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EDUCATION, COMPULSORY SCHOOL ATTENDANCE:

1. §3321.04 RC; NON-EXEMPT CHILD MUST ATTEND FOR FULL TERM SCHOOL IS IN SESSION.
2. §3321.07 RC; HOURS AND TERM OF SCHOOL IN PRIVATE OR PAROCHIAL SCHOOLS MUST BE EQUIVALENT TO THOSE IN PUBLIC SCHOOLS OF THE DISTRICT.
3. §3321.38 RC PROVIDES A PENALTY UPON PARENT, GUARDIAN OR PERSON HAVING CUSTODY OF NON-EXEMPT CHILD OF SCHOOL AGE FOR VIOLATION OF §3321.07 RC.

SYLLABUS:

1. Section 3321.04, Revised Code, directs that every parent, guardian or other person having charge of a child of compulsory school age, who is not exempted as set forth in that section from compulsory school attendance, must send such child to a school for the full time such school attended is in session.

2. Pursuant to Section 3321.07, Revised Code, the hours and term of school attendance for children attending other than a public school shall be equivalent to those required of children attending the public schools of the district; therefore, pupils enrolled in a private or parochial school must be in attendance for a school term equivalent to that required of pupils in the public schools of the district, notwithstanding the fact that such school term may, by virtue of the discretion granted to boards of education by Section 3313.48, Revised Code, be of longer duration than the minimum prescribed by law.

3. Section 3321.38, Revised Code, as amended by Amended House Bill No. 212, 101st General Assembly, imposes a penalty upon any parent, guardian, or other person having care of a child of compulsory school age for violation of Section 3321.07, Revised Code. (Opinion No. 3209, Opinions of the Attorney General for 1953, page 589, distinguished.)

Columbus, Ohio, June 19, 1957

Hon. James H. Estill, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Holmes County Board of Education has requested of me to ask your office for an opinion relative to the required

hours and term of attendance in private and parochial schools under Ohio Law.

“This question seems to involve the interpretation of the following sections of law :

“*Section 3313.48 R. C.* states that public schools shall have a term of not less than 32 weeks in each school year.

“*Section 3321.07 R. C.* states that the hours and term of attendance exacted in schools other than public schools shall be equivalent to the hours and term of attendance required of children in the public schools of the district.

“*Section 3321.38 R. C.* provides a penalty against *parents, guardians or others having care of a child* for violation of Section 3321.07.

“*Section 3321.04 R. C.* of the compulsory attendance law states that *parents, guardians or others having care of a child* shall send their child to school for the full term of such school which shall not be less than 32 weeks.

“We have several ‘Amish’ Parochial Schools in the county which have been operating on a 32 week or 8 month term. The public schools in the district in which they are located have been operating on a 180 day term in order to qualify for aid under Section 3317.01 R. C. Since the Amish people are almost exclusively an agricultural class it is to their advantage to have their older children at home during the spring planting season and this is the basis of their desire for an 8 month term instead of a 9 month one. However, the practical problem exists when public school pupils must attend for a longer term than private or parochial pupils.

“I believe that the main problem might be broken down into two basic questions :

“(1) Is the governing authority of a private or parochial school required by Ohio Law to provide a school term in excess of 32 weeks, and

“(2) Are properly enrolled private or parochial school pupils required by Ohio Law to be in attendance at school longer than 32 weeks?

“It is my personal opinion that a decision on these questions involves several considerations which may or may not be helpful to you in your determination. (A) Is there any conflict between Sections 3321.07 and 3321.04 R. C. which both refer to private and parochial school terms and if so which section controls? (B) Under Section 3321.07 R. C. may a public school board properly act to set the term for private and parochial schools in

view of the minimum term language of Sections 3313.48 and 3321.04 R. C.? (C) If under Section 3321.38 R. C. a governing authority of a private or parochial school cannot be compelled to exact a school term equivalent to that of the public schools in the district, then do private and parochial school pupils meet the attendance requirements of Section 3321.04 R. C. by attending such term as the private or parochial school does provide if that term be at least 32 weeks in length? (D) If a private or parochial school cannot be required or compelled to establish a term longer than 32 weeks then of what effect is Section 3321.07 and 3321.38 R. C.?"

Your attention is directed to Opinion No. 3209, Opinions of the Attorney General for 1953, page 589. Although the subsequent amendment of Section 3321.38, Revised Code, makes it necessary to distinguish one phase of the conclusion reached in that opinion, much of the discussion is particularly applicable to your inquiry.

The author of Opinion No. 3209, *supra*, said this at page 590:

"At the outset, a precise delineation of the question which I will seek to answer should be made. Although your question is literally 'whether or not the Amish parochial schools must provide a term of the minimum 36 weeks duration,' the solution to that problem does not rest with you. I believe that your inquiry must be interpreted as asking whether the failure of the Amish parochial schools to provide a term in excess of 32 weeks involves any punishable violation of the compulsory school attendance laws."

This language, I believe, applies with equal force to the first question you have presented in your inquiry. My answer will be phrased as though your request had so read.

Section 3313.48, Revised Code, now reads as follows:

"The board of education of each city, exempted village, and local school district shall provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Every day school so provided shall continue not less than thirty-two weeks in each school year."

