

OPINION NO. 89-018**Syllabus:**

1. Under R.C. 3317.01, the Superintendent of Public Instruction may waive the one hundred eighty-two day minimum school year requirement for the purpose of R.C. 3317.01 only if it had been necessary for a school to be closed because of a disease epidemic, hazardous weather conditions, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use, provided that the number of days the school was actually open for instruction with pupils in attendance and for individualized parent-teacher conferences and reporting periods is not less than one hundred seventy-five.
2. The decision to close a school on a particular day is that of the district board of education. Under R.C. 3317.01, the review of the decision of the district board of education by the Superintendent of Public Instruction is to determine the existence of one of the circumstances enumerated in R.C. 3317.01 and of the sufficiency of the proof of the necessity of the school closing.
3. The Superintendent of Public Instruction is not authorized to waive the minimum school year requirement in R.C. 3317.01 for a day school was closed due to a potential inability to provide school bus transportation for students according to the established bus schedules or due to potential traffic congestion slowing emergency service response time to the school.

To: Franklin B. Walter, Superintendent of Public Instruction, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1989

I have before me your request for my opinion on the application of provisions R.C. 3317.01 and R.C. 3313.48 which require public schools to be open for instruction for one-hundred eighty-two days in each school year. Specifically, you have asked "whether a rally for a political candidate is a public calamity which requires that [the superintendent of public instruction] waive the closing of the public schools for a day."¹ You have informed me that on October 7, 1988, then United States Vice President George Bush made a campaign stop in Medina, Ohio. Upon the advice of the Medina Chief of Police, the Superintendent of the Medina City Schools closed the schools in the district for that day. The closing was based on a concern that firefighting and other emergency vehicles might be unable to assist any student requiring emergency care, and that the school might be unable to maintain its normal school bus routes or reasonable or expected bus schedules due to traffic congestion.

The minimum length of a school year is mandated by R.C. 3313.48, which states, in relevant part:

The board of education of each city, exempted village, local, and joint vocational school district shall provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the

¹ I have previously stated that the Attorney General's authority to issue opinions does not include authority to exercise on behalf of another officer discretion that has been bestowed by statute on that officer. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-007; 1985 Op. Att'y Gen. No. 85-007. Therefore, I am constrained from stating my opinion whether, given the factual background in your request, the day in question may be considered a "calamity day." Instead, I will confine my opinion to a discussion of the general application of R.C. 3317.01 and 3313.48.

of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof. Except as provided in section 3313.481 of the Revised Code,² each school so provided shall be open for instruction with pupils in attendance for not less than one hundred eighty-two days in each school year, which may include all of the following:

(A) Up to four school days per year in which classes are dismissed one-half day early or the equivalent amount of time during a different number of days for the purpose of individualized parent-teacher conferences and reporting periods;

(B) Up to two days for professional meetings of teachers when such days occur during a regular school week and schools are not in session;

(C) *The number of days the school is closed as a result of public calamity, as provided in section 3317.01 of the Revised Code.* (Emphasis and footnote added.)

R.C. 3317.01 provides, in part relevant to public calamity days:

This requirement [that the school year meet the requirements of R.C. 3313.48 with regard to the minimum number of days a school must be open for instruction in order to be eligible for the "school foundation program" fund distributions] shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed because of disease epidemic, hazardous weather conditions, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use, provided that...the number of days the school was actually open for instruction with pupils in attendance and for individualized parent-teacher conferences and reporting periods is not less than one hundred seventy-five.... (Emphasis added.)

The initial determination that a school should be closed due to the existence of a public calamity is made by the board of education of the school district. 1966 Op. Att'y Gen. No. 66-030 at 2-48. Since a board of education is vested, pursuant to R.C. 3313.47, with the duty to manage and control the schools of the district and is authorized, pursuant to R.C. 3313.20, to adopt rules and regulations necessary for the governance of the district's employees and pupils, it is the responsibility of the board of education to determine whether to close a school on a particular day. R.C. 3317.01 "does not b[y] its express terms remove this decision [to close a school due to a calamity] from the board of education of the district, and I am unable to conclude that there is any language in that section which does so by implication." Op. No. 66-030 at 2-48.³ The decision to close a school due to a calamity and to count that day as one of the "days the school is closed as a result of public calamity" under R.C. 3313.48 is, thus, that of the board of education of the district.

The Superintendent of Public Instruction may waive the minimum school year requirement so that the calamity days taken by a school district may be counted within the minimum days school is in session for the purposes of R.C. 3317.01. Op. No. 66-030 at 2-48. The review by the Superintendent of Public Instruction is limited to whether the district board of education abused its discretion in closing a school. Op. No. 66-030 at 2-49. The determination to be made is whether the existing facts support the district board's decision that one of the

² R.C. 3313.481 provides for the operation of school on a flexible schedule, on a quarter, trimester or pentamester schedule, or on a staggered attendance schedule.

