OPINION NO. 2012-037

Syllabus:

2012-037

1. R.C. 3313.17 authorizes a board of education of a local school

district to sell water from an aquifer located beneath real property owned by the district.

2. A board of education of a local school district may not operate a water bottling plant as a for-profit business.

3. A board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes. (1992 Op. Att'y Gen. No. 92-016, approved and followed.)

4. A board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. (1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), overruled.)

To: David P. Fornshell, Warren County Prosecuting Attorney, Lebanon, Ohio
By: Michael DeWine, Ohio Attorney General, October 30, 2012

You have requested an opinion concerning the authority of a board of education of a local school district to use and sell water from an aquifer located beneath real property owned by the district.[1] Specifically, you ask:

1. May a board of education of a local school district sell water from an aquifer located beneath real property owned by the district?

2. May a board of education of a local school district operate a water bottling plant as a for-profit business?

3. May a board of education of a local school district enter into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business?

4. Is a board of education of a local school district exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water?

Authority of a Board of Education to Sell Water

Your first question concerns the authority of a board of education of a local

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[1] An aquifer is a "water-bearing stratum of permeable rock, sand, or gravel." *Merriam-Webster's Collegiate Dictionary* 62 (11th ed. 2005); *see* R.C. 1521.01(C); R.C. 6101.01(G).

school district to sell water from an aquifer located beneath real property owned by the district.[2] It is firmly established in Ohio that a board of education of a local school district, as a creature of statute, *see* R.C. 3311.03; R.C. 3313.01, has "no more authority than what has been conferred on [it] by statute or what is clearly implied therefrom." *Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*, 52 Ohio St. 3d 222, 223, 556 N.E.2d 511 (1990); 2003 Op. Att'y Gen. No. 2003-019 at 2-146. R.C. 3313.17 provides that a board of education of a local school district is a body politic and corporate, with authority to acquire, hold, and dispose of real and personal property and to enter into contracts. *See* R.C. 3313.41 (setting forth procedures for disposing of real and personal property that is owned by a board of education in its corporate capacity).

For purposes of R.C. 3313.17, "property" means "any property, real or personal, tangible or intangible, and any interest or license in that property." R.C. 2901.01(A)(10)(a). R.C. 5739.01(YY) further provides that "water" is "tangible personal property" for purposes of Ohio's sales tax law, which is set forth in R.C. Chapter 5739. *See generally* R.C. 5739.02 (authorizing the state to levy an excise tax on each retail sale made in this state); R.C. 5739.021 (authorizing a county to levy an additional tax on certain retail sales made in the county). Given that the General Assembly has recognized water as tangible personal property for purposes of Ohio's sales tax law, water is personal property for purposes of R.C. 3313.17 that may be sold by a board of education of a local school district.[3] *See generally* R.C. 3313.45 ("[w]hen, in its opinion, the school district would be benefited thereby, the board of education may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other mineral[s] upon lands owned by such school district, to any person, association, or corporation, who complies with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes, and all other matters of contract shall be such as the board deems most advantageous to the school district"); R.C. 3313.451 (a board of education "may enter into contracts with others . . . for the purposes of extracting, producing, selling, using, or transporting such petroleum, gas, components, and by-products"). Accordingly, R.C. 3313.17 authorizes a board of

[2] For the purpose of this opinion, it is assumed that no deed restriction, covenant, or condition of a gift, devise, or bequest of land prohibits a board of education of a local school district from selling water from an aquifer located beneath real property owned or held in trust by the district. *See generally* R.C. 3313.17 (a board of education of a local school district may take and hold in trust for the use and benefit of such district any grant or devise of real property); 1929 Op. Att'y Gen. No. 809, vol. II, p. 1246 (syllabus) ("[w]here the board of education of a school district obtains title to land under a deed which conveys such land to the board of education 'so long as the same may be used for school purposes,' said board of education . . . may lease such lands for gas and oil purposes, unless the use of the land for such purposes makes it impossible to use the same for school purposes").