In Opinion No. 3209, *supra*, the following was said regarding the effect of this section:

"This section, you will note, requires every board of education to provide for the education of the youth of school age within its district, and then makes the mandatory provision that every

day school so provided shall be maintained for *not less than* thirty-two weeks in each school year. This provision plainly does nothing but establish a minimum term and does not in any way restrict or limit the discretion of the board of education in establishing and maintaining its schools for a longer period. This minimum term of thirty-two weeks constitutes what is familiarly known as an eight months school year, comprising one hundred and sixty days, whereas a large portion of the schools throughout the state have been, and are being maintained for a period of thirty-six weeks, which is known as a nine months school year, comprising one hundred and eighty days."

At this point it should be noted that the 102nd General Assembly in enacting Amended Senate Bill No. 111, which includes an amendment to Section 3313.48, Revised Code, has increased the minimum period during which each day school shall be open for instruction and has expressed such period in terms of days; the effective date of this amendment is set by Section 3 of the Act as January 1, 1959.

It is mandatory that parents, guardians, or other persons having control of children of compulsory school age, except those children exempted from such attendance pursuant to Section 3321.04, Revised Code, send those children to a school for the full time the school attended is in session, although not necessarily to a public school. If, however, a child attends other than a public school that school must conform to certain standards both as to the instruction given and as to the hours and term of attendance at such school. A penalty is imposed upon a person who violates his statutory duties regarding the sending of such children to school.

Sections 3321.04, 3321.07 and 3321.38, Revised Code, with which we are here concerned, were amended by the 101st General Assembly, in Amended House Bill No. 212, 126 Ohio Laws, 655. Section 3321.04, Revised Code, now reads in pertinent part :

"Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed under an age and schooling certificate and who has not been determined to be incapable of profiting substantially by further instruction, must send such child to a school, which conforms to the minimum standards prescribed by the state board of education, *for the full time the school attended is in session*, which shall not be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date on which the child begins to reside in the district or within one week after his withdrawal from employment. * * *."

(Emphasis added.)

Section 3321.07, Revised Code, provides as follows:

“If any child attends upon instruction elsewhere than in a public school such instruction shall be in a school which conforms to the minimum standards prescribed by the state board of education. *The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district.* This section does not require a child to attend a high school instead of a vocational, commercial, or other special type of school, provided the instruction therein is for a term and for hours equivalent to those of the high school, and provided his attendance at such school will not interfere with a continuous program of education for the child to the age of sixteen.” (Emphasis added)

Section 3321.38, Revised Code, now reads in part:

“(A) No parent, guardian, or other person having care of a child of compulsory school age shall violate section 3321.01, 3321.03, 3321.04, 3321.07, 3321.10, 3321.19, 3321.20, or 3331.14 of the Revised Code. The court may require a person convicted of violating this division to give bond in the sum of one hundred dollars with sureties to the approval of the court, conditioned that he will cause the child under his charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law. * * *” (Emphasis added.)

It is then obvious that a parent, guardian, or other person having charge of a child subject to compulsory school attendance cannot with immunity select for the attendance of such child a school which provides instruction for a lesser period of time than that provided by the public schools of the district. To send a child to a school which does not meet those requirements subjects the person having control of such child to the penalty provided in Section 3321.38, Revised Code. This was not true at the time Opinion No. 3209, Opinions of the Attorney General for 1953, page 589, which has been cited hereinbefore, was issued. Section 3321.38, Revised Code, then provided no penalty for violation of Section 3321.07, Revised Code, although at that time as well as at the present time Section 3321.07, Revised Code, made it mandatory that such other school have hours and terms of attendance equal to those required of children in the public schools of the district.

I see no conflict or inconsistency between Sections 3321.04 and 3321.07, Revised Code. Pursuant to Section 3321.04, Revised Code, a

child of compulsory school age must be sent to school for the full time such school is in session and such time must be not less than thirty-two weeks per school year. Such school term may, however, be of longer duration than thirty-two weeks. In those districts in which children attending public schools are required to be in attendance for such longer period, then children attending other than public schools must also be in attendance for such longer period. Thus, attendance for a thirty-two week period cannot be looked upon as compliance with Section 3321.07, Revised Code, in any district in which the school term of public schools is greater than thirty-two weeks.

In reaching this conclusion I am not unmindful of the existence of a question of the constitutional validity of the statutory provision here involved, for it is evident that the legislature has provided no standards for the guidance of boards of education in determining, within particular districts, the length of the public school term. As a practical matter we may suppose that in many cases this determination is made chiefly with the object of qualification for the state school subsidy under the "one hundred eighty days" requirement in Section 3317.01, Revised Code.

The absence of such guides or standards, and the possibility of the length of a public school term being made solely from financing considerations rather than upon the basis of educational need and efficiency of local schools, supply the basis for a possible argument that such action, in particular districts, may be arbitrarily made.

It is, of course, wholly beyond the scope of my office to determine such a constitutional question. I assume the validity of the provision here in question, therefore, and limit this opinion to an interpretation of the several statutes according to their plain terms.

It is, therefore, my opinion and you are advised:

1. Section 3321.04, Revised Code, directs that every parent, guardian or other person having charge of a child of compulsory school age, who is not exempted as set forth in that section from compulsory school attendance, must send such child to a school for the full time such school attended is in session.

2. Pursuant to Section 3321.07, Revised Code, the hours and term of school attendance for children attending other than a public school shall be equivalent to those required of children attending the public schools of

the district ; therefore, pupils enrolled in a private or parochial school must be in attendance for a school term equivalent to that required of pupils in the public schools of the district, notwithstanding the fact that such school term may, by virtue of the discretion granted to boards of education by Section 3313.48, Revised Code, be of longer duration than the minimum prescribed by law.

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Respectfully,
WILLIAM SAXBE
Attorney General