decisions be made by public agencies, expressly made accountable to consumer rather than provider interests. R.C. 3702.58(A)(2); R.C. 3702.61; 42 U.S.C. §§3001-1(c), 300m, 300m-2. The General Assembly's decision to delegate certificate of need decisions to accountable public agencies, rather than to providers, is manifest in the fact that Am. Sub. S.B. 349, 112th Gen. A. (1978) (eff. March 15, 1979), which enacted R.C. Chapter 3702, replaced and repealed former R.C. 3701.85-.86, under which the provider-dominated Public Health Council had a prominent role in planning for the provision of health services.[1] It is apparent, then, that the current statutory scheme neither envisions nor sanctions private agreements among providers to decide what institutional health services each shall market. Such decisions have been delegated by explicit legislative choice to HSA's and SHPDA's accountable to the public. Private provider agreements as to these issues have the capacity to infringe upon the lawful authority of these public agencies. In the situation you describe, a private decision to grant Lakewood Hospital the right to offer eight services for a ten-year period, and to deny Westlake Hospital the right to offer such services during that period, would be imposed on the community regardless of future determinations of need by the HSA or SHPDA.

The final question is whether the terms of the proposed agreement do in fact violate the Valentine Act. Based on the facts discussed above, it is entirely possible that a court would find the proposed contracts between the two hospitals to be a market sharing agreement which impermissibly restrains trade, in violation of the Valentine Act. See, e.g., United States v. Topco Associates, 405 U.S. 596 (1972) (per se rules against market division agreements). Of particular note is the case of St. Paul Fire & Marine Ins. Co. v. Barry, 438 U.S. 531 (1978), where the Supreme Court found a private agreement to allocate customers to be a per se violation. Of course, there may be redeeming competitive features, not apparent from the facts before me, which might prompt a court to require more extensive factual inquiry to determine the legality of the agreement under Ohio's antitrust law. See, e.g., North Pacific Railway v. United States, 356 U.S. 1, 5 (1958) (per se rules apply only to agreements that have a " pernicious effect on competition and lack any redeeming virtue"). Nonetheless, based on the facts that you have presented, I cannot conclude that the proposed agreement would be in compliance with R.C. Chapter 1331. I am, therefore, unable to state a present intention not to bring an action under the antitrust law should the proposed agreement be consummated.

In conclusion, then, it is my opinion, and you are hereby advised, that it cannot be concluded, as a matter of law, that a private agreement between two hospitals, whereby one hospital agrees not to provide certain health care services in order that duplication of services may be avoided, will not violate the prohibition against restraints of trade or commerce set forth in R.C. Chapter 1331.

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[1]The Public Health Council retains a myriad of health-related responsibilities. See, e.g., R.C. 3701.33-.35 (general duties); R.C. 3715.69 (pure food and drug regulation); R.C. 3733.21 (regulation of agricultural labor camps).

OPINION NO. 80-060

Syllabus:

1. The amount expended from the general fund under R.C. 3313.53 for directing, supervising and coaching student activities should not be included in calculating the amount of money expended from the general fund for the support of student activities for the purpose of conforming to the limitation of R.C. 3315.062.

2. Student activity funds established by the board of education of any school district except a county school district must be budgeted and appropriated in accordance with the procedures set

forth in R.C. Chapter 5705, including the certification requirements of R.C. 5705.41(D) and R.C. 5705.412.

3. Pursuant to R.C. 117.17, the treasurer may delegate to an employee the authority to receive custody of funds initially, but the treasurer may not authorize said employee to retain custody of the funds for longer than twenty-four hours, or to deposit the funds himself. R.C. 117.17, 135.17, 3313.51.

4. The treasurer of a school board may not delegate to another the authority to certify contracts or orders for expenditures pursuant to R.C. 5705.41(D) and R.C. 5705.412.

5. The treasurer of a school board may not delegate to an employee the duty to record, transcribe or attest to the minutes of each board of education meeting as required by R.C. 3313.26.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, September 30, 1980

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

1. In calculating the amount by which the general fund has subsidized the operation of student activities for purpose of comparing that amount to the limitation on such a subsidy as set forth in Section 3315.062, Ohio Revised Code, should the calculation include the amount paid from the general fund for directing, supervising and coaching student activities?

