

**OPINION NO. 85-098****Syllabus:**

1. The board of education of a local school district must attempt to comply with village zoning regulations with respect to signs which the board is required to erect and maintain pursuant to R.C. 3313.20. If compliance with the village zoning regulations would frustrate or hinder the public purpose underlying the use of the board's property in accordance with R.C. 3313.20, a court must balance the competing governmental interests of the board of education and the village.
2. A village may require a board of education of a local school district to obtain a permit in order to erect those signs which the board is required to post pursuant to R.C. 3313.20.
3. Absent statutory authority, a village may not require a board of education of a local school district to pay a fee in order to erect those signs which the board is required to post pursuant to R.C. 3313.20.

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**To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985**

I have before me your request for my opinion concerning the extent to which a village may require the board of education of a local school district to comply with village zoning regulations with regard to signs posted by the board of education pursuant to R.C. 3313.20.

Boards of education are creatures of statute, with only that authority which is expressly granted by statute or which may be necessarily implied therefrom. Board of Education v. Volk, 72 Ohio St. 469, 74 N.E. 646 (1905). R.C. 3313.20 directs boards of education to promulgate rules and to post certain signs by providing in pertinent part as follows:

The board of education shall make such rules as are necessary for its government and the government of its employees, pupils of its schools, and all other

persons entering upon its school grounds or premises. Rules regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. (Emphasis added.)

Absent unequivocal evidence of legislative intent to the contrary, the term "shall" generally causes any provision in which it is contained to be construed as mandatory and not discretionary. Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). As I have no evidence to indicate that the term "shall," as used in R.C. 3313.20, is to be construed as discretionary, I conclude that R.C. 3313.20 imposes upon boards of education a mandatory duty to post rules regarding the entry of persons other than students, staff, and faculty upon school grounds or premises in the manner therein specified.

R.C. 715.27 specifically provides that any municipal corporation may "[r]egulate the erection of fences, billboards, signs, and other structures, within such municipal corporation, and provide for the removal and repair of insecure billboards, signs, and other structures." Further, the authority of a municipality to regulate signs and billboards within its boundaries as a matter of local self-government, is considered well settled. See Weir v. Rimmelin, 15 Ohio St. 3d 55, 472 N.E.2d 341 (1984).

The village in question has adopted a comprehensive regulatory scheme governing outdoor signs of all types. The rules include regulation of illuminated and moving signs, a required setback for real estate signs and bulletin boards for churches, schools and other public institutions, and guidelines for signs erected near street intersections or railroad grade crossings. The regulations further provide that no sign shall be maintained or established without a permit and that, at the time of application for the permit, a fee shall be assessed on the basis of each square foot of message area. Your question has been occasioned by the efforts of the village to enforce these regulations with regard to signs maintained by the board of education of a local school district pursuant to R.C. 3313.20.<sup>1</sup>

Absolute governmental immunity from local zoning requirements was rejected in Brownfield v. State, 63 Ohio St. 2d 282, 407 N.E.2d 1365 (1980). As the court stated in

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<sup>1</sup> I note that section 1102 of the village zoning ordinance provides that, "[f]or the purpose of this ordinance 'sign' does not include signs erected and maintained pursuant to or in discharge of any governmental function, or that required by any law, ordinance, or governmental regulation." Although this section appears to be applicable to the signs in question, the board of education has been advised by the village that signs erected pursuant to R.C. 3313.20 do not qualify for exclusion under section 1102 of the local ordinance. Therefore, in analyzing your question, I must assume that the village ordinance makes no exception for the type of sign erected by a board of education pursuant to R.C. 3313.20.

Brownfield: "Whenever possible, the divergent interests of governmental entities should be harmonized rather than placed in opposition...[U]nless there exists a direct statutory grant of immunity in a given instance, the...land-owning authority must make a reasonable attempt to comply with the zoning restrictions of the affected political subdivision." Brownfield 63 Ohio St. 2d at 286, 407 N.E.2d at 1368 (citations omitted). The court in Brownfield went on to state that if reasonable attempts to comply with local zoning provisions fail, then a court must implement a balancing test:

Where compliance with zoning regulations would frustrate or significantly hinder the public purpose underlying the acquisition of property, a court should consider, inter alia, the essential nature of the government-owned facility, the impact of the facility upon surrounding property, and the alternative locations available for the facility, in determining whether the proposed use should be immune from zoning laws.

