

OPINION NO. 87-041**Syllabus:**

Pursuant to R.C. 4117.10(A), a board of education may provide in a collective bargaining agreement that children of non-resident teaching employees may attend school within the district tuition-free. (1981 Op. Att'y Gen. No. 81-052 distinguished.)

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 4, 1987

I have before me your request for my opinion in which you ask whether a board of education of a local school district and an employee organization may provide, in a collective bargaining agreement, that children of non-resident teaching employees may receive tuition-free education. You have noted that in 1981 my predecessor rendered an opinion which concluded that a board of education could not provide tuition-free education for children of non-resident teaching employees since the board's authority to provide such a fringe benefit is constricted by R.C. 3313.64 and R.C. 3317.08. 1981 Op. Att'y Gen. No. 81-052. You are interested in knowing whether R.C. 4117.10(A), a provision of the collective bargaining law which became effective in 1984, authorizes a board of education to negotiate for tuition-free education as a fringe benefit for non-resident teaching employees.

When 1981 Op. No. 81-052 was issued, the collective bargaining law, R.C. Chapter 4117., was not in existence. R.C. Chapter 4117., as enacted by Am. Sub. S.B. 133, 115th Gen. A. (1983) (eff., in part, April 1, 1984), establishes collective bargaining procedures for public employers and public employees. Pursuant to R.C. 4117.01(B), "public employer" includes any school district. R.C. 4117.01(C) defines a "public employee" as "any person holding a position by appointment or employment in the service of a public employer." Thus, it is clear that R.C. Chapter 4117. applies to a local school district¹ and its employees.

R.C. 4117.10(A) provides in pertinent part:

An agreement between a public employer and an exclusive representative² entered into pursuant to Chapter 4117. of the Revised Code governs the

¹ The management of the schools within each school district is vested in the board of education for that district. R.C. 3313.47. For purposes of negotiating an agreement under R.C. Chapter 4117., the district is represented by a designee of the board of education. R.C. 4117.10(C).

² R.C. 4117.01(E) defines "exclusive representative" as "the employee organization certified or recognized as an exclusive representative under [R.C. 4117.05]." The employee organization so certified or recognized becomes the exclusive representative for all public employees within an appropriate bargaining unit for purposes of collective bargaining. See generally 1984 Op. Att'y Gen. No. 84-092.

wages,³ hours, and terms and conditions of public employment covered by the agreement.... Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees.... Except for [stated exceptions not applicable to this inquiry⁴], Chapter 4117. of the Revised Code prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in [R.C. Chapter 4117.] or as otherwise specified by the general assembly. (Footnotes added.)

Pursuant to R.C. 4117.10, where an agreement has been entered into between the school district and an exclusive representative which addresses wages, hours, terms and conditions of employment, the agreement will govern and it prevails over conflicting provisions of state law. See generally 1986 Op. Att'y Gen. No. 86-086 (employee meals); 1985 Op. Att'y Gen. No. 85-102 (vacation leave); 1985 Op. Att'y Gen. No. 85-075 (sick leave); 1984 Op. No. 84-092 (compensation in excess of statutory amount); 1984 Op. Att'y Gen. No. 84-086 (insurance).

As a creature of statute, a board of education has those powers expressly granted by statute or necessarily implied therefrom. See Verberg v. Bd. of Educ., 135 Ohio St. 246, 20 N.E.2d 368 (1939); Schwing v. McClure, 120 Ohio St. 335, 166 N.E.230 (1929); Op. No. 81-052. A board of education enjoys broad managerial authority under R.C. 3313.20 ("[t]he board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises") and R.C. 3313.47 ("board of education shall have the management and control of all of the public schools...in its respective district"). A board of education may not confer authority upon itself via collective bargaining which it would not otherwise have, nor may an agreement negotiated under R.C. Chapter 4117. alter legal relationships between the government and the public at large. see, e.g., State ex rel. Dispatch Printing Co. v. Wells, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985) (notwithstanding R.C. 4117.10(A), a provision in a collective bargaining agreement does not prevail over a conflicting provision in the public records law, R.C. 149.43). The provisions of state law constricting the authority to compensate, see Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), may not apply, however, where the employer and the exclusive representative have collectively bargained for a more generous fringe benefit, since the statutory

³ "Wages" are defined as "hourly rates of pay, salaries, or other forms of compensation for services rendered" R.C. 4117.01(L).

⁴ Laws related to civil rights, affirmative action, unemployment compensation, worker's compensation, retirement of public employees, residency requirements, and minimum education requirements and standards are not superseded by R.C. Chapter 4117.

restrictions on compensation are superseded by a collective bargaining agreement. R.C. 4117.10(A).

The authority to provide fringe benefits flows directly from the authority to compensate. See Ebert; Op. No. 81-052. Thus, because the board of education is vested with the authority to set compensation, R.C. 3313.20; R.C. 3319.08; Dayton Classroom Teachers Association v. Dayton Board of Education, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975), it may collectively bargain, pursuant to R.C. 4117.10, with regard to fringe benefits. Moreover, the collective bargaining agreement will govern the wages, hours, terms and conditions of employment, notwithstanding the conflicting provisions of state law. R.C. 4117.10(A).

In Op. No. 81-052, prior to the enactment of R.C. 4117.10, my predecessor accurately concluded that the authority of a board of education to provide compensation, including tuition-free education as a fringe benefit could not be used as a vehicle to circumvent the requirement of R.C. 3317.08 and R.C. 3313.64 that non-resident students pay tuition. That analysis is still correct absent a collective bargaining agreement.⁵ Pursuant to the board's authority to compensate and R.C. 4117.10, it is apparent that a board of education may now provide, in a collective bargaining agreement, for tuition-free education as a fringe benefit to non-resident teaching employees. (1981 Op. Att'y Gen. No. 81-052 distinguished.)

It is, therefore, my conclusion, and you are advised that pursuant to R.C. 4117.10(A), a board of education may provide in a collective bargaining agreement that children of non-resident teaching employees may attend school within the district tuition-free. (1981 Op. Att'y Gen. No. 81-052 distinguished.)

⁵ S.B. No. 27, 117th Gen. A. (1987) was recently introduced in the General Assembly. Under the terms of the proposed legislation a board of education could adopt a policy providing for tuition-free admission of children of employees, even in the absence of a collective bargaining agreement.