

OPINION NO. 74-095

Syllabus:

A board of education may, pursuant to its authority under R.C. 3313.20 and R.C. 3313.47, enact a regulation designating areas within a school building where students shall be permitted to smoke as long as the Board of Education determines it is not injurious to the health or morals of the students.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, November 15, 1974

I have before me your request for an opinion as to whether or not it is legally permissible for a board of education to designate areas within school buildings where students shall be permitted to smoke.

Boards of education in Ohio are creatures of statute and their duties as well as their authority are clearly defined by statute. They are, therefore, restricted to the exercise of powers that are expressly granted to them or clearly implied and necessary for the execution of powers expressly granted. Verberg v. Board of Education, 135 Ohio St. 246 (1939); Schwing v. McClure, et al., Trustees, 120 Ohio St. 335 (1929).

The necessary power of a board of education to adopt rules and regulations is found in R.C. 3313.20, which reads in pertinent part as follows:

"The board of education shall make such rules and regulations 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.
* * *"

In addition, R.C. 3313.47 provides in part:

"Each city, exempted village, or local board of education shall have the management

and control of all of the public schools of whatever name or character in its respective district. * * *

These statutes have frequently been held to confer wide discretion on a board of education to adopt such rules as it deems necessary for the conduct of its schools. Greco v. Roper, 145 Ohio St. 243, 249 (1945); Holroyd v. Eibling, 90 Ohio L. Abs. 78 (1961); State, ex rel. Evans v. Fry, 11 Ohio Misc. 231 (1967). Thus, a series of prior opinions have recognized the authority of school boards to enact rules and regulations reasonably designed to preserve discipline, as well as to protect the morals, health and physical safety of students. See Opinion No. 73-129, Opinions of the Attorney General for 1973; Opinion No. 71-046, Opinions of the Attorney General for 1971; Opinion No. 120, Opinions of the Attorney General for 1963, page 198; Opinion No. 2998, Opinions of the Attorney General for 1962, page 346; Opinion No. 5091, Opinions of the Attorney General for 1942, page 332, 335.

Of course, a board may not enact a regulation which is inconsistent with specific statutory provisions on a subject. Opinion No. 72-072, Opinions of the Attorney General for 1972. See also Opinion No. 73-129, supra, in which I concluded that a board of education could not, under R.C. 3313.20, adopt a rule or regulation denying to teachers the authority to inflict corporal punishment which has been granted to them under R.C. 3319.41. However, when a board of education enacts a regulation on any question, which it is authorized by law to determine, it will not be disturbed in the absence of a gross abuse of discretion. State, ex rel. Evans v. Fry, supra.

With respect to the question you pose, I find nothing in the Revised Code prohibiting smoking in schools, although the designation of smoking areas would be subject to the provisions of R.C. 3707.03 which requires the correction of conditions detrimental to health. Opinion No. 5091, supra; Opinion No. 787, Opinions of the Attorney General for 1951, page 520; Opinion No. 2469, Opinions of the Attorney General for 1950, page 721.

It is suggested, however, in the memorandum submitted with your letter that, despite the recent repeal of R.C. 2903.04, which prohibited selling or giving cigarettes to minors, the designation of smoking areas in schools might still conflict with R.C. 2151.41, which prohibits persons from contributing to the delinquency or unruliness of a child. An unruly child is defined by R.C.2151.022, which reads in pertinent part:

"As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, 'Unruly child' includes any child:

* * * * *

"(C) Who so deports himself as to injure or endanger the health or morals of himself or others.

* * * * *

However, although the Surgeon General of the United States has made findings in the matter, I find nothing in the Revised Code which may be construed as a legislative pronouncement that smoking is per se injurious to the health or morals of a minor. The benefit or harm of designating smoking areas in schools is, therefore, a question of fact and policy rather than of law, and thus properly a matter for determination by the board of education. Such a determination could, as discussed above, be subject to review by the courts on the question of whether the board abused its discretion.

In specific answer to your question it is my opinion, and you are so advised, that a board of education may, pursuant to its authority under R.C. 3313.20 and R.C. 3313.47, enact a regulation designating areas within a school building where students shall be permitted to smoke as long as the Board of Education determines it is not injurious to the health or morals of the students.