63 Ohio St. 2d at 286-87, 407 N.E.2d at 1368.

Although the situation about which you ask is factually distinguishable from Brownfield<sup>2</sup> in that R.C. 3313.20 imposes a mandatory duty upon boards of education to post signs regarding entry onto school premises, I nonetheless consider that Brownfield v. State requires the board of education of a local school district to attempt compliance with the village zoning ordinance. There is no direct grant of statutory immunity applicable to the situation you have described and substantial compliance with the zoning ordinance appears to be possible without frustration of the public purpose underlying the requirements of R.C. 3313.20.

The village regulations provide that no sign may be erected without a permit.<sup>3</sup> I believe that the village may require that the board of education submit an application to the village regarding the regulated signs. The application process will provide the village with the means to assert its limited regulatory authority with regard to the placement of the signs. See Cleveland Electric Illuminating Co. v. City of Lakewood, 64 Ohio St. 2d 374, 415 N.E.2d 297 (1980). In order to ascertain the extent to which the board of education must comply with the local zoning ordinance while performing its mandatory duty to post the signs required by R.C. 3313.20, it is helpful to consider separately the various components of the zoning ordinance.

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<sup>2</sup> In Brownfield v. State, 63 Ohio St. 2d 282, 407 N.E.2d 1365 (1980), the State of Ohio proposed the establishment of a halfway house for recently discharged psychiatric patients. The State made no attempt to comply with local zoning regulations and suit was brought by property owners seeking declaratory and injunctive relief. The court held that the state-owned facility was not automatically exempt from municipal zoning restrictions.

<sup>3</sup> Section 1120 of the village zoning ordinance states: "No sign regulated by this ordinance may be erected, painted, installed, or otherwise established in the village...without a permit, therefore, which permit shall be obtained through the office of the Building Inspector."

R.C. 3313.20 requires that the board of education conspicuously post "rules regarding entry of persons other than students, staff, and faculty upon school grounds or premises...at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building." The zoning ordinance of the village would regulate such signs by means of setback requirements.<sup>4</sup> I consider that the language of R.C. 3313.20 is sufficiently broad to enable the school board to simultaneously comply with the statute and with the village regulations regarding the location of signs. Compliance with these substantive aspects of the local zoning ordinance would not appear to frustrate the public purpose underlying the use of the board of education's property in accordance with the operation of R.C. 3313.20. If, however, compliance with these setback requirements would hinder such public purpose, a court must balance the competing interests of the village and the board of education.

The local zoning ordinance also assesses a fee based upon each square foot of message space before a permit may be obtained. City of East Cleveland v. Board of County Commissioners, 69 Ohio St. 2d 23, 430 N.E.2d 456 (1982), in reliance on Niehaus v. State ex rel. Board of Education, 111 Ohio St. 47, 144 N.E. 433 (1924), suggests that, in the absence of statutory authorization, a municipality may not require a governmental entity to pay a fee as a condition precedent to the governmental entity's compliance with a state statute. There is no statutory grant of authority which enables the village to assess a fee against the board of education. Thus, I conclude that the board of education may not be required to

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<sup>4</sup> The pertinent village regulations provide in part as follows:

1113 Setbacks for Public and Quasipublic Signs

Real estate signs and bulletin boards for a church, school or any other public, religious or educational institution may be erected not less than ten (10) feet from the established right-of-way line of any street or highway provided such sign or bulletin board does not obstruct traffic visibility at street or highway intersections.

1119 Supplementary Regulations

1119.01 No sign shall be erected closer than fifty (50) feet to any intersection, with the exception of those signs incidental to the legal process and necessary to the public welfare or those business signs attached to a building or structure.

1119.02 All signs erected within two hundred (200) feet of any intersection must be erected so as not to obstruct traffic sight lines at street intersections or railroad grade crossings.

pay a fee for a permit to maintain a sign required by R.C. 3313.20.

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

1. The board of education of a local school district must attempt to comply with village zoning regulations with respect to signs which the board is required to erect and maintain pursuant to R.C. 3313.20. If compliance with the village zoning regulations would frustrate or hinder the public purpose underlying the use of the board's property in accordance with R.C. 3313.20, a court must balance the competing governmental interests of the board of education and the village.
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