2. Must student activity funds be budgeted and appropriated in accordance with the procedures set forth in Chapter 5705, Ohio Revised Code?

3. May the treasurer of a school district delegate to an employee within his office or otherwise employed by the board of education, the authority to receive and assume custody of funds until the funds are placed in a depository?

4. May the treasurer of a school district delegate to an employee within his office or otherwise employed by the board of education, the authority to certify contracts or orders for the expenditure of funds as required by Section 5705.41, Ohio Revised Code?

5. May the treasurer of a school district delegate to an employee within his office or otherwise employed by the board of education, the duty to record, transcribe and/or attest to the minutes of each board of education meeting as required by Section 3313.26, Ohio Revised Code?

Your first question involves the relationship between R.C. 3315.062 and R.C. 3313.53. R.C. 3313.53, previously G.C. 4836-4, was amended in 1945 to authorize boards of education to pay from public school funds expenses incurred in directing, supervising and coaching pupil-activity programs. 1945 Ohio Laws 619, 622 (H.B. No. 63). R.C. 3313.53 provides as follows:

> 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.
>
> 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.)

R.C. 3315.062, which was enacted in 1967, 1967 Ohio Laws 1042, 2568 (Am. H.B. No. 279, eff. Dec. 11, 1967), provides in relevant part:

> (A) The board of education of any school district may expend moneys from its general revenue fund for the operation of such student activity programs as may be approved by the state board of education and included in the program of each school district as authorized by its board of education. Such expenditure shall not exceed five-tenths of one per cent of the board's annual operating budget.
>
> (B) The state board of education shall develop, and review biennially, a list of approved student activity programs. (Emphasis added.)

R.C. 3315.062 neither expressly amends nor in any way refers to R.C. 3313.53. Therefore, the intent of the legislature in regard to the limitation found in R.C. 3315.062 must be determined from a reasonable construction of the two sections. See Caldwell v. State, 115 Ohio St. 458, 154 N.E. 792 (1926) (where statutory ambiguity is involved, the legislative intent is ascertained through application of rules of statutory construction). When construction of a statute is necessary, two principles of construction must be observed. Firstly, the legislative intent must be determined primarily from the language of the statutes. Stewart v. Trumbull County Board of Elections, 34 Ohio St. 2d 129, 296 N.E. 2d 676 (1973). Secondly, statutes are to be construed in harmony, if possible, to give full effect to the provisions of each. State ex rel. Merydith Construction Co. v. Dean, 95 Ohio St. 108, 116 N.E. 37 (1916). To respond to your first question, then, it is necessary to examine the language of both R.C. 3315.062 and R.C. 3313.53.

R.C. 3313.53 operates to vest in the district board of education the authority to establish special programs and departments which either augment or directly relate to the school's curriculum. The section was enacted in recognition of the value of extracurricular activities in a well-rounded educational program. 1963 Op. Att'y Gen. No. 157, p. 249, 254.

R.C. 3313.53 provides that general funds may be utilized for the compensation of supervisory personnel, and that such expenses are to be paid as other school expenses. Since other school expenses are paid upon the order of the board of education pursuant to a warrant drawn upon an appropriate fund, this provision vests in the board of education discretion to determine the amount to be expended. R.C. 5705.41(C).

Although R.C. 3313.53 does not restrict the amount which may be spent, it does restrict the purpose for which money may be expended. The board's authority to expend public funds for pupil activity programs is strictly limited to costs arising from supervising those pupil activities which are expressly enumerated in the statute, or which are directly related to the curriculum. R.C. 3313.53. The board of education has no authority under R.C. 3313.53 to expend any public funds for the payment of other costs, such as costs of supplies and equipment, arising from the maintenance of student activity programs. See 1963 Op. Att'y Gen. No. 157, p. 249.

