

3060

EDUCATION, BOARD OF; SCHOOLS AND COURSES; SPECIAL—TUITION AND MATERIALS, §3313.53 R.C., COST OF; CHARGES—DRIVER TRAINING, AUTO EXPENSES, COST OF; CHARGES.

SYLLABUS:

1. A board of education is without authority to make a tuition charge against pupils between six and twenty-one years of age for attendance in any of the special schools or courses which the board is authorized by law to establish.

2. A board of education is without authority to make a charge against any pupil between six and twenty-one years of age for materials of any character used or consumed in the process of instruction either in the ordinary day schools or in the special schools authorized by law, or in the special training courses authorized by Section 3313.53, Revised Code. However, a pupil in any special course who produces articles for his own use and ownership may be charged for the materials used therefor.

3. Pupils under twenty-one years of age taking instruction in classes established by a board of education for driver training may not be charged for gasoline, oil, *etc.*, used in such training. But if persons over twenty-one years of age are admitted to such classes, a charge covering all costs of such instruction may be made against them.

Columbus, Ohio, November 14, 1958

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion on the following questions:

- “1. Whether School Districts operating Evening Schools, Vacation Schools, Special Instruction Schools, or Part-time Schools, when pupils are within the school age; namely, from 6 to 21 years, may be charged tuition for enrolling in such courses.
- “2. Whether School Districts may make a charge for the use of materials necessary to undertake courses of study as provided for in the Special Instruction courses under Section 3313.53 of the Revised Code, as well as the Driver Training Courses wherein gasoline, oil, etc., is used by the student in the furtherance of his course of instruction.”

The first branch of your inquiry raises the question whether boards of education may make a charge by way of tuition to pupils within the school age, *viz.*, from 6 to 21 years, if they avail themselves of evening schools, vacation schools and special instruction schools, or part-time schools. Section 3313.64, Revised Code, reads in part as follows:

*“The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age.” * * * (Emphasis added)*
Section 3313.48, Revised Code, 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.” (Emphasis added)

That section as amended, effective January 1, 1959, substitutes for “thirty-two weeks,” “one hundred seventy-six days.”

It is quite evident that if the special schools to which your questions refer are within the scope of the words, “the schools of each district,” then

there could be no question but that the education of pupils within the school age in these special schools shall be free.

Nowhere in the statutes do I find any provision of the law which limits the public schools to what are ordinarily referred to as "day schools."

Section 3313.32, Revised Code, reads as follows:

"The board of education of a city, exempted village, or local school district may organize evening schools.

"Any person more than twenty-one years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board prescribes."

Section 3313.56, Revised Code, authorizes the board of education of any district to establish part-time schools or classes for the further education of children who are employed on age or school certificates. This section closes with the words: "Boards of education may provide for the expense of such schools the same as for the expense of ordinary elementary schools.

Section 3313.57, Revised Code, authorizes the board of education to provide activities for children during the summer vacation period which will promote their health and other enumerated desirable results. A like provision is made as to the expense of these activities.

Section 3313.53, Revised Code, makes the following provisions:

"The board of education of any city, exempted village, or local school district may establish and maintain in connection with the public school systems:

"(A) Manual training, industrial arts, domestic science, and commercial departments;

"(B) Agricultural, industrial, vocational, and trades schools;

"(C) Kindergartens. Such board *may pay from the public school funds, as other school expenses are paid*, the expenses of establishing and maintaining such departments and schools and of directing, supervising, and coaching the pupil-activity programs in music, language, arts, speech, government, athletics, and any others directly related to the curriculum." (Emphasis added)

In none of these special provisions is there any suggestion of grant of authority to a board of education to vary from the provision to which I have called attention, that the schools of each district shall be "free to all school residents between 6 and 21 years of age."

While attendance in these special schools is in general optional, yet they appear to me to be a part of the general plan contemplated by the law for the complete education of the children of the district, and accordingly my answer to your first question must be that the board of education is without any authority to make a charge of tuition against the pupils resident of its district between the ages of 6 and 21, and enrolling in such special schools or courses.

Your second question relates to the right of a board of education to make a charge for the use of materials necessary for the prosecution of the special courses authorized by Section 3313.33, Revised Code, and also for the gasoline, oil, *etc.*, used by students in the furtherance of their course of instruction in motor vehicle driver training.

It may be said at the outset that there is nothing in any of the statutes either authorizing or forbidding such charges. It appears to me that we must resort to a rule of reason in determining the extent to which the board of education may go in charging for materials used in connection with the operation of the school and particularly in the special courses above referred to. Plainly, the every day operation of the day school and most of these special courses, involves the use and destruction of certain equipment which is essential to the task of providing free education to the children of school age. These would include a wide range of materials, from blackboard crayon to the free school books which a board of education is required by Section 3329.06, Revised Code, to furnish its pupils. As to these, it is manifest that no accurate determination could be arrived at by which the cost could be allocated to each pupil. I am convinced that the expense of providing and replacing such equipment is a part of the free education which the schools are required to furnish.