[3] This opinion does not consider whether a person who purchases water from an aquifer located beneath real property owned by a board of education of a local school district must pay any sales tax under R.C. Chapter 5739.

education of a local school district to sell water from an aquifer located beneath real property owned by the district.[4] *See generally* 1959 Op. Att'y Gen. No. 922, p. 619 (syllabus, paragraph 2) (''[a] local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, [after] so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of [R.C. 3313.17]'').

Authority of a Board of Education to Operate a Water Bottling Plant

Your second question asks whether a board of education of a local school district may operate a water bottling plant as a for-profit business. No statute expressly authorizes a board of education to operate a water bottling plant. Nor is such authority necessary to enable the board to perform its statutory function of providing an education to its students. *See generally* Ohio Const. art. VI, § 3 (''[p]rovision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds''); R.C. 3313.37(A) (the board of education of a local school district may acquire school buildings and playgrounds, ''provide the necessary apparatus and make all other necessary provisions for the schools under its control''); R.C. 3313.47 (each ''local board of education shall have the management and control of all of the public schools of whatever name or character that it operates in its . . . district''); R.C. 3319.08 (the board of education of a local school district ''shall enter into written contracts for the employment and reemployment of all teachers'').

As explained in *Groveport Madison Local Educ. Ass'n v. Groveport Madison Local Bd. of Educ.*, 72 Ohio App. 3d 394, 396-97, 594 N.E.2d 994 (Franklin County 1991):

> In examining the nature of corporate powers invested in a board of education, it is clear that a board of education is not deemed to be a full corporation. '''It is well settled that a board of education is a quasi-corporation acting for the public as one of the state's ministerial educa-

[4] The sale of water by a board of education of a local school district must be done in accordance with the provisions of law governing the sale of personal property by the board of education. *See Schwing v. McClure*, 120 Ohio St. 335, 342, 166 N.E. 230 (1929); 1999 Op. Att'y Gen. No. 99-007 at 2-52; 1986 Op. Att'y Gen. No. 86-062 at 2-339; 1983 Op. Att'y Gen. No. 83-082 at 2-329; 1934 Op. Att'y Gen. No. 2474, vol. I, p. 422, at 424; *see, e.g.*, R.C. 3313.41(A) (''[e]xcept as provided in divisions (C), (D), (F), and (G) of this section, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars, it shall sell the property at public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation in the school district, by publication as provided in [R.C. 7.16], or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property'').

> tion agencies "for the organization, administration and control of the public school system of the state."'" *Wayman v. Bd. of Edn.* (1966), 5 Ohio St. 2d 248, 249, 34 O.O.2d 473, 474, 215 N.E.2d 394, 395, citing *Cline v. Martin* (1916), 94 Ohio St. 420, 426, 115 N.E. 37, 38. A board of education "'* * * is constituted a body politic and corporate, but it is not a corporation within the provisions of the statutes governing corporations or a corporation for profit * * *.'" *Brown v. Bd. of Edn.* (1969), 17 Ohio App. 2d 1, 3, 46 O.O.2d 1, 2, 243 N.E.2d 767, 768, reversed on other grounds (1969), 20 Ohio St. 2d 68, 49 O.O.2d 347, 253 N.E.2d 767, citing 48 Ohio Jurisprudence 2d (Part 1) 749. A board of education has but limited corporate powers. *Robertson v. Bd. of Edn.* (1875), 27 Ohio St. 96, 103.
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> Unlike private corporations, created for business purposes, or municipal corporations, more fully endowed with corporate life and functions, boards of education possess but limited corporate functions which are granted to enable them to carry out their public purpose in promoting and administering education.

The operation of a water bottling plant does not enable a board of education of a local school district to provide an education to the students in the district, and so, a board of education may not operate such a plant.[5] *Cf.* 1999 Op. Att'y Gen. No. 99-007 at 2-50 ("[t]here is no statute that expressly authorizes a vocational school

[5] Prior opinions of the Attorney General have determined that a board of education's duty to provide vocational education under R.C. 3313.90 "vests in the board of education broad discretion to carry out this legislative mandate." 1978 Op. Att'y Gen. No. 78-040 at 2-94; *see* 1999 Op. Att'y Gen. No. 99-007; 1981 Op. Att'y Gen. No. 81-092; 1976 Op. Att'y Gen. No. 76-065; 1971 Op. Att'y Gen. No. 71-068; 1971 Op. Att'y Gen. No. 71-026. However, in exercising this discretion, a board of education may not "go beyond that which is reasonably necessary to fulfill the requirements of the vocational education curriculum." 1978 Op. Att'y Gen. No. 78-040 at 2-94; *see* 1999 Op. Att'y Gen. No. 99-007; 1981 Op. Att'y Gen. No. 81-092; 1976 Op. Att'y Gen. No. 76-065; 1971 Op. Att'y Gen. No. 71-068; 1971 Op. Att'y Gen. No. 71-026.

