

OPINION NO. 87-101**Syllabus:**

A school district does not necessarily forfeit its opportunity to receive tuition payments under R.C. 3313.64(I) if its treasurer submits the tuition information to the Superintendent of Public Instruction after the due dates specified in R.C. 3313.64(I). Because the due dates specified are directory rather than mandatory, the Superintendent may decide, in the exercise of his discretion, to accept tuition information filed after the due dates.

To: David E. Bowers, Allen County Prosecuting Attorney, Lima, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987

I have before me your request for my opinion regarding payment of tuition to a school district for tuition expenses of students who are school residents of another school district pursuant to R.C. 3313.64. R.C. 3313.64(I), which provides for the deduction and distribution of tuition payments, requires the treasurer of each school district to furnish the Superintendent of Public Instruction with the necessary tuition information for each six month period by January 15 and July 15 of each year. I have rephrased your question as follows:

If a school district treasurer neglects to submit to the Superintendent of Public Instruction the report required by R.C. 3313.64(I) until after the due dates specified in the statute, does the school forfeit its opportunity to receive tuition payments for the students named in the late report?

According to materials you submitted with your opinion request, the information is reported on a form known as the "SF-14" form. R.C. 3313.64(I) describes the information to be included on the SF-14 form, and also describes the method for deducting and distributing the tuition payments:

A school district required to pay tuition pursuant to division (C)(2) or (3) of this section or ...[R.C.] 3313.65...shall have an amount deducted under...[R.C. 3317.023(G)]...equal to its own tuition rate for the same period of attendance. A school district entitled to receive tuition pursuant to division (C)(2) or (3) of this section or...[R.C.] 3313.65...shall have an amount credited under...[R.C. 3317.023(G)]...equal to its own tuition rate for the same period of attendance. If the tuition rate credited to the district of attendance exceeds the rate deducted from the district required to pay tuition, the department of education shall pay the district of attendance the difference from amounts deducted from all districts' payments under...[R.C. 3317.023(G)]...but not credited to other school districts under such division, and from appropriations made for such purpose. The treasurer of each school district shall, by the fifteenth day of January and July, furnish the superintendent of public instruction a report of the names of each child who attended the district's schools under divisions (C)(2) and (3) of this section or...[R.C.] 3313.65...during the preceding six calendar months, the duration of such attendance, the school district responsible for tuition on behalf of the child, and such other information as the superintendent requires.

Upon receipt of the report the superintendent shall, pursuant to...[R.C. 3317.023(G)]...deduct each district's tuition obligations under divisions (C)(2) and (3) of this section or...[R.C.] 3313.65...and pay to the district of attendance that amount plus any amount required to be paid by the state. (Emphasis added.)

R.C. 3317.022 provides a formula for computation of state aid to school districts. R.C. 3317.023(A) provides that the amount of state aid to be provided to a school district will be adjusted "by the amount of the computations made under [R.C. 3317.023](B) to (J)." R.C. 3317.023(G) provides in pertinent part:

(1) If the district is required to pay to or entitled to receive tuition from another school district under...[R.C.3313.64(C)(2) or (3)] or...[R.C.] 3313.65...or if the superintendent of public instruction is required to determine the correct amount of tuition and make a deduction or credit under...[R.C.] 3317.08...deduct and credit such amounts as provided in...[R.C.3313.64(I)] or 3317.08....

The funds distributed pursuant to R.C. 3317.023(G) are part of the "School Foundation Program," a program of state aid to school districts coordinated pursuant to R.C. Chapter 3317. R.C. 3317.01 regulates the administration of the Program, and provides in pertinent part:

[R.C.] Chapter 3317...shall be administered by the state board of education, with the approval of the controlling board. The superintendent of public instruction shall calculate the amounts payable to each district and shall certify the amounts payable to each eligible district to the treasurer of the district as provided by this chapter.

R.C. 3317.01(C) restricts distribution of the Program's funds, and provides in pertinent part:

A board of education which has not conformed with other law and the rules pursuant thereto, shall not participate in the distribution of funds authorized by ...[R.C.]...3317.022 to 3317.025 and [R.C.] 3317.16 ...except for good and sufficient reason established to the satisfaction of the state board of education and the state controlling board.

It must thus be determined whether the school district mentioned in your letter had "conformed" with R.C. 3313.64(I) when it filed the necessary SF-14 form with the Superintendent of Public Instruction after the due dates provided in the statute.

R.C. 3313.64(I) provides that the school district's treasurer "shall...furnish the superintendent of public instruction" with the required reports "by the fifteenth of January and July." One of my predecessors has interpreted the word "shall" as used in a statute and noted that "shall" does not always impose a mandatory duty:

Ordinarily the use of the word "shall" in a statute carries with it the presumption that it is used in the mandatory rather than the directive sense, but the character and context of the legislation may require that the word "shall" be interpreted as merely directory if to do otherwise would frustrate the intent of the legislature.

