OPINION NO. 2003-019

Syllabus:

1. The board of education of a city, exempted village, or local school district may, during a labor dispute, expend public funds to pay a private security firm to provide security at the residences of individual board members or the superintendent of the school district, or to accompany those individuals when they are engaged in personal business off the school campus, only if the board, in the reasonable exercise of its discretion, finds that an expenditure for that purpose is necessary for the performance of the board's statutory functions.

2. The board of education of a city, exempted village, or local school district is not permitted to grant its members security services as part of their compensation, but may grant security services to the superin-

tendent of the school district as part of the compensation provided pursuant to R.C. 3319.01.

To: Robert Junk, Pike County Prosecuting Attorney, Waverly, Ohio
By: Jim Petro, Attorney General, May 27, 2003

We have received your request for an opinion on questions that arose recently in connection with a labor strike in a local school district. The questions you have presented, as clarified by means of a telephone conversation, are as follows:

1. Is the board of education of a local school district legally allowed to use public funds to pay a private security firm to guard the residences of individual board members or the superintendent during a labor dispute?

2. Is the board of education of a local school district legally allowed to use public funds to pay a private security firm to guard the persons of individual board members or the superintendent during a labor dispute when those board members or the superintendent are engaged in personal business off the school campus?

You have informed us that the situation precipitating these questions involved a labor strike in a school district within your county. During the strike, the board of education hired a private security firm to preserve order at the school campus. Under the facts you have presented, the private security firm also provided guard services off the school campus, accompanying the superintendent and three of the five board members when they left the school property and were no longer participating in school business, and providing guard services at their residences.

We note, initially, that this opinion does not purport to determine the legality of paricular action taken in the past. It is not appropriate for an opinion of the Attorney General to make findings of fact or determinations regarding the validity of a particular contract. *See, e.g.*, 1998 Op. Att'y Gen. No. 98-014, at 2-73 n.3; 1989 Op. Att'y Gen. No. 89-010, at 2- 40; 1986 Op. Att'y Gen. No. 86-076, at 2-422; 1983 Op. Att'y Gen. No. 83-057, at 2-232. Rather, this opinion discusses general principles of law to be applied to various situations as appropriate.

We note, further, that although your questions apply directly to the board of education of a local school district, the statutes applicable to boards of education of local school districts are generally applicable also to boards of education of city and exempted village school districts. *See, e.g.*, R.C. 3313.37; R.C. 3313.47. Accordingly, this opinion uses the term "board of education" to apply to the boards of these three types of districts.[1]

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[1]Cooperative education school districts, joint vocational school districts, and educational service centers are subject to some, but not all, of the same statutes. *See, e.g.*, R.C. 3311.01; R.C. 3311.055; R.C. 3311.18; R.C. 3313.20; R.C. 3313.37; R.C. 3313.47; R.C. 3319.01. Therefore, their authority must be considered separately and is not addressed in this opinion.

Authority of a board of education

To address your questions, it is helpful to begin with a discussion of the authority of a board of education. A board of education is created as a body politic and corporate, with authority to acquire, hold, and dispose of property and to enter into contracts. R.C. 3313.17. A board of education is a creature of statute and, as such, it has only those powers that it is expressly granted by statute and those powers that are implied as reasonably necessary for the performance of the express powers. *See, e.g., Verberg v. Bd. of Educ.*, 135 Ohio St. 246, 248, 20 N.E.2d 368 (1939); *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929); *Bd. of Educ. v. Ferguson*, 68 Ohio App. 514, 516-17, 39 N.E.2d 196 (Franklin County 1941); *Harrison v. Bd. of Educ.*, 60 Ohio App. 45, 48, 19 N.E.2d 522 (Cuyahoga County 1938); 1934 Op. Att'y Gen. No. 3764, vol. III, p. 1915. The authority of a board of education to act in financial transactions must be clearly and distinctly granted, and any doubt regarding the authority to expend funds must be resolved against the expenditure. *See, e.g., State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 467, 134 N.E. 655 (1921); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3) ("[i]n case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power"). *See generally State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) ("[a]ll public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund").

A board of education has authority to acquire school buildings and playgrounds, to provide the necessary apparatus, and to "make all other necessary provisions for the schools under its control." R.C. 3313.37(A). A prior Attorney General construed this provision as follows:

> It is noted that this section [then G.C. 7620] vests very broad powers in the board of education .... Such language manifestly discloses the legislative intent to vest boards of education with ample authority to do those things requisite and necessary for the general welfare of the schools under their jurisdiction.... [S]uch authority apparently is limited only by the requirement of the necessity and the proper exercise of the board's discretion.