With respect to your particular inquiry, the operation of a water bottling plant as a for-profit business by the board of education of this particular school district is not intended to prepare a student for a particular occupation. *See generally* 1971 Op. Att'y Gen. No. 71-068 at 2-229 and 2-230 (vocational education programs are designed to "enable high school students to develop saleable skills in an industry or trade where employment opportunities are unlimited, motivate students to complete their high school training, and develop attitudes necessary in the work-a-day world"). It also seems unlikely that the operation of the plant will provide any hands-on opportunities for a student to learn a marketable skill. Moreover, any vocational training or other educational benefit provided by the operation

district to acquire necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet. A vocational school district, however, may acquire and operate such a system as part of its statutory functions if the acquisition and operation of the system is part of its curriculum or is otherwise necessary for the performance of its statutory duties''). Thus, the power to operate a water bottling plant is not conferred by statute upon a board of education or ''clearly implied and necessary for the execution of the powers expressly granted'' to the board. 1964 Op. Att'y Gen. No. 1285 at 2-301.

Moreover, as the operation of a water bottling plant by a board of education is not ''necessary for the general welfare of the schools under [its] jurisdiction,'' a board may not expend moneys to operate such a plant. 1922 Op. Att'y Gen. No. 3885, vol. II, p. 1127, at 1128. *See generally* 2003 Op. Att'y Gen. No. 2003-019 at 2-146 (''[t]he 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''' (quoting 1940 Op. Att'y Gen. No. 1698, vol. I, p. 39 (syllabus, paragraph 3))); 1921 Op. Att'y Gen. No. 2753, vol. II, p. 1191 (syllabus, paragraph 1) (finding authority for a 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'' under its jurisdiction). It is a well-settled legal principle that ''[t]he 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.'' 2003 Op. Att'y Gen. No. 2003-019 at 2-146; *accord State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 467, 134 N.E. 655 (1921); 1981 Op. Att'y Gen. No. 81-002 at 2-5. A board of education of a local school district, therefore, may not operate a water bottling plant as a for-profit business.

Authority of a Board of Education to Have a Private Entity Operate a Water Bottling Plant as a For-profit Business

Your third question asks whether a board of education of a local school district may enter into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business. A board of education of a local school district may not enter into a contract that exceeds its statutorily created rights. *See Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*; *Thaxton v. Medina City Bd. of Educ.*, 21 Ohio St. 3d 56, 57, 488 N.E.2d 136 (1986); *Empire Gas Corp. v. Westerville Bd. of Educ.*, 102 Ohio App. 3d 613, 618-19, 657 N.E.2d 790 (Franklin County 1995). In addition, a board of education must exercise its powers within the limitations set forth in the Ohio Constitution. *See* 1999 Op. Att'y Gen. No. 99-007 at 2-54; 1978 Op. Att'y Gen. No. 78-040 at 2-95.

No statute authorizes a board of education of a local school district to enter

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of the plant would be incidental to its primary purpose—earning a profit. For these reasons, we believe that the operation of a water bottling plant by a board of education as a for-profit business exceeds that which is reasonably necessary to fulfill the requirements of a vocational education curriculum.

into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business. However, R.C. 3313.17, which authorizes a board of education to acquire and hold real property, has been interpreted as authorizing a board of education to lease real property "which it determines is not presently needed for school purposes and which cannot be advantageously sold." 1992 Op. Att'y Gen. No. 92-016 (syllabus, paragraph 2); *see* 1963 Op. Att'y Gen. No. 622, p. 624, at 627; 1959 Op. Att'y Gen. No. 922, p. 619, at 621-22; 1956 Op. Att'y Gen. No. 7225, p. 738 (syllabus, paragraph 2); 1953 Op. Att'y Gen. No. 2534, p. 158 (syllabus, paragraph 1); 1932 Op. Att'y Gen. No. 4588, vol. II, p. 1006 (syllabus, paragraph 2). As explained in 1992 Op. Att'y Gen. No. 92-016 at 2-55:

> Although there are not provisions of the Revised Code that expressly authorize a board of education to lease real property which is not presently needed for school purposes, prior opinions of the Attorney General have inferred such authority.
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> The basis of these opinions is the authority of the board of education to acquire and hold property. R.C. 3313.17 provides that a board of education is "capable of . . . acquiring, holding, possessing, and disposing of real and personal property." Although R.C. 3313.17 does not generally authorize a board of education to acquire land for the purpose of leasing for profit, there are circumstances that justify a board of education in leasing property which it had acquired for school purposes . . . .
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> Thus, the authority of the board of education to lease property is limited by the duty of the board to preserve the availability of property to which it holds title for school purposes "where a present or probable future need therefor exists or is likely to arise." *State ex rel. Baciak v. Board of Educ.*, 55 Ohio Law Abs. 185, 189, 88 N.E.2d 808, 810 (Ct. App. Cuyahoga County 1949). Although a board of education may lease real property which it determines is not presently needed for school purposes and which cannot advantageously be sold, the board is required to preserve the availability of the real property for future need. As noted in the discussion of your third question below, the lease must, therefore, provide for termination by the board of education if it is determined that the property is needed for school purposes in the future. (Citations omitted.)

Accordingly, on the basis of 1992 Op. Att'y Gen. No. 92-016, a board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes.

A lease between a board of education and a private entity for the use of real property titled to the board must not, however, violate the lending credit or joint ownership prohibitions of Article VIII, § 4 of the Ohio Constitution. *See* 1999 Op.

Att'y Gen. No. 99-007; 1996 Op. Att'y Gen. No. 96-051; 1992 Op. Att'y Gen. No. 92-016; 1978 Op. Att'y Gen. No. 78-040. This constitutional provision mandates that "[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever."

Article VIII, § 4 of the Ohio Constitution has been construed to apply to agencies or instrumentalities of the state, including boards of education. 2010 Op. Att'y Gen. No. 2010-012 at 2-81 n.3; 1996 Op. Att'y Gen. No. 96-051 at 2-194 and 2-195; 1992 Op. Att'y Gen. No. 92-016 at 2-53 and 2-54; 1978 Op. Att'y Gen. No. 78-040 at 2-95. And, the provision prohibits a board of education from leasing real property to a private entity where the lease arrangement creates a union of public and private property:

> Courts have held that Ohio Const. art. VIII, §§ 4 and 6 were aimed at preventing situations in which there is a "business partnership" between a political subdivision and a private party or a "union of public and private capital or credit in any enterprise whatever." *Walker v. City of Cincinnati*, 21 Ohio St. 14, 54 (1871). Arrangements in which public and private property are intermingled have been found to be prohibited by these constitutional provisions. In contrast, a variety of leases and other contractual arrangements have been found constitutional on the grounds that they preserve the separate property interests of the governmental and private bodies.
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> In 1992 Op. Att'y Gen. No. 92-016, my predecessor concluded that the Ohio Constitution permitted a board of education to agree with a private cellular telephone company on a contract under which the school board would lease to the company real property located at its high school football stadium, the company would erect a monopole communications tower and a building to house the company's equipment, and the company would lease to the school board a portion of the tower for the installation of lights and loudspeakers. Under the contract, the company would allow the school district to use a portion of the company's building as a ticket booth for athletic events. The opinion concluded that such an arrangement would be permissible, where the arrangement did not effect a union of private and public property. In that case, the ownership of each item of property was clearly defined and there was no sharing of risks or profits.
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> In contrast, 1978 Op. Att'y Gen. No. 78-040 concluded that the constitutional prohibition against joint ventures prohibited an arrangement under which an oil and gas company would have constructed a gas station on the property of a joint vocational school district. The proposal was that the gas station be operated by students, with supervision by the vocational staff and periodic consultation with the company's management team, and that the profits be shared between the company and the

> school district. In that case, the interests of the school board and the private company were not separable, but were joined in a common enterprise. (Citations omitted.)