³ R.C. 3317.01 has been repeatedly amended since the issuance of 1966 Op. Att'y Gen. No. 66-030. The operative portion of the statute that refers to the duties of the Superintendent of Public Instruction regarding calamity days, however, has not been changed except for the enumerated reasons for closing a school. See note 4, *infra* (setting forth the language of R.C. 3317.01 at the time of issuance of Op. No. 66-030).

factors in R.C. 3317.01 was present and necessitated the closing of the school. The superintendent's review, thus, is of the sufficiency of the evidence.⁴ Op. No. 66-030 at 2-49 explains the review process as follows:

By Section 3317.01, Revised Code, and within the limits of that section, [the Superintendent of Public Instruction is] charged with the duty to waive the requirements that the schools of a district be open for the entire number of days specified by the legislature....[The Superintendent of Public Instruction] may decline to waive the requirements of the said section where [the Superintendent of Public Instruction] determine[s], after review of the existing facts, that a board of education abused its discretion in reaching the conclusion that a school must be closed.... [The Superintendent of Public Instruction] may find it necessary to ask boards of education to furnish evidentiary materials as proof of situations which caused them to find it necessary to close the schools.

To determine whether a specific set of facts may be classified as a "public calamity" it is first necessary to ascertain the definition of the term as used in R.C. 3313.48.⁵ No statutory provision explicitly defines "public calamity" but R.C. 3313.48 incorporates a definition by referring to R.C. 3317.01 with the language "as provided in section 3317.01 of the Revised Code." Although no Ohio case construes "as provided in," this phrase is a proviso which serves to restrict the operative effect of statutory language to less than what its scope of operation would otherwise be. *See generally Zumstein v. Mullen*, 67 Ohio St. 382, 409, 66 N.E. 140, 144 (1902) ("[a] proviso is generally used in a statute to qualify, limit or restrain the operation of general terms contained in a previous part of the section or act..."); 1A N. Singer, *Sutherland's Statutes and Statutory Construction* §21.11, §47.08, 47.09 (4th ed. 1985). The term, "as provided in section 3317.01," expressly qualifies, limits and restrains the inclusion of "days the school is closed as a result of public calamity" to those days "provided in Section 3317.01." R.C. 3317.01 provides four grounds for which school may be closed. The definition of "public calamity" is, thus, limited to only four circumstances: (1) a disease epidemic; (2) hazardous weather conditions; (3) damage to a school building; and (4) other temporary circumstances due to utility failure rendering the school building unfit for school use. Where, as here, a statute specifically provides definite, plain language, the language need only be read to ascertain its meaning. *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927). The definite, plain language of R.C. 3317.01 incorporated by R.C. 3313.48 is to be read as allowing only the four enumerated circumstances as a reason for the designation of a school day as a "calamity day".

⁴ See 1965 Op. Att'y Gen. No. 65-198 (construing R.C. 3317.01 to require a school district to have school actually open for instruction 182 days, less the statutory exceptions, but in no case less than 175 days to qualify for school foundation funds under R.C. Chapter 3317. The Superintendent of Public Instruction, therefore, lacks the authority to waive the 182 day requirement as to a particular calamity day if doing so would reduce below 175 days the number of days school was actually open for instruction with pupils in attendance and for individualized parent-teacher conferences and reporting periods.

⁵ I am aware one of my predecessors, in Op. No. 66-030, stated: "[t]he General Assembly has not defined the term 'other public calamity' or that of 'public calamity.'...[I]n my opinion, the possible causes [constituting public calamity] are limitless. R.C. 3313.48, at that time, referred to 'public calamity', as provided in section 3317.01 of the Revised Code." R.C. 3317.01 stated, in part, "this requirement shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed because of disease epidemic, temporary circumstances rendering the school building unfit for school use or other public calamity...." 1965 Ohio Laws 774. Subsequent statutory changes to R.C. 3317.01 removed the "other public calamity" provision and added other specific permissible reasons for closing a school.