1922 Op. Att'y Gen. No. 3885, vol. II, p. 1127, at 1128 (finding authority for board of education to construct at its own expense sidewalks on streets abutting school property); *see also* 1921 Op. Att'y Gen. No. 2753, vol. II, p. 1191 (syllabus, paragraph 1) (finding authority for board of education to pay mileage to officers and employees using private automobiles in the performance of their duties when "deemed necessary for the best interests of the schools"). The authority granted to a board of education under R.C. 3313.37(A) permits the board to expend public funds for purposes that are "essential to the proper conduct of the schools under its control." 1940 Op. Att'y Gen. No. 1698, vol. I, p. 39, at 40 (syllabus, paragraph 3) (authorizing the purchase of a bell if the board of education determines that a bell "is essential to the proper conduct of the schools," and authorizing the erection of a bell tower on adjoining premises "if in the exercise of a sound discretion the board determines the interests of the schools are thereby best served"). This authority also permits a board of education to provide for the insurance and protection of property that it owns or leases. *See, e.g.*, 1960 Op. Att'y Gen. No. 1304, p. 305 (syllabus, paragraph 3) (authority to insure leased office equipment); 1957 Op. Att'y Gen. No. 1145, p. 522 (authority to purchase and install a

warning system);[2] 1934 Op. Att'y Gen. No. 3764, vol. III, p. 1915 (authority to purchase burglary or robbery insurance).

A board of education is expressly given responsibility for "the management and control" of all the public schools that it operates in its district, and authority to provide for the hiring of janitors, superintendents of buildings, and other employees to maintain and protect its facilities. R.C. 3313.47. The board of education also has express authority to "make any rules that 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." R.C. 3313.20(A).

R.C. 3313.20 and R.C. 3313.47 have been construed to grant the board of education authority to take reasonable steps to provide for the safety and security of the buildings and activities of the school district, its personnel, and its students. Thus, it has been found that, in the absence of clear statutory guidance, the board of education has discretion to determine what action should be taken in the event of an emergency or threat to the safety of school operations and activities. *See, e.g.*, 1997 Op. Att'y Gen. No. 97-046 (board of education has authority to determine procedure for schools to follow in the event of the receipt of a bomb threat); 1966 Op. Att'y Gen. No. 66-030 (board of education has discretion to determine when there is a public calamity that necessitates closing a school). The authority to provide security and maintain order extends also to meetings and other official functions of the board of education. *See, e.g., Corre v. State*, 8 Ohio Dec. Rep. 715 (Hamilton County D. Ct. 1881) (person appointed sergeant-at-arms by board of education was authorized to enforce decision of board to remove reporter from the floor of the chamber). *See generally Kalk v. Village of Woodmere*, 27 Ohio App. 3d 145, 148, 500 N.E.2d 384 (Cuyahoga County 1985) (public body has inherent power to regulate its meetings to secure orderly, productive process rather than chaos).

R.C. 3313.536 requires the board of education of each city, exempted village, and local school district to adopt a comprehensive school safety plan for each school building under the board's control. The plan addresses potential hazards to staff and student safety and is developed with the involvement of community law enforcement and safety officials, parents, teachers, and nonteaching employees. A copy of the plan must be filed with each law enforcement agency that has jurisdiction over the school building. The plan must include a protocol for addressing serious threats to the safety of school property, students, employees, or administrators and a protocol for responding to emergency events that compromise the safety of school property, students, employees, or administrators. Each protocol must include procedures determined by the board to be appropriate for responding to

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[2]Concerns about security have been viewed as part of the responsibility of a board of education at least since issuance of the 1957 opinion, which states:

> [B]eing aware of the recent developments in modern warfare, and recognizing the fact that the threat of air attack by hostile forces is no longer a matter of remote possibility and inasmuch as school boards are authorized under Section 3313.37, Revised Code, to construct, repair and furnish schoolhouses, keeping constantly in mind the safety features of such schoolhouses, I am of the opinion that the establishment and installation of a warning system can be included within the scope of the phrase "all other necessary provisions."

1957 Op. Att'y Gen. No. 1145, p. 522, at 525.

threats or emergencies "including such things as notification of appropriate law enforcement personnel, calling upon specified emergency response personnel for assistance, and informing parents of affected students." R.C. 3313.536.

