

3438

A SCHOOL BOARD MAY CHARGE A FEE FOR THE USE OF INSTRUMENTS IN ITS MUSIC PROGRAM—§3313.60, R.C., OPIN. 3546, OAG, 1939 (OVERRULED) §3313.642, R.C.

SYLLABUS:

Under Section 3313.642, Revised Code, the board of education of a city, exempted village, or local school district may prescribe a schedule of fees for the use of musical instruments owned by the school district and used in the teaching of music as a part of a school's curriculum, such fees to be paid by the pupils using the instruments. Opinion No. 3546, Opinions of the Attorney General for 1938, page 2556, insofar as it conflicts with this opinion, is overruled.

Columbus, Ohio, November 27, 1962

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

Dear Sir:

In your request for opinion you ask a specific question as follows:

“May a school district charge a student a rental fee for the use of musical instruments provided by the board as a necessary apparatus in carrying into effect the teaching of music as a part of the regular curriculum of the school?”

Section 3313.60, Revised Code, provides that the graded courses of study in the public schools shall include the fine arts *including music*. Thus, it would appear to follow that a board of education has authority to adopt the teaching of instrumental music as a graded course of study in the schools, and to provide the necessary instruments for such course of study;

and my conclusion in this regard is in accord with that reached in Opinion No. 3546, Opinions of the Attorney General for 1938, page 2556 (issued on January 9, 1939).

The question of whether a fee could be charged pupils for the use of instruments furnished to them was discussed in Opinion No. 3546, *supra*, it being stated at page 2560 thereof:

“If the board of education adopts the teaching of instrumental music as a graded course of study and furnishes the instruments to the pupils, it would not have any authority to charge a rental fee to a pupil for the use of the apparatus, that is, the band instrument. Under such circumstances a board of education would not have any more authority to charge a rental to pupils for the instruments necessary to carry on such a prescribed course of instrumental music than it would have to charge a rental to pupils for the use of stoves in the domestic science department, or tubes, tables, etc., in its chemistry or physics laboratory.

“It is true that a board of education can require a reasonable deposit or fee to cover any loss in case of destruction or breakage. However, no charge can be made for the use of any apparatus owned by the board of education and used by pupils. This proposition of law was discussed in an opinion appearing in Opinions of the Attorney General for the year 1927, Vol. II, page 1157, wherein, at page 1159, it was held as follows:

“In view of the fact that such laboratory fees have been exacted by the school authorities for many years without question, I am of the opinion that a board of education may in its discretion, under the authority of Section 4750, of the General Code, prescribe rules requiring pupils in the public schools to pay reasonable incidental fees to cover the use of material and the breakage of test tubes, etc., used in laboratory work. Such rules must be reasonable and not such as to exact tuition fees under the guise of mere incidental fees. No charge, however, can be made for the use of any apparatus owned or used by the board of education.’”

In both the 1927 and 1939 opinions it was held that a fee could not be charged for the use of school owned property. Since the issuance of those opinions, however, there has been enacted a specific provision of law, Section 3313.642, Revised Code, which allows for the charging of fees in certain instances, and it becomes necessary to review this provision to ascertain whether the charging of fees for the use of musical instruments is now authorized. Said Section 3313.642 reads as follows:

“Notwithstanding the provisions of sections 3313.48 and 3313.64 of the Revised Code, the board of education of a city,

exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge pursuant to the provisions of section 3329.06 of the Revised Code. Boards of education may adopt rules and regulations prescribing a schedule of fees for such materials and prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library material, textbooks required to be furnished without charge, and for damages to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned."

Sections 3313.48 and 3313.64, Revised Code, referred to in Section 3313.642, *supra*, provide that a free education shall be furnished to children of school age. Section 3329.06, Revised Code, also referred to, provides for the furnishing of school books to public school pupils.

I interpret Section 3313.642, *supra*, to state that: (1) a board of education is not required to furnish musical instruments free of charge, (2) a board of education is allowed to charge fees for *materials* furnished to pupils for use in a course of instruction, and (3) a board is allowed to charge pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library material, and textbooks required to be furnished without charge, and for damages to school buildings. It remains to be determined, therefore, whether musical instruments should be considered as "materials" within the purview of the law in question.

In Ballentine's Law Dictionary, Second Edition, page 800, the word "material" is defined as follows:

"As a noun, the word means any physical matter or substance used in the fabrication of anything and becoming a part of the thing fabricated * * *."

I must confess some question as to whether a musical instrument falls within the above definition. On the other hand, I have the same question as to textbooks, but the use of the words "with the exception of the necessary textbooks required to be furnished without charge pursuant to the provisions of Section 3329.06 of the Revised Code," implies that textbooks are considered to be materials; and this is indicative of the intention of the legislature as to the meaning of the word "materials."

I am aware that the adoption of a broad interpretation of the word "materials" could open the door to charges for the use of stoves, tubes, tables, etc., by pupils, as noted in Opinion No. 3646, *supra*, since those items might be said to be used in a course of instruction. In view of the language used, however, I am constrained to conclude that musical instruments are "materials" within the law in question, and that a board of education may adopt a schedule of fees for the use of such instruments. Opinion No. 3546, *supra*, insofar as it conflicts with this conclusion, is therefore overruled.

Accordingly, it is my opinion and you are advised that under Section 3313.642, Revised Code, the board of education of a city, exempted village, or local school district may prescribe a schedule of fees for the use of musical instruments owned by the school district and used in the teaching of music as a part of a school's curriculum, such fees to be paid by the pupils using the instruments. Opinion No. 3546, Opinions of the Attorney General for 1938, page 2556, insofar as it conflicts with this opinion, is overruled.

Respectfully,

MARK MCELROY

Attorney General