

OPINION NO. 75-021

Syllabus:

A board of education may, pursuant to R.C. 3315.062, permit the use of student activity funds to pay a school's portion of the institutional membership fee in an association of secondary school principals, when such portion of the fee amounts to a subscription to the association's publications.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 25, 1975

I have before me your predecessor's request for my opinion as to whether the institutional membership portion of the total membership fee to the National Association of Secondary School Principals (NASSP) may be paid from student activity funds. From the materials which you have furnished me, it appears that the advice of the Ohio Association of Secondary School Principals has been that the individual principal's portion (\$120) of an institutional membership fee would have to be paid by the principal, but that the school's portion (\$20) could be paid out of the student activity funds.

An institutional membership in the NASSP is taken out in the name of an individual principal. It includes convention registration for the individual and two copies of the association's publications, one sent to the individual and the other to the institution. The NASSP material is sent to the school librarians in return for the institutional fee of twenty dollars. Some of the material comes out bi-weekly and some monthly. It belongs to the school and may be used by administrators, teachers and students. The institutional fee is in the nature of a subscription for NASSP materials.

R.C. 3315.062, concerning student activity programs and expenditures, reads, in part, as follows:

* * * * *

"If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school

district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board."

(Emphasis added.)

The Section provides for the establishment of a student activity fund, and approval of the board of education is specifically required before an expenditure can be made from the fund. However, no guidelines are prescribed for distinguishing a proper expenditure from an improper one. Thus the determination of which expenditures are proper lies within the sound discretion of the board. In 1975 Op. Att'y Gen. No. 75-008, in discussing expenditures from student activity funds, I said,

"Although no statutory guidelines have been written, it must be remembered that the student activity funds in question here are public funds, having been received by public officials under color of law. See R.C. 117.10. Thus, the limitation that public funds may only be spent for a public purpose must be observed. See Opinion No. 71-044, Opinions of the Attorney General for 1971, and Opinion No. 74-048, Opinions of the Attorney General for 1974. The board of education must look at the facts concerning the proposed expenditure and determine whether such expenditure would serve a public purpose."

Thus, a board of education may expend funds from student activity accounts only if the expenditure would serve a public purpose. In State, ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), the court stated, at 325, "The courts as a rule have no judicial definition of a public as distinguished from a private purpose, but have left each case to be determined by its own peculiar circumstances."

The expenditures of public funds for membership fees in associations is noted in Drury, Ohio School Guide, 3d Ed., Sec. 3.32, which reads, in part, as follows:

"It would appear that a board of education has the power to expend public funds to purchase material, journals, magazines and other material which in its discretion are necessary for the effective administration of the schools. Therefore, if incidental affiliation with a private organization is required to obtain such materials, such would not be legally improper, where no further financial support is undertaken."

In my opinion a board of education could justifiably conclude that the membership fees sought to be expended here serve a public purpose, since they are really subscription fees for publications. The receiving of such publications, for the use of administrators, teachers and students, is a benefit gained by the institution.

In 1948 Op. Att'y Gen. No. 4122, it was held that a board of library trustees, vested with discretion in making expenditures for the establishment, maintenance, and improvement of the public library

under their jurisdiction, could expend public funds to subscribe to a membership in a private society for the purpose of securing for the library a magazine published by the society and distributed only to society members. This situation is analogous to the question at hand. Both involve the expenditure of public funds for the receipt of publications. The statutes involved there grant the board of library trustees discretion in managing a library. More importantly, the very nature of a library demands that all reasonable measures be taken to ensure that a complete selection of magazines and periodicals are available for public use. Thus, membership fees in that case were necessary to receiving the publication, and having the publication available was relevant to the purposes of a public library. Membership fees in the instant case, which amount to a subscription for school publications, are useful for the management of a complex school system. This expenditure would appear to be within the sound discretion of a school board.

It is significant that the General Assembly has taken action to allow boards of education to expend public funds for membership fees in associations. R.C. 3313.87 provides for the expenditure of funds to pay membership fees in a school board association, and R.C. 3313.871 provides for a like expenditure for dues and fees in an accrediting association. Thus, the General Assembly has recognized that membership in these associations does indeed serve a public purpose in that it helps the schools to provide high quality education for the students of the community, which, in turn, benefits the entire community.

It should also be noted that R.C. 3315.062, *supra*, requires the board of education to adopt regulations governing the receipts and disbursements of the student activity fund. In this connection, I said, in 1971 Op. Att'y Gen. 71-026:

"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)."

In specific answer to your predecessor's question it is my opinion, and you are so advised, that a board of education may, pursuant to R.C. 3315.062, permit the use of student activity funds to pay a school's portion of the institutional membership fee in an association of secondary school principals, when such portion of the fee amounts to a subscription to the association's publications.