1979 Op. Att'y Gen. No. 79-076 at 2-246 (citation omitted). In 1946, the Ohio Supreme Court held that a statute that required persons elected to office to file a bond by a certain date or risk forfeiture of office was directory rather than mandatory, and affirmed a decision that allowed the respondent-officers to assume office. State ex rel. Jones v. Farrar, 146 Ohio St. 467, 66 N.E.2d 531 (1946). The requirement originated in G.C. 7, which provided that:

A person elected...to an office who is required by law to give a bond...previous to the performance of the duties [of his office], who refuses or neglects to give such bond...within the time...prescribed by law...shall be deemed to have refused to accept the office to which he was elected...and such office shall be considered vacant....

See Id. at 470-71, 66 N.E.2d at 533-34. In addition, G.C. 4242 provided that "[t]he [village] council may declare vacant the office of any person elected...to an office who fails to...give any bond required...of him, within ten days after he has been notified of his...election...." Id. at 471, 66 N.E.2d at 534. The respondent-elected officials had been notified of their election on December 5, 1943, but did not file their bonds

until twenty-five days later, on December 30, 1943. Id. Although the statutes themselves provided penalties for violation of the time-for-filing requirements, the court reasoned that the time-for-filing requirements were not vital to the enforcement of the statute, and allowed the respondents to take office. In its syllabus, the court distinguished between mandatory and directory statutes, noting that "[a] statute is mandatory where noncompliance with its provisions will render illegal and void the...acts to which it relates or for which it provides, and is directory where noncompliance will not invalidate such...acts." Id. at 467, 66 N.E.2d at 532 (Syllabus, paragraph one).¹

Nothing in R.C. 3313.64(I) indicates that a school board treasurer renders "illegal and void" payment of tuition to a school district for a non-resident child by tardily furnishing the Superintendent of Public Instruction with the reports required under R.C. 3313.64(I). Indeed, R.C. 3317.023(G) provides that the Department of Education should deduct and distribute tuition payments pursuant to the requirements of R.C. 3313.64(I). R.C. 3313.64(I) provides only that "upon receipt of the [SF-14,] the Superintendent of Public Instruction "shall...deduct each district's tuition obligations under divisions (C)(2) and (3) of this section or [R.C.]... 3313.65...and pay to the district of attendance that amount plus any amount required to be paid by the state." I can find no statute that requires the Superintendent to complete the deduction or distribution of payments before any specific date.

The Ohio Supreme Court also held, in State ex rel. Jones v. Farrar that most statutory time requirements are directory rather than mandatory:

As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure; and, unless the object or purpose of a statutory provision requiring some act to be performed within a specified period of time is discernible from the language employed, the statute is directory and not mandatory. (Emphasis added.)

Farrar, 146 Ohio St. at 467, 66 N.E.2d at 534. (Syllabus, paragraph three). See also State ex rel. Webb v. Bd. of Education of the Bryan City School District, 10 Ohio St. 3d 27, 460 N.E.2d 1121 (1984) (syllabus) (the court interpreted the language in R.C. 3319.16 that a board of education "shall set a

¹ Similarly, Black's Law Dictionary distinguishes between "mandatory" and "directory" provisions in statutes as follows: "A 'mandatory' provision in a statute is one...which renders the proceedings to which it relates void [if the provision is not followed], while a 'directory' provision is one the observance of which is not necessary to validity of the proceeding. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory...otherwise, when it relates to form and manner, and where an act is incident, or after jurisdiction acquired, it is directory merely." Black's Law Dictionary 867 (5th ed. 1979) (citation omitted).

time for the hearing which shall be within thirty days from the date of receipt of the written demand" and held that the language was "directory and not mandatory, and [that] a board of education under this statute in a referee-requested hearing need only schedule the date for such hearing within thirty days of the receipt of the written demand from the teacher for such hearing").

The apparent "object and purpose" of R.C. 3313.64(I) is to ensure that school districts are charged for and receive tuition payments as necessary and that the Superintendent of Public Instruction has the necessary information to make the appropriate deductions and payments. Furnishing the Superintendent of Public Instruction with the tuition information on the SP-14 form is not the act that entitles school districts to receive tuition payments. Rather, R.C. 3313.64(I) provides that school districts become entitled to tuition payments pursuant to R.C. 3313.64(C)(2) or (3) or R.C. 3313.65, which provide guidelines for determining which school district is responsible for tuition when a child attends school in a school district other than the school district in which he lives. Therefore, school districts become entitled to receive tuition payments when they properly provide education to a child who is a "school resident" of another school district pursuant to R.C. 3313.64.