1996 Op. Att'y Gen. No. 96-051 at 2-195; *accord* 1992 Op. Att'y Gen. No. 92-016 at 2-53 and 2-54; 1978 Op. Att'y Gen. No. 78-040 at 2-95 and 2-96; *see* 1999 Op. Att'y Gen. No. 99-007 at 2-54.

Therefore, in response to your third question, a board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes.[6]

Applicability of a Municipal Ordinance to Real Property Owned by a Board of Education

Your final question asks whether a board of education of a local school district is exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. A municipality is granted the authority to establish and operate public utilities, including a public water system. 1991 Op. Att'y Gen. No. 91-070 at 2-330; 1946 Op. Att'y Gen. No. 1153, p. 602, at 607; *see* Ohio Const. art. XVIII, § 4 (''[a]ny municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants''); Ohio Const. art. XVIII, § 5 (''[a]ny municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance''); Ohio Const. art. XVIII, § 6 (expressly including the sale of water as a public utility); R.C. Chapter 743 (setting forth provisions of law governing the authority of a municipality to provide a public water system); *see also* Ohio Const. art. XVIII, §§ 3 and 7 (municipal powers of local self-government). This authority includes, among other things, establishing regulations regarding the use and protection of the municipality's water system. *See* Ohio Const. art. XVIII, § 3; Ohio Const. art. XVIII, § 7; R.C. 743.02; *see also City of Mansfield v. Humphreys Mfg. Co.*, 82 Ohio St. 216, 92 N.E. 233 (1910); *Rogers v. City of Cincinnati*, 13 Ohio App. 472 (Hamilton County 1920).

In your particular situation, a municipality has enacted an ordinance that requires the board of education of a local school district to purchase water from the municipality's water system when the board constructs a new building that will

[6] To avoid the unlawful commingling of public and private property, the board of education may not own the water that is to be bottled at the plant. In other words, if the water to be bottled at the plant is to come from an aquifer located beneath real property owned by the local school district, the board of education of the district must sell it before it may be bottled.

have running water. Information provided to us indicates that the municipal ordinance does not exempt the board of education from this requirement. Consequently, the board of education is required to comply with the municipal ordinance unless state law provides immunity from the municipal ordinance or a court determines otherwise.[7] *See generally* 1920 Op. Att'y Gen. No. 1756, vol. II, p. 1234, at 1237 (a board of education "may drive a well on its own property and construct a water system for use in its new building if no sanitary or other regulation forbids or may forbid should the water supply become bad or unfit for use").

No provision in the Revised Code exempts a board of education of a local school district from complying with a municipal ordinance requiring the board to purchase water from the municipality's water system when the board constructs a new building that will have running water. R.C. 743.09 does, however, provide certain instances in which a municipality must provide free water service:[8]

> No charge shall be made by a municipal corporation or the waterworks department thereof for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, for the cleaning of market houses, or the use of any public building belonging to the municipal corporation.
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> In any case in which a school district includes territory not within the boundaries of the municipal corporation, a proportionate charge for water service shall be made in the ratio which the tax valuation of the

[7] In Ohio, a board of education of a local school district must make a reasonable attempt to comply with an applicable municipal ordinance unless the board possesses a direct statutory grant of immunity. *See* 2002 Op. Att'y Gen. No 2002-007; 1985 Op. Att'y Gen. No. 85-098; *see also Taylor v. Ohio Dep't of Rehab. and Corr.*, 43 Ohio App. 3d 205, 540 N.E.2d 310 (Franklin County 1988); 2001 Op. Att'y Gen. No 2001-002; 1991 Op. Att'y Gen. No. 91-070; 1986 Op. Att'y Gen. No. 86-026. If, after making a reasonable effort, the board of education determines that compliance with the ordinance would frustrate or significantly hinder its use of the property for school purposes, then the board may have a court weigh and balance the interest of the school district and municipality to determine the extent to which the board of education is required to comply with the ordinance. *See* 1985 Op. Att'y Gen. No. 85-098; *see also Taylor v. Ohio Dep't of Rehab. and Corr.*; 2001 Op. Att'y Gen. No 2001-002; 1991 Op. Att'y Gen. No. 91-070; 1986 Op. Att'y Gen. No. 86-026.

