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EDUCATION—STATE BOARD—HIGH SCHOOL CHARTERS—  
BOARD SUBJECT TO ADMINISTRATIVE PROCEDURE ACT  
IN GRANTING AND REVOKING CHARTERS—Chapter 119., R.C.  
PRIVATE PAROCHIAL SCHOOLS . . . 3301.16 R.C|.

SYLLABUS :

Under the provisions of Section 3301.16, Revised Code, the state board of education in reaching a determination of the qualification of a school for the granting of a high school charter, is governed by the provisions of Chapter 119., Revised Code.

Columbus, Ohio, April 14, 1959

Hon. James H. Estill, Prosecuting Attorney  
Holmes County, Millersburg, Ohio

Dear Sir :

I have before me your letter in which you request my opinion relative to the required procedure on the part of the State Board of Education in granting or refusing charters for high schools, desired by the Old Order Amish Mennonite Church, in Holmes and other counties.

You have submitted with your request certain correspondence and other data which disclose the many difficult questions which have arisen concerning these parochial schools, and for which no solution has been found. However, the specific question which you present to me, and to which I will mainly confine my reply is, to quote from your letter :

“I therefore request your opinion, in the light of the above quoted provisions of the Revised Code, as to whether or not the State Board of Education in making a determination as set forth in ‘Exhibit B’ attached would be subject to the provisions and procedural methods as set forth in Chapter 119. of the Revised Code of Ohio.”

To understand the scope of your request it is necessary to quote what you refer to as “Exhibit B” which is a letter from the Superintendent of Public Instruction reading as follows :

January 16, 1959

Mr. William H. Knight  
Superintendent of Schools  
Millersburg, Ohio

Dear Mr. Knight:

"On January 12, I reported to the State Board of Education that on December 12, 1958, members of my staff visited an Amish high school located on the farm of Ammon Wongerd in Holmes County. On December 19, the same type of school located on the farm of Mrs. Roman Yoder in Tuscarawas County was visited.

"On the basis of reports made by these visitors, I reported to the board that these schools do not meet the minimum standards established for the granting of a High School Charter.

"The Board acting upon my report passed the following motion:

'I move that this Board approve and confirm the Department's findings to the effect that the recently established Amish vocational schools referred to in this report are not conforming to established minimum standards, and that all personnel in the Department of Education be directed to give all lawful assistance to local authorities in the enforcement of such minimum standards, whether through the school attendance laws or any other appropriate means.'

"It is, therefore, clear that children attending these and similar schools are not in compliance with the provisions of Section 3321.03, Revised Code of Ohio.

Very truly yours,

E. E. Holt,  
Superintendent of Public Instruction."

That letter plainly shows that the inquiry and finding had reference to the qualification of the schools in question as "high schools."

Before coming directly to an answer to your question, I think it well to call attention to certain statutory provisions. Section 3301.07, Revised Code, prescribing the powers and duties of the state board of education, reads in part as follows:

"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. \* \* \*"  
Said Section 301.07, Revised Code, also contains the following provision:

"In the formulation and administration of such standards for non-tax-supported schools the school shall also consider the particular needs, methods, and objectives of said schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed."

Section 3321.07, Revised Code, being a part of the chapter on compulsory attendance, reads as follows:

"If any child attends upon instruction elsewhere than in a public school such instruction shall be in a school which conforms to the minimum standards prescribed by the state board of education. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district. This section does not require a child to attend a *high school instead of a vocational, commercial, or other special type of school*, provided the instruction therein is for a term and for hours equivalent to those of the high school, and provided his attendance at such school will not interfere with a continuous program of education for the child to the age of sixteen." (Emphasis added)

In Opinion No. 7149, Opinions of the Attorney General for 1944, p. 544, the then Attorney General, construing Section 4849-6 General Code, which is quite similar to Section 3321.07, *supra*, and dealing with the Amish situation, held:

"A child of compulsory school age, who has completed the first eight grades of the school curriculum, is not required by the Ohio statutes to attend high school or pursue the curriculum there afforded providing he regularly attends a vocational, commercial or other special type of school, parochial or otherwise, which provides instruction for a term and hours equivalent to those of established high schools."

In the course of the opinion it was said:

It would further seem to me that it is immaterial whether some of the courses taught consist of a more thorough study in the branches of learning taught in the first eight grades of the public school system."

Section 3301.16, Revised Code, sets forth the power and duty of the state board of education in the granting and revocation of charters for high schools and prescribes the procedure. Insofar as pertinent, that section reads as follows:

“Pursuant to standards prescribed by the state board of education as provided in paragraph D of Section 3301.07 of the Revised Code, such board shall classify and charter high schools. Such board shall revoke the charter of any high school which fails to meet the standards of high schools as prescribed by the board. In the *issuance and revocation of high school charters, the state board of education shall be governed by the provisions of chapter 119 of the Revised Code.*” (Emphasis added)

Chapter 119., Revised Code, here referred to, is entitled “Administrative Procedure.” While I do not deem it necessary here to outline the provisions of that chapter, it may be noted that it deals with the granting and revocation of licenses, permits, commissions and charters issued by certain public agencies, and requires proceedings and hearings of a somewhat formal nature, with the right of appeal to the Court of Common Pleas of Franklin County.

It is stated in your letter that the Amish people after consultation with the state board, were furnished forms for application for approval and chartering of their high schools; that they did not fill out or file the forms furnished, but, as stated by you, “with the consent of the department, the Amish filed, in lieu thereof, a document in the nature of a brief, explaining their school plan and its objectives, purposes and underlying philosophy.”

Whereupon the state board sent an inspection team, who, in company with the Millersburg school officials, made an inspection of two of the twenty-two such Amish schools, one located in Holmes County and one in Tuscarawas County.

The result of this inspection is embodied in Exhibit B, hereinabove set out. While there can be no doubt as to the thoroughness of his investigation, or of the good faith of the state board in making it, it certainly does not conform to the requirements of Chapter 119., Revised Code.

Accordingly, in specific answer to the question submitted, it is my opinion and you are advised that under the provisions of Section 3301.16, Revised Code, the state board of education in reaching a determination of

the qualification of a school for the granting of a high school charter, is governed by the provisions of Chapter 119, Revised Code.

Respectfully,

MARK McELROY

Attorney General