It is, thus, clear that a board of education has a legitimate interest in having the educational process function smoothly and has authority to take reasonable action to provide for the safety and security of its facilities and the people who use them. *See also, e.g.*, R.C. 3313.815 (when a school food service program is serving food to students, there must be at least one employee present who is trained in methods to prevent choking and able to perform the Heimlich maneuver); R.C. 3781.06(A)(1) (buildings used as places of assembly or education must be constructed, equipped, and maintained in a safe and sanitary condition); R.C. Chapter 4167 (public employment risk reduction program). *See generally McCortle v. Bates*, 29 Ohio St. 419, 422 (1876) (members of a board of education "have, in their corporate capacity, the title, care, and custody of all school property whatever within their jurisdiction, and are invested with full power to control the same in such manner as they may think will best subserve the interest of the common schools and the cause of education").

It appears, in addition, that in appropriate circumstances the board's authority to provide for safety and security may extend beyond the boundaries of the board's property and beyond the activities and operations of the schools. *See, e.g.*, R.C. 3313.661 (board of education policy regarding suspension, expulsion, removal and permanent exclusion of pupil may address "misconduct by a pupil that, regardless of where it occurs, is directed at a district official or employee, or the property of such official or employee"); 1922 Op. Att'y Gen. No. 3885, vol. II, p. 1127. *See generally Peterson v. Doe*, 647 So. 2d 1288, 1291 (La. App. 1994) (in providing security guards, the school recognized that "the duty to protect extends, not only to the school grounds, but also to areas contiguous and reasonably adjacent to the school property, areas which are incidental to school activities"). Further, it is apparent that, in providing for the safety and security of its schools, a board of education is expected to communicate and cooperate with its local law enforcement officials. R.C. 3313.536; *see also* R.C. 3313.95 (authorizing a board of education to contract with a township, municipal corporation, or sheriff for the assignment of police officers to the schools for the purpose of assisting guidance counselors and teachers in working with students concerning the use of alcohol and drugs of abuse); 1997 Op. Att'y Gen. No. 97-046. *See generally* R.C. Chapter 2917 (offenses against the public peace).

Labor disputes

Provisions governing collective bargaining by public employees appear in R.C. Chapter 4117. The provisions authorize collective bargaining between public employers (including school districts) and their employees, subject to certain exceptions. R.C. 4117.01(B) and (C); R.C. 4117.03. Further, they establish the State Employment Relations Board and give the Board responsibility for implementing and administering the collective bargaining law. R.C. 4117.02.

R.C. Chapter 4117 sets forth procedures for the organization of bargaining units and the negotiation of collective bargaining agreements. R.C. 4117.04-.09. It also establishes procedures for the resolution of disputes and, with certain exceptions, grants public employees the right to strike in accordance with prescribed procedures. R.C. 4117.10; R.C. 4117.14. If a public employer believes that a lawful strike "creates clear and present danger to the health or safety of the public," the public employer may take legal action to have the strike enjoined. R.C. 4117.16.

Ohio's public employees' collective bargaining law is designed to promote the orderly and peaceful resolution of labor disputes. *See, e.g., Cent. Ohio Transit Auth. v. Transp. Workers Union, Local 208*, 37 Ohio St. 3d 56, 62, 524 N.E.2d 151 (1988) (R.C. Chapter 4117 "has enjoyed remarkable success in dramatically reducing public-sector work stoppage by providing a sophisticated framework for peaceful and rational dispute resolution"). In addition to providing procedures for negotiating agreements and resolving differences, it lists various actions that constitute unfair labor practices and provides for them to be investigated and remedied by the State Employment Relations Board. R.C. 4117.11-.12. Among the unfair labor practices that may be committed by public employers are interference, restraint, or coercion of employees in the exercise of their rights under R.C. Chapter 4117, the refusal to bargain collectively, and locking out employees to bring pressure on them to compromise or capitulate. R.C. 4117.11(A). Among the unfair labor practices that may be committed by public employees are the refusal to bargain collectively, the failure to fairly represent all public employees in a bargaining unit, and inducing or encouraging an individual to picket the residence or place of private employment of a public official or representative of the public employer in connection with a labor relations dispute. R.C. 4117.11(B).[3]

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[3]R.C. 4117.11(B) states, in part, that it is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

> (7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer;
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> (8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

