

OPINION NO. 86-013**Syllabus:**

1. Moneys included in a student activity fund pursuant to R.C. 3315.062, which are derived from school activities conducted by a school class and which are intended to be used for the benefit of such school class, are public funds.
2. A board of education may authorize, pursuant to R.C. 3315.062(C), the disbursement and expenditure of moneys from a student activity fund, provided the board determines by a reasonable exercise of its discretion that the proposed disbursement and expenditure will serve a valid and proper public purpose.
3. A board of education may expend moneys from a student activity fund for the purpose of holding a class reunion if the board reasonably determines such expenditure serves a valid and proper public purpose.
4. A board of education may not disburse moneys in a student activity fund to a school class, upon graduation, where such moneys would be held by members of the class for an indefinite period of time for the purpose of holding future class reunions.

To: Peter R. Selbel, Defiance County Prosecuting Attorney, Defiance, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 27, 1986

I have before me your request for my opinion regarding student activity funds that are maintained by school classes.

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The money contained in such funds is comprised of revenues derived from school activities conducted by the classes, and is used for the benefit of the class that raised the money. You wish to know whether the money in such a student activity fund is public money, and how such money may be disbursed when a particular student class graduates.

R.C. 3315.062, which provides for the establishment of student activity funds and for the expenditure of moneys contained therein, reads as follows:

(A) The board of education of any school district may expend moneys from its general revenue fund for the operation of such student activity programs as may be approved by the state board of education and included in the program of each school district as authorized by its board of education. Such expenditure shall not exceed five-tenths of one per cent of the board's annual operating budget.

(B) The state board of education shall develop, and review biennially, a list of approved student activity programs.

(C) If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board.

(D) The board of education of any school district may purchase accident insurance for pupils participating in school athletic programs for which the school district is authorized to expend public money. The board also may, to the extent it considers necessary, establish a self-insurance plan for the protection of such pupils against loss or expense resulting from bodily injury or death by accident, or for the payment of any deductible under a policy of accident insurance procured pursuant to this division.

It is by now well established that moneys in a student activity fund are public moneys. As my predecessor stated in 1980 Op. Att'y Gen. No. 80-060 at 2-237:

Although the money in student activity funds is derived from private contributions, rather than from a tax levy, such money nevertheless constitutes public funds by virtue of the fact that it is received by public officials under color of law. See R.C. 117.10; 1975 Op. Att'y Gen. No. 75-008, No. 75-021. Furthermore, fund revenue is unquestionably under the control of the board of education, as the board is required, pursuant to R.C. 3315.062, to approve all

expenditures from student activity funds¹ (footnote added).

Accord 1982 Op. Att'y Gen. No. 82-014; 1976 Op. Att'y Gen. No. 76-008; 1975 Op. Att'y Gen. No. 75-021; 1975 Op. Att'y Gen. No. 75-008. Thus, in response to your first question, I conclude that the moneys included in a student activity fund pursuant to R.C. 3315.062, which are derived from school activities conducted by a school class and which are to be used for the benefit of such school class, are public funds.

I turn now to your question regarding the manner in which moneys in a student activity fund, which have been generated by a school class, may be distributed upon the graduation of such class. As was stated generally in Op. No. 75-008 at 2-35 to 2-36:

The third paragraph of R.C. 3315.062 provides for the establishment of a student activity fund. The approval of the board of education is specifically required before an expenditure can be made from the fund. However this Section establishes no guidelines for distinguishing a proper expenditure of student activity funds from an improper one. Thus the determination of which expenditures are proper lies within the sound discretion of the board of education.

Although no statutory guidelines have been written, it must be remembered that the student activity funds in question here are public funds, having been received by public officials under color of law. See R.C. 117.10. Thus, the limitation that public funds may only be spent for a public purpose must be observed. See Opinion No. 71-044...and Opinion No. 74-048.... The board of education must look at the facts concerning the proposed expenditure and determine whether such expenditure would serve a public purpose.

See Op. No. 82-014 at 2-48 to 2-49 ("expenditures [from a student activity fund] which are reasonable may be approved by the board [of education] pursuant to R.C. 3315.062"); Op. No. 76-008; Op. No. 75-008. See generally State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 325, 98 N.E.2d 835, 838 (1951) (discussing the public purpose requirement). Thus, a board of education may, as a general matter, authorize the expenditure of moneys from a student activity fund if the board determines by a reasonable exercise of its discretion that the expenditure is proper and serves a valid public purpose.

In your letter you have posed the example that in some instances a school class may wish to withdraw the balance remaining in its student activity fund at the time of graduation and deposit it in a bank for future class reunions. As I noted in 1985 Op. Att'y Gen. No. 85-047 at 2-173, "I recognize that legislative authorities have broad discretion in determining what constitutes a public purpose, and such determination will be judicially overturned only in cases where the determination is manifestly arbitrary or unreasonable."

¹ 1980 Op. Att'y Gen. No. 80-060 concluded that student activity funds, being public funds, must be administered in accordance with the budgeting and appropriation procedures set forth in R.C. Chapter 5705, including the certification requirements of R.C. 5705.41(D) and R.C. 5705.412.

See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951); State ex rel. McClure v. Hagerman. I am unable, however, to discern any valid public purpose that would be served by permitting a school class access to moneys in its student activity fund immediately upon graduation for deposit in a separate, private bank account, where the moneys will remain for an indefinite period of time. Cf. Op. No. 85-047 at 2-173 (the prepayment of county property taxes by individual property owners into an interest-bearing escrow account established by the county treasurer, to be held in the account until such time as the taxes become due, serves no valid public purpose). As the court stated in State ex rel. McClure v. Hagerman, 155 Ohio St. at 325, 98 N.E.2d at 838, "'a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the [state or political subdivision], the sovereign powers of which are used to promote such public purpose'" (citation omitted). The transfer of public funds to a private individual or individuals, to be held by them for an indefinite period of time, does not appear to meet the test set forth in McClure, regardless of the manner in which such funds are eventually used.

Instead, I believe that moneys included in a student activity fund should remain therein, subject to the control and custody of the board of education, until such time as the school class proposes to expend those moneys for a particular purpose.² If, at that time, the board of education determines that disbursement and expenditure of those moneys for the purpose of conducting a class reunion serves a valid and proper public purpose, then the board may expend the funds for such purpose. See, e.g., Op. No. 75-008 (syllabus, paragraph two) (a board of education may expend public funds from student activity accounts as payment for meals for nonstudents, provided such expenditure is for a public purpose).

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

1. Moneys included in a student activity fund pursuant to R.C. 3315.062, which are derived from school activities conducted by a school class and which are intended to be used for the benefit of such school class, are public funds.
2. A board of education may authorize, pursuant to R.C. 3315.062(C), the disbursement and expenditure of moneys from a student activity fund, provided the board determines by a reasonable exercise of its discretion that the proposed disbursement and expenditure will serve a valid and proper public purpose.
3. A board of education may expend moneys from a student activity fund for the purpose of holding a class reunion if the board reasonably determines such expenditure serves a valid and proper public purpose.

² Any interest that may be earned on those moneys shall be credited, pursuant to R.C. 135.21 and R.C. 5705.10, to the general fund of the school district. 1985 Op. Att'y Gen. No. 85-085 at 2-345.

4. A board of education may not disburse moneys in a student activity fund to a school class, upon graduation, where such moneys would be held by members of the class for an indefinite period of time for the purpose of holding future class reunions.