The evident concern expressed in your letter is whether the request of the Medina City Board of Education for a waiver under the given facts fits within one of the four enumerated situations in R.C. 3317.01. You have indicated that the Medina City Board of Education has requested the waiver for "other temporary circumstances due to utility failure rendering the school building unfit for school use" because of the possible difficulty encountered by school buses and emergency vehicles in travelling to the schools. While an argument may be made that the provision of school busing is a utility,⁶ no statutory definition of "utility" as used specifically in R.C. 3317.01 exists. Absent such a definition, the common meaning of the term controls. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). *Webster's New World Dictionary* 1565 (2d college ed. 1972) defines "utility" as, "something useful to the public, esp. the service of electric power, gas, water, telephone, etc." Furthermore, no other Revised Code section brings public school busing within its definition of "utility". "Utility" is defined by R.C. 324.01(A) (for purposes of R.C. 324.01 to 324.12, inclusive, "'Utility' means: (1) An electric company, gas company, heating company, cooling company, telephone company, telegraph company, or communications company supplying a utility service..."); by R.C. 324.01(D) ("'[u]tility service' means the supplying of water, steam, or air through pipes or tubing for heating or cooling purposes to customers within the county, the supplying of electricity, artificial gas or natural gas to customers within the county, and the transmission of telephonic or telegraphic messages..."); and by R.C. 3307.15(B)(5)(b) (for the purposes of R.C. 3307.15(B)(4), "'[u]tility' means any waterworks system, gas system, electric light system, sewer or sewerage disposal system, bridge, tunnel, turnpike, or other highway, or any combination of two or more of the foregoing"). R.C. 4905.03 also lists electric, gas, natural gas, telephone and telegraph as "public utilities." Moreover, the General Assembly has specifically excepted school buses as a public utility regulated by the Public Utilities Commission of Ohio by the definition in R.C. 4921.02 ("as used in sections 4921.01 to 4921.32 of the Revised Code: (A)...'Motor transportation company' as so used does not include any person, firm, copartnership, voluntary association, joint-stock association company, or corporation, wherever organized or incorporated....(4) Engaged in the transportation of pupils in school buses operating to or from school sessions or school events.") Inasmuch as provision of busing by a public school district in Ohio is not included in any statutory definition of "utility", and the common meaning, likewise, does not include the term, I conclude "utility," as used in R.C. 3317.01, does not include public school busing. Since school busing is not a utility, the lack of school busing does not constitute "other temporary circumstances due to utility failure rendering the school building unfit for school use." The closing of school for a day is not, therefore, due to a public calamity.⁷

You have noted that the Medina City Board of Education raised an alternative argument that the school buildings would be unfit due to a potential slowing of response times of emergency services due to traffic congestion. Such a circumstance, however, does not make the *school building* unfit. There is no indication in the background information you provided that there occurred a failure

⁶ R.C. 4905.03(A)(3) defines a motor transportation company as a public utility when engaged in business of carrying persons *for hire for the public in general*. Such definition is inapplicable to school bus transportation provided by a public school district, however, since school buses are not for hire or for the public in general.

⁷ It appears the Medina City Schools were closed due to a potential inability to bus students according to the established schedule. Lack of school busing has been questioned as a proper reason for closing schools. Op. 66-030 at 2-49 states, "[s]ection 3317.01, Revised Code, requires that the schools of a district be open for instruction. I am not persuaded that in every instance it would be necessary, or even proper, to close the schools of a district because it would not be wise to have all or a part of the school buses in operation."

of utilities affecting the building itself, e.g., electricity, gas or water.⁸ A calamity day is not properly included in the one hundred eighty-two day school year requirement where there is no proof that the failure of a utility rendered the *school building* unfit for school use. The focus of this particular definition of public calamity under R.C. 3317.01 is upon the physical plant of the school. It contemplates such physical components as heating, lighting and sewage disposal equipment. Should a utility failure cause the temporary loss of one of these components of the school building rendering the building, itself, unfit for school use, then a public calamity exists and the provisions of 3317.01 allow the Superintendent of Public Instruction to properly grant a waiver. According to the facts presented in the instant request the waiver was applied for due to potential school bus and emergency service difficulties. Neither of these reasons affect the physical plant of the school building. Neither would make a school building unfit for school use. I conclude, therefore, that closing school for a day because of potential school busing and emergency service delays is not due to a "public calamity."

Therefore, it is my opinion and you are hereby advised that:

1. Under R.C. 3317.01, the Superintendent of Public Instruction may waive the one hundred eighty-two day minimum school year requirement for the purpose of R.C. 3317.01 only if it had been necessary for a school to be closed because of a disease epidemic, hazardous weather conditions, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use, provided that the number of days the school was actually open for instruction with pupils in attendance and for individualized parent-teacher conferences and reporting periods is not less than one hundred seventy-five.
2. The decision to close a school on a particular day is that of the district board of education. Under R.C. 3317.01, the review of the decision of the district board of education by the Superintendent of Public Instruction is to determine the existence of one of the circumstances enumerated in R.C. 3317.01 and of the sufficiency of the proof of the necessity of the school closing.
3. The Superintendent of Public Instruction is not authorized to waive the minimum school year requirement in R.C. 3317.01 for a day school was closed due to a potential inability to provide school bus transportation for students according to the established bus schedules or due to potential traffic congestion slowing emergency service response time to the school.

⁸ The argument also fails since it ignores the statutory requirement that a "utility failure" be the cause of the building's unfitness. I am unconvinced that R.C. 3317.01 contemplates emergency services as a "utility." See R.C. 4905.02 and 4905.03 (which incorporate R.C. 4921.02, as an exception, in the definition of "public utility"). R.C. 4921.02 specifically excepts the provision of "transportation of injured, ill or deceased persons by...ambulance."