In *United Electrical, Radio & Machine Workers v. State Employment Relations Board*, 126 Ohio App. 3d 345, 710 N.E.2d 358, 1998 SERB 4-41 (Cuyahoga County 1998), *discretionary appeal not allowed*, 83 Ohio St. 3d 1447, 700 N.E.2d 331 (1998), the Eighth District Court of Appeals found these provisions to be unconstitutional. R.C. 4117.11(B)(7) was found unconstitutional because it regulates picketing on the basis of the labor-related content of the picketing; the court found that division (B)(7) is not content-neutral, serves no compelling state interest, and is not narrowly tailored. R.C. 4117.11(B)(8) was found unconstitutional as a prior restraint on the right to picket. The Ohio Supreme Court declined to hear the appeal; therefore, the *United Electrical, Radio & Machine Workers* case is binding precedent only the in the Eighth Appellate District, and the provisions of R.C. 4117.11(B)(7) and (8) may be enforced in other jurisdictions. *See In re City of North Royalton*, SERB 99-002, at 3-15 n.4 (Jan. 22, 1999). For purposes of this opinion, we do not cite R.C. 4117.11(B) to establish the existence of unfair labor practices in particular instances. Rather, as discussed later in this opinion, we cite R.C. 4117.11(B)(7) to illustrate that, in the course of a labor relations dispute, it is possible that the residence or place of private employment of a public official (which are sites ordinarily considered to be part of the personal, rather than the public, life of the official) may become the site of activity or conflict related to the labor relations dispute.

Because of the nature of the collective bargaining process and the procedures for dispute settlement, there may be administrative or judicial directives regarding the action of the various parties. Orders of the court or of the State Employment Relations Board may affect the actions that are considered appropriate in a particular instance. *See, e.g.*, R.C. 4117.12 (orders of the State Employment Relations Board); R.C. 4117.13 (petition to common pleas court regarding unfair labor practice); R.C. 4117.16 (order enjoining strike); R.C. 4117.18 (prohibition against refusing to obey an order of the court or the State Employment Relations Board).

R.C. Chapter 4117 does not directly address the authority of a public employer to provide security services to protect property or people during a labor dispute. Therefore, the public employer has such authority in that regard as it is granted by the statutes governing its powers and duties. As discussed above, a board of education has general authority to provide for the safety and security of its property and of officials, staff, and pupils.

Public purpose

Your letter of request notes that public funds may be expended only for a public purpose, and it is appropriate to consider the application of this principle to the questions you have raised. The principle that public funds may be expended only for a public purpose has been firmly established under Ohio law. *See Kohler v. Powell*, 115 Ohio St. 405, 418, 154 N.E. 340 (1926) ("[p]ublic money may be used only for public purposes and never for private gain"); 1982 Op. Att'y Gen. No. 82-006. The principle has been explained as follows:

> "Public purpose" is an amorphous concept that often assumes various dimensions in different contexts. As a limitation on the expenditure of public funds, it is commonly recognized to be a doctrine based on due process of law. It has been held that the Fourteenth amendment to the United States Constitution requires that the taking of one's money by taxation is lawful only when the expenditure of those monies fulfills a public purpose. Loan Association v. Topeka, 20 Wall. 655, 22 L. Ed. 455 (1874).

1977 Op. Att'y Gen. No. 77-049, at 2-175; *see also Jones v. City of Portland*, 245 U.S. 217, 221 (1917) ("local conditions are of such varying character that what is or is not a public use is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information"); *Common Cause v. State*, 455 A.2d 1, 15-27 (Me. 1993). The concept of public purpose is also commonly applied in conjunction with Ohio Const. art. VIII, §§ 4 and 6. Thus, it has been found that, in the case of a nonprofit corporation, the existence of a valid public purpose overcomes constitutional prohibitions against the giving or lending of credit. Ohio Const. art. VIII, §§ 4 and 6; *see also, e.g., State ex rel. Tomino v. Brown*, 47 Ohio St. 3d 119, 549 N.E.2d 505 (1989); *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955); 2000 Op. Att'y Gen. No. 2000-013, at 2-75. The public purpose requirement has also been applied to donations of public property. *See, e.g.*, 1998 Op. Att'y Gen. No. 98- 014.

The determination of a public purpose is made with a view to the needs of the public, and may change as the conditions and practices of society change. *See State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 324-25, 98 N.E.2d 835 (1951); 1988 Op. Att'y Gen. No. 88-058. The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts, and such a determination will not be reversed by the courts unless it is manifestly arbitrary or unreasonable. *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (syllabus, paragraph 2); *State ex rel. Gordon v. Rhodes*, 156 Ohio St. 81, 100 N.E.2d 225 (1951) (syllabus, paragraph 2); *see also State ex rel. McClure v.*

Hagerman, 155 Ohio St. at 325; *State ex rel. Dickman v. Defenbacher*. Thus, a legislative body has broad discretion in determining what constitutes a public purpose. *See* 1986 Op. Att'y Gen. No. 86-013 (syllabus, paragraph 2) (a board of education may authorize the expenditure of public money from a student activity fund "provided the board determines by a reasonable exercise of its discretion that the proposed disbursement and expenditure will serve a valid and proper public purpose"); 1977 Op. Att'y Gen. No. 77-049, at 2-175 ("[l]egislative bodies possess great latitude in determining what constitutes a public purpose"); *see also* 1983 Op. Att'y Gen. No. 83-042.