[8] R.C. 743.27 states that "[t]he legislative authority of any municipal corporation owning and operating municipal water . . . plants, may provide by ordinance that the products of such plants, when used for municipal or public purposes, shall be furnished free of charge." *See generally* 1946 Op. Att'y Gen. No. 1153, p. 602 (syllabus, paragraph 2) ("[a] municipality owning a system of waterworks . . . may furnish free water . . . to a public school district located wholly or partly within the municipal limits").

> property outside the municipal corporation bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the water-works department of the municipal corporation governing, controlling, and regulating the use of water consumed.

While R.C. 743.09 does not grant a board of education of a local school district statutory immunity from the operation of a municipal ordinance requiring the board to purchase water from the municipality's water system when the board constructs a new building that will have running water, it may affect the amount the board has to pay for water furnished by the municipality.[9] *See generally* 1946 Op. Att'y Gen. No. 1153, p. 602 (syllabus, paragraph 1) (''[n]otwithstanding the provisions of [G.C. 3963 (now R.C. 743.09)], there is no mandatory duty resting upon municipalities to furnish free water . . . to public school buildings'');[10] 1920 Op. Att'y Gen. No. 1756, vol. II, p. 1234, at 1240 (a ''board of education as a consumer'' of water supplied by a municipality ''is required to observe the regulations provided in the last part of [G.C. 3963 (now R.C. 743.09)]''). As no statute provides a board

[9] On page 435 of the 1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), it was concluded that G.C. 3963 (now R.C. 743.09) requires a municipality that provides water service to ''furnish water free of charge for the use of public school buildings.'' At the time this opinion was issued, G.C. 3963, as set forth in the 1910 General Code, prohibited a municipality from charging ''for supplying water for . . . the use of public school buildings.'' *See* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing of Ohio 1910) (setting forth the statutes of the General Code). *See generally* 1910 Ohio Laws 39 (H.B. 348, approved Mar. 29, 1910) (the statutes of Ohio shall be published by the state and officially designated as ''The General Code''); 1906 Ohio Laws 221 (S.B. 31, filed Apr. 16, 1906) (title) (''[t]o provide for the revision and consolidation of the statute laws of Ohio'').

When the language of the General Code was recodified as the Revised Code, the language prohibiting a municipality from charging for supplying water for the use of public school buildings was not included in R.C. 743.09 or elsewhere in the Revised Code. *See* 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953) (to recodify the entire General Code as the Revised Code). In light of this legislative change we overrule 1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910).

[10] When 1946 Op. Att'y Gen. No. 1153, p. 602 was issued, R.C. 743.09's predecessor, G.C. 3963, prohibited a municipality from charging for supplying water ''for the use of the public school buildings in such [municipality].'' 1919 Ohio Laws, Part II, 1160 (filed Feb. 11, 1920); *see also City of Cincinnati v. Bd. of Educ. of the City of Cincinnati*, 30 Ohio N.P. (n.s.) 595 (C.P. Hamilton County 1933) (a city director of public service is prohibited from assessing and collecting water rents from boards of education). As stated in note 9, *supra*, the language prohibiting a municipality from charging for supplying water for the use of public school buildings was not included in R.C. 743.09 or elsewhere in the Revised Code when the General Code was recodified as the Revised Code.

of education of a local school district immunity from a municipal ordinance requiring the board to purchase water from the municipality when the board constructs a new building that will have running water, the board is not exempt from complying with the ordinance. Therefore, a board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water.

Conclusions

On the basis of the foregoing, it is my opinion, and you are hereby advised as follows:

1. R.C. 3313.17 authorizes a board of education of a local school district to sell water from an aquifer located beneath real property owned by the district.

2. A board of education of a local school district may not operate a water bottling plant as a for-profit business.

3. A board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes. (1992 Op. Att'y Gen. No. 92-016, approved and followed.)

4. A board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. (1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), overruled.)