In contrast, R.C. 3315.062 does not restrict the purposes for which general revenue may be spent. The activities subsidized under that section need not relate directly to the curriculum, and the money expended need not be for costs of compensating supervisory personnel. See generally 1975 Op. Att'y Gen. No. 75-021 (money from student activity funds may be expended to pay membership fee in educational association if the fee amounts to a subscription to an association publication); 1975 Op. Att'y Gen. No. 75-008 (money may be expended from student activity funds as payment for meals for non-students if a public purpose is thereby

served); 1963 Op. Att'y Gen. No. 157, p. 249, 255 (money from student athletic funds may be spent to purchase football equipment). As you note in your letter, however, R.C. 3315.062 does limit the amount of general revenue which may be expended on student activity programs to five-tenths of one per cent of the board's annual budget.

Such an analysis of the two sections leads to the conclusion that R.C. 3313.53 and R.C. 3315.062 serve a common purpose and together were intended to provide a total scheme for the funding of student activity programs. Both sections were enacted in recognition of the value of student activity programs as part of the educational program of public schools, and of the necessity to provide funding for such programs. R.C. 3313.53, which was amended in 1945, provides the funds necessary to compensate supervisory personnel, whereas R.C. 3315.062, which was enacted in 1967, provides other funding necessary to commence and maintain operation of such activity programs.

A harmonious construction of the sections indicates that although the legislature intended the sections to operate together, it did not intend for R.C. 3315.062 to restrict expenditures under R.C. 3313.53. Such a conclusion is supported by the plain language of R.C. 3313.53. R.C. 3313.53 contains its own restriction on expenditures, which expressly limits the purpose of the expenditures, but not the amount.

Given the express language of R.C. 3313.53, and the silence of R.C. 3315.062, it would be unreasonable to conclude that the legislature intended for R.C. 3313.53 to be amended by R.C. 3315.062. See R.C. 1.47 ("In enacting a statute; it is presumed that: . . .(C) A just and reasonable result is intended. . ."). See also Lucas County Board of Commissioners v. City of Toledo, 28 Ohio St. 2d 214, 277 N.E. 2d 193 (1971) (repeals of statutes by implication are not favored). A more reasonable construction of the sections leads to the conclusion that the legislature did not intend for R.C. 3315.062 to restrict expenditures under R.C. 3313.53, but, rather, intended for the funding provided under R.C. 3315.062 to be in addition to that provided by R.C. 3313.53. Thus, the legislature restricted expenditures under R.C. 3315.062 to five-tenths of one percent, in light of the fact that funding for the compensation of supervisors was already provided for by R.C. 3313.53. See Charles v. Fawley, 71 Ohio St. 50, 72 N.E. 294 (1904); Eggleston v. Harrison, 61 Ohio St. 397, 55 N.E. 993 (1900); State ex rel. Drake v. Roosa, 11 Ohio St. 16 (1860) (in enacting statutes, the legislature is presumed to have legislated with knowledge and in light of all statutes regarding the subject matter of the act).

In specific answer to your first question, then, it is my opinion that the amount expended from the general fund under R.C. 3313.53 for directing, supervising and coaching student activities should not be included in calculating the amount of money contributed from the general fund, for the purpose of conforming to the five-tenths of one percent limitation of R.C. 3315.062.

In your second question you inquire whether student activity funds must be appropriated and budgeted in accordance with the provisions of R.C. Chapter 5705.

R.C. 3315.062, which requires boards of education to establish student activity funds, provides, in pertinent part, as follows:

> If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board.

Pursuant to R.C. 3315.062, a board of education must promulgate rules and adopt a system of accounting to govern the administration of student activity funds. The provisions of R.C. Chapter 5705, however, generally govern the administration of public funds of subdivisions. Your inquiry, therefore, necessarily involves a determination as to whether the legislature, in requiring boards of education to adopt accounting procedures, intended to exempt student activity funds from compliance with R.C. Chapter 5705.