When the General Assembly enacts a law authorizing a board of education to spend money for a stated purpose, the General Assembly is expressing its determination that the stated purpose is a public purpose and that an expenditure authorized by statute is a proper expenditure of public money. *See, e.g., State ex rel. Dickman v. Defenbacher*; 1991 Op. Att'y Gen. No. 91-071, at 2-338. When the board of education determines that a particular expenditure is authorized by a statute enacted by the General Assembly and that the expenditure is necessary for the board to perform its statutory functions, the board is determining that the expenditure is a proper expenditure that serves the public purpose expressed in the statute. A finding that an expenditure is reasonably implied as necessary for the performance of a statutory function thus constitutes a finding that the expenditure serves the public purpose expressed in the statute. *See* 1994 Op. Att'y Gen. No. 94-001; 1988 Op. Att'y Gen. No. 88-039, at 2-190 n.3. *See generally* 1986 Op. Att'y Gen. No. 86-086 (syllabus, paragraph 2) (the State Lottery Commission may expend public funds for the provision of meals at meetings "only where the Commission has determined that the provision of such meals is necessary to the performance of a function or duty expressly or impliedly conferred upon the Commission by statute and if its determination is not manifestly arbitrary or unreasonable"); 1982 Op. Att'y Gen. No. 82-006 (syllabus, paragraph 3) (a public body created by statute may expend public funds to purchase coffee, meals, refreshments, and other amenities "if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable").

An expenditure properly authorized by statute may serve a public purpose even though it provides incidental benefit to persons individually. On this point, it has been stated that "the existence of a private purpose does not constitute a bar to the use of public funds in situations where there is a primary public purpose." 1998 Op. Att'y Gen. No. 98-022, at 2-118; *see also, e.g., In re Annexation of 118.7 Acres*, 52 Ohio St. 3d 124, 130, 556 N.E.2d 1140 (1990); *Bazell v. City of Cincinnati*; *State ex rel. McClure v. Hagerman*, 155 Ohio St. at 324; 1994 Op. Att'y Gen. No. 94-001, at 2-5 (if proper officials reasonably determine in particular circumstances that dredging a private homeowner's streams advances statutory purposes, then the dredging is a proper use of public funds; if the dredging confers a tangible improvement only for the homeowner, rather than for the general public, then it is not a permissible use of public funds); 1993 Op. Att'y Gen. No. 93-043.

School board's authority to provide security during a labor dispute

While it is clear that a board of education has only the authority it is granted by statute, it is also clear that, within the authority granted by statute, a board of education has broad discretion to determine how to manage, control, and protect its property and to provide safety and security for the operations of the board and the schools of the district. *See, e.g., State ex rel. Ohio High School Athletic Ass'n v. Judges of Ct. of C. Pleas*, 173 Ohio St. 239, 181 N.E.2d 261 (1962) (syllabus, paragraph 2) ("[a] court has no authority to control

the discretion vested in a board of education by the statutes of this state or to substitute its judgment for the judgment of such board, upon any question the board is authorized by law to determine"); *Harrison v. Bd. of Educ.*, 60 Ohio App. at 53 ("a wide discretion was lodged in the board [of education] in the discharge of the duties" imposed by statute); *Clay v. Harrison Hills City Sch. Dist. Bd. of Educ.*, 102 Ohio Misc. 2d 13, 21, 723 N.E.2d 1149 (C.P. Harrison County 1999) ("[t]he black-letter law of Ohio is irrefutable that the legislature has vested the superintendents of schools and boards of education with almost unlimited reasonable authority to manage and control the schools within their districts"); 1981 Op. Att'y Gen. No. 81- 052, at 2-200 ("boards of education are rather unique creatures of statute in that the legislature has vested in them broad, discretionary grants of authority"); 1940 Op. Att'y Gen. No. 1698, vol. I, p. 39, at 42 ("where power is extended by statute to administrative boards [including boards of education] to act with respect to any matter the manner of so doing and the extent thereof if not fixed or limited by statute are within the discretion of the board, which discretion will not be interfered with by the courts"). The authority of a public body to expend money for a particular purpose "may be fairly implied where it is reasonably related to the duties of the public agency." *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981); *see also* 1986 Op. Att'y Gen. No. 86-086; 1982 Op. Att'y Gen. No. 82-006. Expenditures for security purposes thus are permitted when they are reasonably necessary for the proper administration of public functions.

