessary to fulfill the requirements of the curriculum. As I expressed in Opinion No. 71-026, supra:

"\* \* \* [T]he use of the joint vocational school facilities on occasion for the preparation, serving and management of meals and banquets to organizations in the community is justified as a part of the training in the vocational food service program which is offered in the school curriculum.

\* \* \* \* \*

"I would caution, however, that the preparation and serving of such banquets should not go beyond what is reasonably necessary to fulfill the requirements of the curriculum." (Emphasis added)

Thus, in regard to the programs enumerated in your request, all may be justified if necessary for the specific purpose of fulfilling the requirements of the curriculum.

You also inquire as to whether a school carrying on such programs, and in conjunction therewith making retail sales to the public, would be required to obtain a vendor's license and to pay a tax on such sales. Section 5739.01, Revised Code, dealing with the state sales tax, provides as follows:

"As used in sections 5739.01 to 5739.31, inclusive, of the Revised Code:

"(A) 'Person' includes \* \* \* the state and its political subdivisions, and combinations of individuals of any form.

"\* \* \* \* \* \* \* \*"

Since a political subdivision is a "person" within the meaning of the Sales Tax Act, the sale of tangible personal property by a school board is subject to tax. Thus, a school which carries on vocational programs involving the retail sale of goods, whether purchased with public funds or otherwise, must, under Section 5739.17, Revised Code, obtain a vendor's license. Section 5739.17, supra, specifically requires:

"No person shall engage in making retail sales subject to a tax imposed by or pursuant to section 5739.02 or 5739.021 of the Revised Code as a business without having a license therefor.

"\* \* \* \* \* \* \* \*"

Therefore, in specific answer to your questions, it is my opinion, and you are so advised that:

1. Through the implementation of vocational education programs authorized under Section 3313.90, Revised Code, a school may engage and compete in private enterprise, even at a profit, so long as such program is reasonably necessary to fulfill the requirements of the school's curriculum.

2. A school with vocational education programs involving the retail sale of goods, whether purchased with public funds or otherwise, is subject to the Sales Tax Act on the transfer of such goods to another and must obtain a vendor's license as provided in Section 5739.17, Revised Code.