R.C. Chapter 5705, commonly known as the "Uniform Tax Levy Law," was enacted to effectuate a uniform system of taxation throughout the counties and to curb irresponsible spending practices of taxing units and subdivisions. 1974 Op. Att'y Gen. No. 74-044; 1947 Op. Att'y Gen. No. 1915, p. 260, 263; 1937 Op. Att'y Gen. No. 997, vol. II, p. 1744, 1747. See generally Emmert v. City of Elyria, 74 Ohio St. 185, 78 N.E. 269 (1906) (discussing provisions pertaining to municipalities, from which the Uniform Tax Levy Law was derived). R.C. 5705.01(A) includes in the definition of "subdivision" for the purposes of R.C. Chapter 5705 all school districts except county school districts. Thus, the fiscal affairs of any school district which is not a county school district are governed by the provisions of R.C. Chapter 5705.

In general, the provisions of R.C. Chapter 5705 require taxing units and subdivisions to adopt annual tax budgets which are submitted to the county budget commission, R.C. 5705.28-.31, and to pass annual appropriation measures which are based upon the official certificate of estimated resources issued by the county budget commission, R.C. 5705.38.

R.C. 5705.41, to which you refer in your letter, specifically prohibits the expenditure of any funds by subdivisions and taxing units unless the funds have been budgeted and appropriated, and the expenditure certified, in accordance with the requirements of R.C. Chapter 5705. R.C. 5705.41 provides, in pertinent part, as follows:

> No subdivision or taxing unit shall:
>
> (A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code; provided that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the same for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;
>
> (B) Make any expenditures of money unless it has been appropriated as provided in such chapter;
>
> (C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn;
>
> (D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

The plain language of R.C. 5705.01 to 5705.412 indicates that the legislature intended for these provisions to govern the administration of all public funds in the possession of taxing units and political subdivisions. R.C. 5705.09(F) requires subdivisions to establish special funds "for each class of revenues derived from a source other than the general property tax." R.C. 5705.29(B)(1) provides that the tax budget submitted by a subdivision shall include "[a] n estimate of receipts from other sources than the general property tax during the ensuing fiscal year." R.C. 5705.45 and 5705.412 impose liability upon any officer, employee or person who expends or authorizes the expenditure of "any public funds" without first complying with the provisions of R.C. 5705.41 and R.C. 5705.412.

Although the money in student activity funds is derived from private contributions, rather than from a tax levy, such money nevertheless constitutes public funds by virtue of the fact that it is received by public officials under color of law. See R.C. 117.10; 1975 Op. Att'y Gen. No. 75-008, No. 75-021. Furthermore, fund revenue is unquestionably under the control of the board of education, as the board is required, pursuant to R.C. 3315.062, to approve all expenditures from student activity funds. Since any statutes which were enacted for the protection of public revenue (such as R.C. 5705.01-.412), must be strictly adhered to,[1] it would appear, in the absence of any evidence of a contrary intent, that student activity funds were intended by the legislature to be governed by the provisions of R.C. Chapter 5705.

It is well settled that boards of education are creatures of statute and as such have only such powers as are expressly conferred by statute or necessarily implied therefrom. Verberg v. Board of Education, 135 Ohio St. 246, 20 N.E. 2d 368 (1939); Board of Education v. Best, 52 Ohio St. 138, 39 N.E. 694 (1894). There is no indication in the plain language of R.C. 3315.062 of any legislative intent to confer upon a board of education total control over student activity funds, or to exempt such funds from compliance with the provisions of R.C. Chapter 5705. You have suggested in your inquiry, however, that student activity funds may be exempt from the general provisions of R.C. Chapter 5705 because the money in such funds is non-tax revenue.

The theory that student activity funds are so exempted from the provisions of R.C. Chapter 5705 is apparently based upon a line of early cases, decided under G.C. 5625-33(d), the predecessor to R.C. 5705.41(D), in which the courts held that the expenditure of non-tax revenue was not subject to the certification requirement of G.C. 5625-33(d) (now R.C. 5705.41(D)).[2] Although the courts, in the cases noted, stated as a general proposition that non-tax revenues were not subject to the certification requirement of G.C. 5625-33(d), the cases actually appear to have been decided on the basis of narrow issues of fact rather than upon the distinction between tax revenue and non-tax revenue.[3]

Since that time, however, the General Assembly has seen fit to enact specific exemptions to the certification requirement of R.C. 5705.41(D), which would serve to exempt certain of the expenditures made in the aforementioned cases. See R.C.