In accordance with the principles discussed above, a board of education has authority to employ a private security firm to preserve order at the school campus during a labor dispute if, in the reasonable exercise of its discretion, the board of education finds that the employment of a private security firm for that purpose is necessary to enable the board to perform its statutory functions. The employment of a private security firm to preserve order at the school campus during a labor dispute appears to serve the board's function of protecting its property and providing for the safety of persons who use its facilities, and thus to constitute a proper expenditure of public funds.

The issue raised by your questions is whether the authority of a board of education to employ a private security firm during a labor dispute extends to the use of the private security firm to guard the houses of the superintendent and school board members and to accompany the superintendent and school board members when those individuals are engaged in personal business off the school campus. The same test applies. The employment of the private security firm for those purposes is authorized if, in the reasonable exercise of its discretion, the board of education finds that the employment of the private security firm is necessary to enable the board to perform its statutory functions. *See generally* 1995 Op. Att'y Gen. No. 95-027 (syllabus, paragraph 2) (a county children services board may not grant its executive director benefit payments after the executive director has resigned "unless the board reasonably finds that the provision of such payments is necessary to the efficient performance of the board's statutory functions"); 1990 Op. Att'y Gen. No. 90-008, at 2-37 to 2-38 ("a state agency may expend public funds only if it has reasonably determined that the expenditure is necessary to the performance of a function or duty or to the exercise of an express or implied power"); 1985 Op. Att'y Gen. No. 85-005 (syllabus) (board of county hospital trustees may not make payments solely to encourage employees' early retirement "unless the board reasonably finds that such action is necessary to the efficient operation of the hospital"); 1983 Op. Att'y Gen. No. 83-029 (Director of Transportation may reimburse employees for personal property lost, stolen, or destroyed in the course of employment only if the Director reasonably finds such action necessary for the efficient operation of the Department).

As discussed previously, the authority to exercise discretion regarding the expenditure of school district funds is placed initially in the hands of the board of education, and the courts will not interfere with the reasonable exercise of that discretion. Hence, the board of education is responsible for assuring that the moneys it holds on behalf of the public are applied to proper purposes and expended with care. The board of education also is responsible for protecting the safety and security of its property and the people who use it. Thus, the board of education must balance its duty to preserve and protect money held in trust for the public and its responsibility to provide for the safety and efficiency of its operations. *See, e.g., Truitt v. Diggs*, 611 P. 2d 633, 635 (Okla. 1980) ("[a] great deal of discretion is involved [on the part of a school board] in determining what security measures are needed").

There may be some question as to whether the employment of a security service to guard the persons or residences of members of a board of education or the superintendent of a school district is reasonably necessary to the functions of the school district, or whether it is a personal expense that should be borne by the individuals themselves. This determination must be made by the board with consideration of the tenor of the labor dispute and the nature and degree of any threatened harm.

We live in a society in which the threat of crime is always present. *See, e.g., Goldberg v. Housing Auth.*, 38 N.J. 578, 583, 186 A.2d 291 (1962) ("[e]veryone can foresee the commission of crime virtually anywhere and at any time"). Nonetheless, in many cases, labor disputes are resolved without physical conflict or serious threat of danger to school board members or superintendents. For a board of education to find that a labor dispute justifies the expenditure of public funds to protect non-school property or to protect individuals who are not engaged in school activities would require the board to find that providing protection for that property or those individuals is reasonably related to the efficient operation of the school district and the proper exercise of its functions. Whether such a relationship exists requires consideration of the circumstances of a particular situation and cannot be made by means of a formal opinion of the Attorney General.

