

OPINION 65-89**Syllabus:**

The provisions of Section 3313.642, Revised Code, do not prohibit a board of education from furnishing such materials as workbooks and other school supplies to all students free of charge.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, May 18, 1965

I am in receipt of your request for my opinion which reads as follows:

"I respectfully request your opinion relating to the following question: May a school board purchase workbooks and supplies and furnish the same free of charge to all of the students? This question may already have been answered in your Opinion No. 903, Syllabus 2.

"Revised Code 3313.642 provides in part that the board may furnish free of charge materials to such pupils as it deems are in serious financial need, but this section also provides in part as follows:

"'The board of education * * * shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in the course of instruction with the exception of the necessary textbooks required to be furnished without charge * * *.'

"I am concerned with the language 'shall not be required'. I raise the question, does that language then make it permissive to furnish materials free of charge to all pupils or is it limited only to those that are determined to be in serious financial need?"

Consideration of the general power of a board of education to purchase such supplies as mentioned in your letter, must antecede the discussion of Section 3313.642, Revised Code.

Of course, the prevailing basic attitude projected throughout our public school law is that of free public education. Section 3313.811, Revised Code, essentially provides a plain means whereby boards of education of local school districts

are to provide funds for the purchase of school supplies; this section reads in part as follows:

* * * * *

"The school district board of education shall provide rotary funds for the purchase and sale of uniform school supplies either by appropriations from the general fund or accumulation from sales or receipts. Such fund shall be kept separate from other transactions of the board."

Section 3313.642, Revised Code, as amended effective September 16, 1963, 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 section 3329.06 of the Revised Code. The board, may, however, make provision by appropriations transferred from the general fund of the district or otherwise for furnishing free of charge any materials used in a course of instruction to such pupils as it determines are in serious financial need of such materials. Boards of education may adopt rules and regulations prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library materials, textbooks required to be furnished without charge, and for damage to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned."
(Emphasis added)

Noteworthy, is the fact that the lawmakers chose to use the words "shall not be required" in Section 3313.642, supra. Webster's Third International Dictionary defines the word "require," as follows:

"to demand as necessary or essential."

The use of this phrase makes certain that a board of education has no obligation or duty to furnish such materials free of charge. However, the statute contains no specific language which would prohibit the free distribution of these school materials.

In Opinion No. 153, Opinions of the Attorney General for 1963, I used the following language when considering the then Section 3313.642, supra:

"Section 3313.642, Revised Code, permits

but does not require the board of education to establish a schedule of fees for materials furnished. Section 3313.811, Revised Code, permits the sale of supplies at a profit. The board of education can furnish the materials free to all students and it can sell them at a profit."

Since the time of the preparation and issuance of Opinion No. 153, supra, the legislature has changed Section 3313.642, supra, of import to this discussion, the material change was the addition of this language:

"* * * The board may, however, make provision by appropriations transferred from the general fund of the district or otherwise for furnishing free of charge any materials used in a course of instruction to such pupils as it determines are in serious financial need of such materials.* * *"

Prior to the inclusion of this language in Section 3313.642, Revised Code, I concluded in the first and fourth paragraphs of the syllabus in Opinion No. 153, supra, as follows:

"1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education may establish a single fee for pencils, tablets and other items furnished students. However, the students could not be required to pay such fee if they elected to obtain these items elsewhere.

"4. Such fee would have to be charged to all students receiving these items and could not be waived in hardship cases."

After this statute was amended to its present form, effective September 16, 1963, I had occasion to reconsider the effect of the statute as amended in Opinion No. 903, Opinions of the Attorney General for 1964, at page 2-107; the first and second paragraphs of the syllabus reads as follows:

"1. Pursuant to the provisions of Section 3313.642, Revised Code, a board of education of a city, exempted village, or local school district may charge a single fee to students for materials other than textbooks used in a course of instruction, and may enforce the payment of such fee by withholding the grades and credits of students; provided that a student may elect to purchase the necessary materials from another source.

"2. Under Section 3313.642, Revised Code (as amended effective 9/16/63), materials used in a course of instruction may be furnished free of charge to such students as are determined to be in serious financial need of such materials."

According to the latter cited opinion, if a school board establishes a fee to be charged for the materials furnished, the legislature has provided a means of appropriation of funds to defray the costs of materials given free to certain students in serious financial need. Thus, the legislature has provided a means of aid in hardship cases which was unavailable prior to the amendment, as shown by the fourth paragraph of the syllabus in Opinion No. 153, supra.

I have chosen to discuss the two opinions cited hereinabove, not because I feel that either of them is dispositive of your inquiry. They were commented on because you mentioned Opinion No. 903, supra, in your communication.

My research does not reveal any statutory authority which in any fashion restricts the board from furnishing such materials free of charge to students. The board has authority to purchase such items as you mention in your letter of request. I conclude that discretion lies with a board of education to determine whether or not such materials are to be given free to all students. However, if the use of such discretion requires that a fee is to be charged, Section 3313.642, supra, provides a method for payment for students in serious financial need.

Such a conclusion is buttressed by the use of the words "may, however, make provision by appropriations" in Section 3313.642, supra; this proviso couched in terms of discretion, certainly imposes no mandatory duty to make such appropriation in all instances when materials are furnished.

In answer to your specific question, it is my opinion that the provisions of Section 3313.642, Revised Code, do not prohibit a board of education from furnishing such materials as workbooks and other school supplies to all students free of charge.