It is evident, however, that when it comes to courses like manual training, industrial, vocational and trade schools, many special items of expense may be incurred which are for the individual benefit of the pupil availing himself of such courses. For instance, it is common in the manual training schools for a pupil to use considerable quantity of lumber, metals and other materials and be permitted to manufacture some piece of furniture or other article which is to be his own property. Here it would appear to me that there should be a division of expense, that portion of the lumber, *etc.*, which relates to the process of instruction being a part of the legitimate expense of the board providing the course of instruction, but materials

used for the production of some article for the special benefit and ownership of the student being properly charged to him. The same principle would prevail as to other industrial, technical, or special training courses. For example, a student in art may produce a painting which he would wish to take home and own, and it would seem quite reasonable that he should reimburse the school for materials used.

When it comes to driver's training courses we find a peculiar situation. No such courses are specifically authorized by any provision of the law, and they are only recognized as falling within that portion of Section 3313.60, Revised Code, which reads in part:

"Boards of education of county, exempted village, and city school districts shall prescribe a graded course of study for all schools under their control subject to the approval of the state board of education. In such graded courses of study there shall be included the study of the following subjects:

* * *

"(G) First aid, safety and fire prevention; * * *"

A course in "safety" has been held by a series of opinions of my predecessors, to include instructions in driving motor vehicles, See Opinion No. 1214, Opinions of the Attorney General for 1952, p. 187; Opinion No. 4551, Opinions of the Attorney General for 1954, p. 553. In the first of these opinions, *supra*, it was held that a board of education, having prescribed such course of training, has authority to provide "motor vehicle equipment" for the same either by rental or purchase.

In Opinion No. 4551, *supra*, the syllabus reads as follows:

"A board of education has authority, under the provisions of Section 3313.60, Revised Code, to establish a graded course of instruction in the operation of motor vehicles, and may lawfully expend public funds for such purpose."

In the course of the opinion it was said:

"In this situation, where a board of education is expressly authorized by statute to establish graded courses of study in 'first aid, safety and fire prevention,' it would seem that a course in 'safety' could scarcely be regarded as adequate if it did not include instruction in the operation of motor vehicles with emphasis on the prevention of motor vehicle accidents."

In Opinion No. 2112, Opinions of the Attorney General for 1958, p. 302, issued May 15, 1958, I made reference to the opinions aforesaid, and

held that where the state board of education has approved a driver training school as a part of the regular curriculum, the board of a school district may not charge tuition for such training course to students under 21 who are residents of the district.

In none of the above opinions was there any reference to the cost of the gasoline or oil used in carrying out such training. I am unable to see how it can be differentiated from any of the other materials which are consumed, or worn out in the conduct of the schools. Certainly the pupil cannot take home the gasoline and oil which he has consumed, and there is therefore no analogy to the products of his skill in the manual training course above referred to and I must conclude that such pupil driver, if under 21 years of age, cannot be charged with such fuel expense.

In the above discussion as to driver training, I have assumed that we are dealing only with pupils who are within the "school age." It appears to me that practically all of the statutes providing for the organization and conduct of the schools relate solely to the free schools, to wit those provided for children under 21 years of age. The single exception is found in Section 3313.52, Revised Code, which I have quoted, and which provides for "evening schools" which a "person more than twenty-one years of age may be permitted to attend, upon such terms and upon payment of such tuition as the board prescribes."

I do not have before me the question whether a board of education may provide driver training to adults, but if we assume that it may and does, there would certainly be no reason why such persons should not be subject to a tuition charge which would include all elements of expense entering into such course of training. In Opinion No. 3573, Opinions of Attorney General for 1954, p. 64, it was held that a board of education might, in addition to the evening schools authorized by Section 3313.52, *supra*, offer courses to adults in manual training and other vocational and industrial arts, and charge such tuition rates as the board deemed proper. But that finding was based largely on certain federal legislation relative to these subjects and the provision of Section 3303.04, *et seq.*, Revised Code, authorizing the state to cooperate in such courses. This would obviously not include instruction in motor vehicle driving.

In the light of the foregoing, it is my opinion and you are advised:

1. A board of education is without authority to make a tuition charge against pupils between six and twenty-one years of age for attendance

in any of the special schools or courses which the board is authorized by law to establish.

2. A board of education is without authority to make a charge against any pupil between six and twenty-one years of age for materials of any character used or consumed in the process of instruction either in the ordinary day schools or in the special schools authorized by law, or in the special training courses authorized by Section 3313.53, Revised Code. However, a pupil in any special course who produces articles for his own use and ownership may be charged for the materials used therefor.

3. Pupils under twenty-one years of age taking instruction in classes established by a board of education for driver training may not be charged for gasoline, oil, etc., used in such training. But if persons over twenty-one years of age are admitted to such classes, a charge covering all costs of such instruction may be made against them.

Respectfully,
WILLIAM SAXBE
Attorney General