

OPINION NO. 78-061**Syllabus:**

A city board of education may lawfully refuse to contribute to a municipal civil service commission which has billed the board of education pursuant to R.C. 124.54. Furthermore, the ratio referred to in Section 124.54 merely places a maximum on the amount a board of education may contribute, but a city board of education may, in its discretion, appropriate a lesser amount than is provided in that section.

To: Peter R. Seibel, Defiance County Pros. Atty., Defiance, Ohio
By: William J. Brown, Attorney General, December 20, 1978

I have before me your request for an opinion regarding R.C. 124.54. That section provides:

Where municipal civil service commissions act for city school districts of the cities for which they are appointed, the boards of education of such city school district may, by resolution, appropriate each year, to be paid into the treasury of such city, a sum sufficient to meet the portion of the board of education's cost of civil service administration as determined by the ratio of the number of employees of such board in the classified service to the entire number of employees in the classified service in all political divisions administered by such commission.

Specifically, you have asked the following questions:

1. Is it mandatory under R.C. 124.54, that a city board of education contribute to the cost of administration of a municipal civil service commission?
2. Is the ratio referred to in R.C. 124.54 the only permissible contribution the municipal civil ser-

vice commission can receive, or may it accept a lesser amount from the city board of education?

The primary and paramount rule in the interpretation and construction of statutes is to determine and give effect to the intention of the General Assembly. Toledo v. Public Utilities Commission, 135 Ohio St. 57 (1939). In R.C. 124.54, the legislature has stated that a city board of education "may" contribute a sum sufficient to meet the portion of the board of education's cost of civil service administration.

The statutory use of the word "may" is generally construed to make the provision in which it is contained optional, permissive, or discretionary, Dennison v. Dennison, 165 Ohio St. 146 (1956), at least where there is nothing in the language or in the sense or policy of the provision to require an unusual interpretation, State, ex rel. John Tague Post, v. Klinger, 114 Ohio St. 212 (1926).

The rule that a statute which speaks in terms of "may" is permissive is a qualified one. The word "may" sometimes requires a mandatory construction, as where the sense of the entire statute under consideration requires such. Sun Oil Co. v. Ohio Turnpike Comm., 57 Ohio Ops. 199 (C.P. 1954). Whether it is to be so read depends upon a fair construction of the statute. Stanton v. Frankel Bros. Realty Co., 117 Ohio St. 345 (1927). It has been stated that such construction will never be invoked except when it is necessary in order to give effect to the clear policy and intention of the legislature to impose a positive and absolute duty. Roetlinger v. Cincinnati, 16 Ohio App. 273 (1922).

The word "may" will not be given the meaning of "shall" or "must" where it is apparent from the whole section or statute that such was not the legislative intention. Osborn v. Lidy, 51 Ohio St. 90 (1894).

Municipal Civil Service Commissions are established pursuant to R.C. 124.40, which section provides, in pertinent part, as follows:

(A) The mayor or other chief appointing authority of each city in the state shall appoint three persons . . . who shall constitute the municipal civil service commission of such city and of the city school district and city health district in which such city is located. . . . The municipal civil service commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state . . . The expenses and salaries of a municipal civil service commission shall be determined by the legislative authority of the city and a sufficient sum of money shall be appropriated each year to carry out this chapter in the city . . . (Emphasis added.)

Thus, the legislative authority of the city has the clear responsibility to provide "sufficient" funds so that the municipal civil service commission can exercise its powers and duties under this section. It follows that such civil service commissions look primarily to that legislative authority for their funds, and not to the city school district or city health district for which it also acts.

Thus, the legislature has not expressed a clear policy and intention to impose a positive and absolute duty upon a board of education of a city school district to contribute to the cost of administration of such municipal civil service commissions. Therefore the word "may" as used in R.C. 124.54, should be given its general construction of making the provision optional rather than mandatory.

It being optional whether a city board of education contributes at all to the cost of administration of a municipal civil service commission, it follows that the board has similar discretion in deciding whether it will contribute the maximum share outlined by the ratio formula suggested in R.C. 124.54.

As that section alone empowers a board of education to make such contribution, that board is empowered to contribute only to the maximum specified in the ratio formula. It can not exceed that amount. However, it can, at its discretion, resolve to appropriate any amount inclusive of the statutory extremes of no contribution at all and the maximum contribution based on a ratio outlined in the statute.

Thus, it is my opinion, and you are so advised that a city board of education may lawfully refuse to contribute to a municipal civil service commission which has billed the board of education pursuant to R.C. 124.54. Furthermore, the ratio referred to in Section 124.54 merely places a maximum on the amount a board of education may contribute, but a city board of education may, in its discretion, appropriate a lesser amount than is provided in that section.