Although we cannot exercise discretion on behalf of a board of education, we can address various factors that might be relevant to a determination regarding the use of security services. The fact that unfair labor practices may include picketing the residence of a public official suggests that, in a bitter dispute, the residence of a school board member or superintendent may become a site of conflict and thus be deserving of protection. Similarly, the fact that unfair labor practices may include picketing a place of private employment of a public official suggests that activities that appear to be private in nature may become extensions of labor disputes. R.C. 4117.11(B)(7); *see* note 3, *supra*. If a school board member or superintendent is the object of particular threats or continuing harassment, the board of education might reasonably conclude that the continued effective operation of the board or the school system requires that guard services be provided for activities of the superintendent or school board member that occur off the school campus and are not directly related to school district functions. As a practical matter, for example, if a school board meeting is the site of threatened violence, it might be prudent for security guards in attendance at the meeting to accompany the board members or superintendent through a hostile crowd or to a place of safety, even if that place is a private residence or is at some distance from school property.

As a general rule, a board of education may expend public funds to provide the superintendent or members of the school board with private and personal security services that protect their persons or property if the purpose of providing the services is to benefit the school board or school district, as, for example, through improved morale or the assurance

of continued effective operations. *See generally State ex rel. McClure v. Hagerman*, 155 Ohio St. at 325 (in general, a public purpose has as its objective the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of the public). In this regard, it may be concluded that a board of education is authorized to take reasonable action to protect the board members and superintendent against dangers resulting from the performance of their statutory functions.

There are, however limits to the board's authority to provide security services. The discretion of a board of education to expend public funds for security purposes extends only to the exercise of authority granted by statute or clearly implied. It cannot be exercised to authorize expenditures that exceed statutory authority, such as expenditures for purely personal expenses of the members of the board of education or the superintendent, where those expenditures do not serve the statutory purposes of the board of education. *See Bd. of Educ. v. Ferguson*, 68 Ohio App. at 518 (statutory provision in question "is not broad enough in the general language" used to authorize particular expenditures).

We conclude, accordingly, that the board of education of a city, exempted village, or local school district may, during a labor dispute, expend public funds to pay a private security firm to provide security at the residences of individual board members or the superintendent of the school district, or to accompany those individuals when they are engaged in personal business off the school campus, only if the board, in the reasonable exercise of its discretion, finds that an expenditure for that purpose is necessary for the performance of the board's statutory functions.

Provision of security services as compensation

Apart from the provision of security services as part of the board of education's function of providing for the safety and security of its facilities and operations, the board of education may have authority, in some circumstances, to provide security services as part of an individual's compensation. The provision of a fringe benefit is part of the compensation of an individual. Accordingly, an appointing authority with power to fix compensation may establish such fringe benefits as it chooses, subject to any statutes that constrict its authority with regard to the provision of a particular fringe benefit. *See Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); 2002 Op. Att'y Gen. No. 2002- 026, at 2-175; 2000 Op. Att'y Gen. No. 2000-002; 1989 Op. Att'y Gen. No. 89-009; 1987 Op. Att'y Gen. No. 87-041; 1987 Op. Att'y Gen. No. 87-029; 1983 Op. Att'y Gen. No. 83-098; 1981 Op. Att'y Gen. No. 81-052; 1980 Op. Att'y Gen. No. 80-030. In providing fringe benefits, an appointing authority may make reasonable distinctions among groups of employees, but must provide equal benefits to all employees who are similarly situated. *See* 2002 Op. Att'y Gen. No. 2002-026, at 2-175 to 2-176; 1981 Op. Att'y Gen. No. 81-062 (syllabus, paragraph 5).

A fringe benefit is provided at the expense of the employer as an inducement for an employee to continue employment. *Madden v. Bower*, 20 Ohio St. 2d 135, 137, 254 N.E.2d 357 (1969); 1985 Op. Att'y Gen. No. 85-005, at 2-12; 1982 Op. Att'y Gen. No. 82-037, at 2-110. It is a personal benefit to the employee and need not be justified as an expenditure that benefits the appointing authority apart from assisting the appointing authority in retaining employees. *See* 1995 Op. Att'y Gen. No. 95-027, at 2-135 ("the authority of a public entity to grant fringe benefits pursuant to its power to employ extends only to types of benefits that induce an employee to accept employment or continue employment with the public entity"); 1983 Op. Att'y Gen. No. 83-060.