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[1]Knowlton & Breinig v. Board of Education, 13 Ohio App. 30 (Licking County 1919). See also Board of County Commissioners v. Arnold, 65 Ohio St. 479, 63 N.E. 81 (1902).

[2]See Comstock v. Village of Nelsonville, 61 Ohio St. 288, 56 N.E. 15 (1899) (construing Revised Statutes 2702, predecessor to G.C. 5625-33(d)); Hines v. City of Bellefontaine, 74 Ohio App. 393, 57 N.E. 2d 164 (Logan County 1943); Holland v. Village of Grafton, 24 Ohio Law Abs. 642 (Ct. App. Lorain County 1937); Jones v. City of Middletown, 59 Ohio Law Abs. 329, 96 N.E. 2d 799 (C.P. Butler County 1950). It should be noted that the distinction drawn in these cases between tax revenue and non-tax revenue served only to except expenditures of non-tax revenue from the certification requirement and did not serve to except the fund from which such expenditures were made from the other budgeting and accounting procedures of R.C. Chapter 5705. See Hines, 740 Ohio App. at 415, 57 N.E. 2d at 174 (although the funds in question are not raised by taxation, they are public funds subject to statutory limitations on expenditure).

[3]See Comstock (money to be expended was derived through assessments on private property; such expenditures are now exempt pursuant to R.C. 5705.43); Hines (purchase price of parking meters to be paid from money collected from meters); Holland (money to be expended was derived from earnings of public utility; such funds were exempt pursuant to G.C. 5625-36, now R.C. 5705.44); Jones (federal rather than municipal funds were to be expended; such expenditures are now exempt pursuant to R.C. 5705.42).

5705.43 (exempts special assessments from compliance with the appropriation and certification requirements); R.C. 5705.44 (excepts contracts made by public utilities, which are to be paid from the earnings of the utility itself, from the certification requirement of R.C. 5705.41(D)). The enactment of such specific exceptions to a law of general application is evidence that the General Assembly did not intend for there to be any other exceptions. See In Re Story, 159 Ohio St. 144, 111 N.E. 2d 385 (1953). The fact that expenditures from student activity funds do not come within any of these statutory exemptions, and that the General Assembly has not seen fit to enact a statute which would specifically exempt expenditures from student activity funds from the certification requirement of R.C. 5705.41(D), is of great significance.

Of further significance are the decisions rendered in a number of recent Ohio cases, in which the courts held that the certification requirement of R.C. 5705.41(D) is applicable to any expenditure of public funds, whether such funds are comprised of tax revenue or non-tax revenue. See Pincelli v. Ohio Bridge Company, 5 Ohio St. 2d 41, 213 N.E. 2d 356 (1966); State v. Kuhner, 107 Ohio St. 406, 140 N.E. 344 (1923) (construing certification requirement of G.C. 5660 which was analagous to that of G.C. 5625-33(d), the predecessor to R.C. 5705.41(D)); Wyandot Blacktop, Inc. v. Morrow County, No. 564 (Ct. App. Morrow County Feb. 14, 1980). The courts in Pincelli and Wyandot held that the language of R.C. 5705.41(D), "[n] o subdivision or taxing unit shall: . . .(D) [m] ake any contract or give any order involving the expenditure of money," is controlling in determining when certification is required.

Even if the distinction between tax revenue and non-tax revenue was at one time valid as a rule of general application, such a distinction clearly would not have served to exempt student activity funds from all of the accounting and budgeting procedures of R.C. Chapter 5705. See Hines, 74 Ohio App. at 415, 57 N.E. 2d at 174. In view of the decisions reached by the courts in Pincelli, Kuhner, and Wyandot, and in light of the fact that the General Assembly has seen fit to enact certain express exceptions to the certification requirement, R.C. 5705.42, 5705.43, 5705.44, none of which expressly excepts expenditures from student activity funds, it must further be concluded that the distinction between tax revenue and non-tax revenue does not serve to exempt student activity funds from the certification requirement of R.C. 5705.41(D).[4] Consequently, I am of the opinion that the language of R.C. 5705.41, "[n] o subdivision or taxing unit shall: . . .(D) [m] ake any contract or give any order involving the expenditure of money," must be deemed to be controlling. Since expenditures from student activity funds do not come within any statutory exemption, and since no clear judicial exception has been established, it is my opinion that expenditures from student activity funds are subject to the certification requirement of R.C. 5705.41(D).