The General Assembly has not expressed or implied the "object or purpose" of the time requirement of R.C. 3313.64 in the language of the statute. R.C. 3313.64(I) provides in pertinent part:

[t]he treasurer of each school district shall, by the fifteenth day of January and July, furnish the superintendent of public instruction a report of the names of each child who attended the district's schools under divisions (C)(2) and (3) of this section or... [R.C.] 3313.65...during the preceding six calendar months, the duration of such attendance, the school district responsible for tuition on behalf of the child, and such other information as the superintendent requires.

The next paragraph of the statute requires the Superintendent of Public Instruction to "deduct each district's tuition obligations...and pay to the district of attendance that amount plus any amount required to be paid by the state" upon receiving the reports. Nothing in the statute indicates that the Superintendent must have the information by the specified dates in order to be able to deduct and distribute the amounts required; indeed, simply receiving the information seems to be the major requirement for completion of the payments. Thus, receiving the reports by the specified dates simply makes sending the payments more convenient for the Superintendent of Public Instruction. The Ohio Supreme Court has held that statutory provisions that are matters of convenience rather than substance are directory:

As a general rule, statutes which relate to the essence of the act to be performed or to matters of substance are mandatory, and those which do not relate to the essence and compliance with which is merely a matter of convenience...are directory.

State ex rel. Jones v. Farrar, 146 Ohio St. at 467, 66 N.E.2d at 532 (syllabus, paragraph two). The time requirements of R.C. 3313.64(I) do not relate to the "essence" of the act to be performed pursuant to R.C. 3313.64(I); the essence of that act is the deduction and payment of tuition from and to the appropriate school districts when one school district has provided education to students who are residents of another school district. I therefore conclude that the time requirements of R.C. 3313.64(I) are directory rather than mandatory.²

Because the due dates specified in R.C. 3313.64(I) are directory rather than mandatory, the Superintendent of Public Instruction may, in the exercise of his discretion, process SF-14 forms received after the due dates specified in R.C. 3313.64(I). The Ohio Supreme Court has held that a public officer may, in the exercise of his discretion, accept information or documents filed after the specified due date if the due date specified is directory rather than mandatory. See, e.g., State v. Nickles, 159 Ohio St. 353, 112 N.E.2d 531 (1953) (Syllabus, paragraph five); Brewer v. DeMaioresibus, 102 Ohio App. 566, 136 N.E.2d 772 (1956) (Syllabus, paragraphs two and three).³ Thus, the Superintendent of Public Instruction may decide, in the exercise of his discretion, that a school district treasurer has "conformed with other law" pursuant to R.C. 3317.01 even if he submits the information required by R.C. 3313.64(I) after the due dates specified in the statute. Accordingly, a school district does not necessarily forfeit its opportunity to receive tuition payments pursuant to R.C.

² Because the "essence" of R.C. 3313.64(I) relates to the deduction and distribution of tuition payments from and to the appropriate school districts, I need not address the conclusion I would reach if the "essence" of R.C. 3313.64(I) were the furnishing of tuition payment information to the Superintendent of Public Instruction.

³ I note that my conclusion that the Superintendent of Public Instruction may process SF-14 forms received after the due date specified in R.C. 3313.64(I) does not mean that he must process all SF-14 forms that he receives, no matter how tardy they may be. There may be circumstances under which the Superintendent of Public Instruction may, in the exercise of his discretion, refuse to process an SF-14 form filed after the deadline specified in R.C. 3313.64(I). For example, if the SF-14 form is received after the close of the current biennium, it may be impossible for the Superintendent of Public Instruction to deduct and credit tuition payments pursuant to R.C. 3313.64(I). Because the Superintendent is vested with discretion in regard to acceptance of SF-14 forms after the statutory due dates, it would not be appropriate for me to speculate as to the circumstances under which he might decide to do so. I note, however, that he may be guided by the procedures he has adopted pursuant to R.C. 3301.12(B), which requires the Superintendent of Public Instruction to "prescribe and require the preparation and filing of such financial and other reports from school districts, officers, and employees as are necessary or proper," and to "prescribe and require the installation by school districts of such standardized reporting forms and accounting procedures as are essential to the business-like operations of the public schools of the state."

3313.64(I) if its treasurer furnishes the Superintendent of Public Instruction with the tuition information after the due dates specified in R.C. 3313.64(I).

Accordingly, it is my opinion and you are advised that a school district does not necessarily forfeit its opportunity to receive tuition payments under R.C. 3313.64(I) if its treasurer submits the tuition information to the Superintendent of Public Instruction after the due dates specified in R.C. 3313.64(I). Because the due dates specified are directory rather than mandatory, the Superintendent may decide, in the exercise of his discretion, to accept tuition information filed after the due dates.