In the instant case, statutory provisions clearly prescribe the compensation that members of a board of education may receive, and the members have no authority to grant themselves fringe benefits in addition to those plainly authorized by statute. Pursuant to R.C. 3313.12, the board of education of a city, local, or exempted village school district "may provide by resolution for compensation of its members, provided that such compensation shall not exceed one hundred twenty-five dollars per member for meetings attended." The board is also expressly authorized to "provide by resolution for the deduction of amounts payable for benefits" under R.C. 3313.202(D)—namely, group term life, hospitalization, surgical care, or major medical insurance, disability, dental care, vision care, medical care, hearing aids, prescription drugs, sickness and accident insurance, group legal services, or a combination of any of these types of insurance or coverage. R.C. 3313.12; R.C. 3313.202. In addition, the board is authorized to compensate its members, up to specified amounts, for attendance at approved training programs. R.C. 3313.12. The board may also set aside money in a service fund to be used to pay expenses of board members incurred in training and orientation or in the performance of their duties. R.C. 3315.15. The board of education has no authority to grant its members compensation or benefits of any sort in addition to those authorized by statute and, therefore, cannot grant its members security services as part of their compensation. *See* 1989 Op. Att'y Gen. No. 89- 003, at 2-14 ("[p]ublic officers whose compensation is set by statute may not receive fringe benefits unless such benefits are specifically or impliedly authorized by law"); 1984 Op. Att'y Gen. No. 84-036, at 2-114 ("those officers whose compensation is set by statute are not entitled to fringe benefits not provided by statute").[4]

With regard to the superintendent of the school district, however, a different analysis applies. The board of education of each school district is authorized to appoint a superintendent in accordance with conditions and procedures established by law. R.C. 3319.01. The board of education also has discretion to set the compensation of the superintendent, including fringe benefits, subject to statutory restrictions. *Id.* Ohio law provides generally that, when the board of education appoints the superintendent or designates the superintendent's term, the board "shall fix the compensation of the superintendent, which may be increased or decreased during such term, provided such decrease is part of a uniform plan affecting salaries of all employees of the district, and shall execute a written contract of employment with such superintendent." R.C. 3319.01; *see also* R.C. 3319.08(A)(1); R.C. 3319.09(A). Accordingly, the board of education may grant the superintendent fringe benefits as permitted by law. *See* 1987 Op. Att'y Gen. No. 87-041; 1983 Op. Att'y Gen. No. 83-098; 1981 Op. Att'y Gen. No. 81-052; *see also* 2002 Op. Att'y Gen. No. 2002-026; 1982 Op. Att'y Gen. No. 82-037. *See generally State ex rel. Bassman v. Earhart*, 18 Ohio St. 3d 182, 480 N.E.2d 761 (1985) (parking privileges that were not granted as a right by legislative enactment are a mere gratuity and their cessation does not constitute a reduction in pay for purposes of appeal to the State Personnel Board of Review).

No statute expressly addresses the provision of security services as a fringe benefit for the superintendent. Therefore, the board of education is not restricted by statute with

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[4]In considering any question regarding the compensation of members of a board of education, it should be noted that the board members are public officers and, as such, they are subject to the prohibition of Ohio Const. art. II, § 20, against receiving changes in compensation during their existing terms of office. *See* 1980 Op. Att'y Gen. No. 80-050; *see also State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); *State ex rel. Artmayer v. Bd. of Trs.*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975); 1985 Op. Att'y Gen. No. 85-036. *See generally* 1997 Op. Att'y Gen. No. 97-052; 1997 Op. Att'y Gen. No. 97-005.

regard to the provision of those services and may provide them on such terms as it deems appropriate as part of the total compensation granted to the superintendent. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-052. Further, the board is permitted to increase the superintendent's compensation during the term of the contract, but it may not decrease the compensation except as part of a uniform plan affecting salaries of all employees of the district. R.C. 3319.01.

As noted above, security services granted as a fringe benefit would be provided for the benefit of the superintendent and not to carry out functions of the board of education. They might, accordingly, address personal security concerns of the superintendent, rather than the safety or security of the schools and their operations. *See generally, e.g.*, 2000 Op. Att'y Gen. No. 2000-002, at 2-11 n.4; 1993 Op. Att'y Gen. No. 93-043; 1983 Op. Att'y Gen. No. 83-042.

We conclude, therefore, that the board of education of a city, exempted village, or local school district is not permitted to grant its members security services as part of their compensation, but may grant security services to the superintendent of the school district as part of the compensation provided pursuant to R.C. 3319.01.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. The board of education of a city, exempted village, or local school district may, during a labor dispute, expend public funds to pay a private security firm to provide security at the residences of individual board members or the superintendent of the school district, or to accompany those individuals when they are engaged in personal business off the school campus, only if the board, in the reasonable exercise of its discretion, finds that an expenditure for that purpose is necessary for the performance of the board's statutory functions.

2. The board of education of a city, exempted village, or local school district is not permitted to grant its members security services as part of their compensation, but may grant security services to the superintendent of the school district as part of the compensation provided pursuant to R.C. 3319.01.