

**OPINION NO. 79-057****Syllabus:**

R.C. 5709.07 and R.C. 5709.12 authorize the exemption from taxation of real property used, in accordance with those sections, for the operation of a school. This exemption may not be denied merely because the school does not meet the minimum standards referred to in R.C. 3321.03 and R.C. 3321.04.

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**To: Robert R. Kinney, Commissioner, Ohio Department of Tax Equalization,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, September 27, 1979**

Your request for an opinion poses the following questions:

1. Can the Commissioner of Tax Equalization grant real property tax exemption to real property belonging to a religious organization when such property is used by that organization as a

day school for the general educational instruction of children of [compulsory] school age, and when such school is neither chartered by the Ohio State Board of Education [nor] licensed by the Ohio State Board of College and School Registration, and when such school does not meet most of the minimum standards established by the State Board of Education, and when none of the teachers in the school are certified to teach either elementary or secondary school in Ohio?

2. Do the school compulsory attendance laws, sections 3321.03 and 3321.04 of the Revised Code, establish a legislative policy that such unchartered or unlicensed private schools are not to be granted the privilege of having real property tax exemption on their school houses?

Two statutes have been construed to authorize the exemption from taxation of real property used for educational purposes. R.C. 5709.07 exempts "[p]ublic schoolhouses . . . , public colleges and academies . . . , and all lands connected with public institutions of learning, not used with a view to profit." R.C. 5709.12 exempts "[r]eal . . . property belonging to institutions that is used exclusively for charitable purposes." These sections have been relied on to exempt both publicly-owned institutions and privately-owned institutions open to the public, as well as non-profit institutions providing educational services. Denison University v. Board of Tax Appeals, 2 Ohio St. 2d 17 (1965); American Committee of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals, 156 Ohio St. 376 (1951).

As to what is an educational purpose for which an exemption is authorized, neither section is explicit. As a practical matter, however, the Supreme Court has recognized a right to an exemption not only in the case of property used by institutions with accredited programs leading to a degree, but also in the case of property used by organizations for purposes that could qualify as "educational" only under a more general definition of that term.

In American Humanist Association, Inc. v. Board of Tax Appeals, 174 Ohio St. 545 (1963), the Court held that R.C. 5709.12 authorized the exemption of real property used by a non-profit corporation which had been organized to "study and extend educationally principles and ideals concerning human progress, values and welfare, and, in connection therewith, to publish magazines, books, pamphlets and other forms of literature . . . ." Similarly, in American Issue Publishing Co. v. Evatt, 137 Ohio St. 264 (1940), the Court determined that property used by a corporation for temperance education qualified for exemption under the "charitable purposes" language of G.C. 5353 (R.C. 5709.12). R.C. 5709.12, while enacted for a different purpose, reflects legislative approval of the judicial construction of R.C. 5709.12. See Dayton v. Roderer, 50 Ohio St. 159 (1977). See also Cincinnati Nature Center Association v. Board of Tax Appeals, 48 Ohio St. 122 (1976); Goldman v. Friars Club, Inc., 158 Ohio St. 185 (1952).

It follows that the exemptions authorized by R.C. 5709.07 and R.C. 5709.12 are not limited to property used by schools which are chartered by the State Board of Education or licensed by the State Board of College and School Registration, nor to schools staffed by certified teachers. As long as the activities are educational and the institution otherwise meets the requirements of R.C. 5709.07 and R.C. 5709.12, the institution is entitled to an exemption.

Your second question concerns the effect of the school compulsory attendance laws, R.C. 3321.03 and R.C. 3321.04. Specifically, you ask whether such sections establish a legislative policy that would preclude the exemption of property of an unchartered or unlicensed school. The rationale of such a proposition is that the attendance by school-age children at unchartered or unlicensed schools does not comply with the requirements of R.C. 3321.03 and R.C.3321.04 and is, therefore, inconsistent with the public policy of the state.

As you have noted, the availability of an exemption under R.C. 5709.12 is based on an understanding that the "charitable purpose" for which the property is used is consistent with the public policy of this state. American Issue Publishing Company v. Evatt, supra; see Planned Parenthood Ass'n v. Tax Comm'r, 5 Ohio St. 2d 117 (1966). The school compulsory attendance laws do reflect state policy that children of school age shall, unless covered by a statutory exemption, attend a school conforming to standards prescribed by the State Board of Education. In State v. Whisner, 47 Ohio St. 2d 181 (1976), however, the Supreme Court determined that some of these standards, when applied to non-public religious schools, abrogated parents' rights to direct the upbringing and education, secular or religious, of their children. Thus, while recognizing that compulsory education had long been upheld as a valid policy of this state, the Court rejected certain minimum standards as violative of an overriding policy.

Once this overriding state policy is recognized, your duty with respect to R.C. 5709.07 and R.C. 5709.12 becomes clear. Because the religious day schools which you describe are educational institutions, whose operation is protected by the public policy and law of the state, they may qualify for a tax exemption provided the terms of those sections are met, and this exemption may not be denied solely because of R.C. 3321.03 and R.C. 3321.04.

The failure of a religious day school to meet minimum standards established by the State Board of Education will have certain consequences. R.C. 3301.16 provides that the State Board of Education "shall revoke the charter of any . . . school which fails to meet the standards . . . as prescribed by the board." As a result, the teaching staff may be affected, since teaching service at a non-chartered, non-public school will not count as a period of service in establishing the minimum salary level for later employment in a public school, although teaching service at a chartered school will so count. R.C. 3317.13(A)(2); 1977 Op. Att'y Gen. No. 77-074. Similarly, the failure of a non-public school to be chartered by the State Board of Education may affect the decision of a parent or guardian to send a child to such school in light of the obligations placed upon such parent or guardian under the compulsory education provisions of R.C. Chapter 3321, particularly R.C. 3321.02, 3321.04, 3321.07, and 3321.38. The consequences of failure of a non-public school to be chartered by the state do not, however, include an inability to qualify for tax exemption.

In specific answer to your question, it is my opinion, and you are advised, that R.C. 5709.02 and R.C. 5709.12 authorize the exemption from taxation of real property used, in accordance with those sections, for the operation of a school. This exemption may not be denied merely because the school does not meet the minimum standards referred to in R.C. 3321.03 and R.C. 3321.04.