

**OPINION NO. 83-082****Syllabus:**

1. The property of a school district which was dissolved pursuant to former R.C. 3311.29 (1967-1968 Ohio Laws 1032 (Am. Sub. S.B. 350, eff. Dec. 1, 1967)) was divided among the school districts which received its territory at the time of the dissolution.
2. Pursuant to R.C. 3313.41(C), a board of education which decides to dispose of real property that exceeds two thousand dollars in value may sell such real property to a township upon such terms as are agreed between the parties, but may not make a gift of such property to a township.

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**To: William L. Thomas, Belmont County Prosecuting Attorney, St. Clairsville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 2, 1983**

I have before me your request for an opinion concerning an elementary school building located in Wheeling Township which was owned by the former Wheeling Local School District before such district was consolidated with neighboring school districts in 1968. The building is no longer used as a school. You have indicated that the Wheeling Township Trustees wish to use the building for township purposes. Thus, you have asked to what entity the ownership of the building passed at the time of the school district's consolidation.

It is my understanding that the consolidation occurred pursuant to former R.C. 3311.29 (1967-1968 Ohio Laws 1032 (Am. Sub. S.B. 350, eff. Dec. 1, 1967))<sup>1</sup> which provided as follows:

No school district shall be created and after July 1, 1968, no school district shall exist which does not maintain within such district public schools consisting of grades one through twelve, inclusive, and any such existing school district not maintaining such schools after such date shall be dissolved and its territory joined with another school district or districts by order of the state board of education if no agreement is made among the surrounding districts voluntarily, which order shall provide an equitable division of the funds, property, and indebtedness of the dissolved school district among the districts receiving its territory. The state board of education may authorize exceptions to school districts where topography, sparsity of population, and other factors make compliance impracticable.

The superintendent of public instruction is without authority to distribute funds under sections 3317.02 and 3317.06 of the Revised Code to any school district which after July 1, 1968, does not maintain schools with grades one through twelve, inclusive, and to which no exception has been granted by the state board of education. (Emphasis added.)

I have been informed that the territory of the former Wheeling Local School District was joined, in part, with that of the St. Clairsville-Richland City School District, and, in part, with the territory of the Union Local School District. In accordance with R.C. 3311.29, the Wheeling Local School District was dissolved, and its property was divided among the districts which received its territory. The ownership of the school building in question was, accordingly, transferred to the St. Clairsville-Richland City School District.

You have also asked whether the St. Clairsville-Richland City School District, as owners of this unused building, may give or sell the building to Wheeling Township. ~~R.C.~~ <sup>R.C.</sup> 3313.17 grants corporate powers to school district boards of education in the following terms:

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

Thus, a board of education of a school district is authorized to dispose of real property.

R.C. 3313.41 sets forth the methods by which a board of education may dispose of real property which it owns in its corporate capacity, by providing, in pertinent part:

(A) Except as provided in divisions (C) and (D) of this section, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity, and that exceeds in value two thousand dollars, it shall sell the property at public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property.

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<sup>1</sup> This statute was subsequently amended, most recently by Am. Sub. S.B. 170, 111th Gen. A. (1975) (eff. Aug. 29, 1975).

(B) When the board of education has twice offered real or personal property for sale at public auction pursuant to division (A) of this section, and the property has not been sold, the board may sell it at a private sale. At a private sale, the board shall, as it considers best, sell real property as an entire tract or in parcels, and personal property in a single lot or in several lots.

(C) If a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value two thousand dollars, it may sell the property to any municipal corporation, county, township, township park district, board of park commissioners established under Chapter 755. of the Revised Code, or park district established under Chapter 1545. of the Revised Code; to a wholly or partially tax-supported university, university branch, or college; to any board of education; or to the board of trustees of a school district library, upon such terms as are agreed upon. The sale of real or personal property to the board of trustees of a school district library is limited, in the case of real property, to a school district library within whose boundaries the real property is situated, or, in the case of personal property, to a school district library whose boundaries lie in whole or in part within the school district of the selling board of education.

. . . .

(E) The president and the treasurer of the board of education shall execute and deliver deeds or other necessary instruments of conveyance to complete any sale or trade under this section. (Emphasis added.)

Thus, a board of education that decides to dispose of real property exceeding two thousand dollars in value<sup>2</sup> must sell such property in the manner described under R.C. 3313.41(A) and (B), unless the board sells such property to one of the entities enumerated under R.C. 3313.41(C).

In order to determine whether this provision authorizes the board of education to make a gift of real property to Wheeling Township, one must examine the statutory language. Carter v. City of Youngstown, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph 1) ("[A]ll of the terms used should be given their usual and ordinary meaning and signification"). R.C. 3313.41 authorizes a board of education that decides to dispose of real property which exceeds two thousand dollars in value to sell such property. The verb "sell" means "to dispose of by sale." Black's Law Dictionary 1220 (5th ed. 1979). "Sale" is defined as follows:

A contract between two parties, called, respectively, the "seller" (or vendor) and the "buyer" (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. Transfer of property for consideration either in money or its equivalent.

Id. at 1200. The explanation of the term further states that "[s]ale differs from 'gift' in that the latter transaction involves no return or recompense for the thing transferred. Id. The term "gift" means "[a] voluntary transfer of property to another made gratuitously and without consideration." Id. at 619. While R.C. 3313.41(C) permits a sale "upon such terms as are agreed" between the parties, the statutory language contemplates some form of consideration in exchange for the transfer of real property. Accordingly, I conclude that a board of education is not authorized to make a gift of real property valued in excess of two thousand dollars.

Based upon the foregoing, it is my opinion, and you are advised, that:

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<sup>2</sup> You have indicated that the value of the property in question exceeds two thousand dollars.

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