In regard to certification of funds, it should be noted at this point that student activity funds are also subject to the additional certification requirement of R.C. 5705.412. R.C. 5705.412, which imposes restrictions on school district expenditures, provides, in pertinent part, as follows:

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[4]Such a conclusion has practical benefits resulting from the fact that student activity funds are often comprised of both tax revenue and non-tax revenue. See R.C. 3315.062 (a board of education may expend money from its general revenue to operate student activity programs). If the certification requirement of R.C. 5705.41(D) were held to be applicable only to the expenditure of tax revenue, then it would have to be determined, as to each expenditure contemplated, whether the money to be expended originated as tax revenue or non-tax revenue. Such a determination would necessarily require a segregation of tax revenue and non-tax revenue within each student activity fund. To separate the money within one fund according to the source from which it was derived, and to maintain such separation, would be administratively impractical; the conclusion reached herein avoids these practical problems.

> Notwithstanding section 5705.41 of the Revised Code, no school district shall adopt any appropriation measure, make any contract, give any order involving the expenditure of money, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes including the renewal of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to operate an adequate educational program on all the days set forth in its adopted school calendar for the current fiscal year and for a number of days in the succeeding fiscal year equal to the number of days instruction was held or is scheduled for the current fiscal year, ... (Emphasis added.)

This section was enacted to assist school districts in strengthening their fiscal positions and has been interpreted to require certification where none would be required by R.C. 5705.41(D). 1971 Ohio Laws 1485, 1539 (Am. Sub. H.B. No. 475, eff. Dec. 20, 1971); Board of Education v. Maple Hts. Teachers Association, 41 Ohio Misc. 27, 322 N.E. 2d 154 (C.P. Cuyahoga County 1973). R.C. 5705.412 prohibits the expenditure of any public funds if subsequent to the expenditure there would be insufficient revenue, when both tax and non-tax revenue from all sources are considered, to operate an adequate educational program. Thus, R.C. 5705.412 must be viewed as applying to the expenditure of any funds since any expenditure would result in a decrease in the total funds, from all sources, available to operate the educational program. Consequently, I am of the opinion that expenditures from student activity funds are also subject to the certification requirement of R.C. 5705.412.

In conclusion, it is my opinion that student activity funds must be administered in accordance with the provisions of R.C. Chapter 5705. Thus, no expenditure may be made from student activity funds unless the money has been appropriated as provided in R.C. Chapter 5705, R.C. 5705.41(B); no money may be expended except by a proper warrant drawn against an appropriate fund, R.C. 5705.41(C); and no money may be spent or contract executed unless accompanied by a certificate of availability, R.C. 5705.41(D) and 5705.412.

Your third, fourth and fifth questions deal with the authority of a treasurer of a board of education to delegate to another the performance of certain of his duties. Whether the treasurer of a board of education may so delegate the performance of his duties is dependent upon the nature of his office and the nature of the duties which the treasurer is required to perform. It is well settled that, in the absence of specific statutory authorization, a public officer is without authority to delegate to another the exercise of his duties, especially when such duties involve the exercise of judgment or discretion. Rieke v. Hogan, 34 Ohio Law Abs. 311, 36 N.E. 2d 886 (Ct. App. Cuyahoga County 1940), aff'd 138 Ohio St. 27, 32 N.E. 2d 9 (1941); Burkholder v. Lauber, 6 Ohio Misc. 152, 216 N.E. 2d 909 (C.P. Fulton County 1965); 1956 Op. Att'y Gen. No. 7107, p. 663, 665. Some question exists, however, as to whether the treasurer of a board of education is a public officer.

The term "public officer" has generally been defined as an individual who takes an oath of office and who is responsible to the public for the performance of his own duties. Theobald v. State, 10 Ohio C.C. (n.s.) 175 (Montgomery County 1907), aff'd 78 Ohio St. 426, 85 N.E. 1133 (1908). A person who has been elected or appointed to an office and who exercises some functions of government is deemed to be a "public officer." State v. Brennan, 49 Ohio St. 33, 29 N.E. 593 (1892).

In a line of early cases and opinions of the Attorney General, which were decided prior to the time the clerk of the board of education assumed the expanded duties now performed by the treasurer of the board of education, it was held that

the clerk of a board of education did not come within such a definition of public officer. Board of Education v. Juergens, 110 Ohio St. 667, 145 N.E. 31 (1924); Board of Education v. Featherstone, 110 Ohio St. 669, 145 N.E. 31 (1924) (discussing duties of "clerk," individual who, with expanded duties, is now known as "treasurer"); 1932 Op. Att'y Gen. No. 4776, p. 1299; 1925 Op. Att'y Gen. No. 2493, p. 327. But cf. State ex rel. Myers v. Coon, 4 Ohio C.C. (n.s.) 560 (Cuyahoga County 1904) (clerk held to be a public officer within the meaning of a statute providing that a person holding office shall continue in office until his successor is elected or appointed). The courts in Juergens and Featherstone held that the clerk of a board of education was not a public officer within the meaning of Ohio Const. art. II, §20, which prohibits a change of salary during the term of office. In reaching that decision, the courts concluded that the duties of the clerk of a board of education were of a purely clerical or ministerial nature, and that the clerk was not, therefore, a public officer who exercised a part of the sovereignty of the state.

It is worthy of note, however, that, at the time the decisions in the aforementioned cases were rendered, the clerk of a board of education was not the treasurer of the board of education. Revised Statutes 4042-4056. See also State ex rel. Board of Education v. Griffith, 74 Ohio St. 80, 77 N.E. 686 (1906). Hence, the duties performed by the clerk, at that time, were solely those of a bookkeeper or clerk of the school board records. It was not until 1943 that the clerk of a board of education became the treasurer of the board of education and assumed the duties which are, today, performed by the treasurer of a board of education. 1943 Ohio Laws 475, 536 (H.B. No. 217).

The nature of the duties now performed by the treasurer of a board of education are such as lead to the conclusion that the treasurer is, at least in relation to those duties, a public officer. The treasurer is elected by the board of education, R.C. 3313.22, and is required by statute to perform specific governmental functions, R.C. 3313.22-.34. In carrying out these functions, which involve the administration and protection of public funds, the treasurer of a board of education occupies a position of trust and is responsible to the public for his performance. See R.C. 3313.25 (treasurer of board of education executes a bond to secure performance of official duties).

In light of the nature of the duties performed by the treasurer of a board of education and the severity of the consequences to the public which would result from improper performance, I am of the opinion that the treasurer must be deemed to be a public officer as to the duties which he is required to perform. See 1956 Op. Att'y Gen. No. 7107, p. 663. Thus, if the duty in question is one which the treasurer of a board of education is required, by statute, to perform, and the duty involves the protection of public funds, rights or interests, the treasurer may not substitute the performance of another unless he has express authority to do so. See State ex rel. Brennan, 49 Ohio St. 33, 29 N.E. 593 (1892) (a public officer has the power to control public property and to perform public functions in the interest of the people). I am aware of no general statute which authorizes the treasurer of a board of education to delegate the performance of such duties. Cf. R.C. 314.05 (county auditor may appoint deputy auditor); 321.04 (county treasurer may appoint deputy treasurer). Thus, in the absence of a specific statute that authorizes the treasurer of a board of education to delegate the performance of a particular duty, which he, as a public officer, is required to perform, it must be concluded that the treasurer of a board of education has no authority to make such a delegation.

With these principles in mind, I turn now to your third question in which you inquire whether the treasurer may delegate the authority to receive and assume custody of funds until such time as the funds are placed in a depository.

R.C. 3313.51 provides, in pertinent part, as follows:

> In every school district the treasurer of the board of education shall be the treasurer of the school funds. . . . All moneys received by a treasurer of a school district from any source whatsoever shall be immediately placed by him in a depository designated by the board

of education of such school district, as provided by sections 135.01 to 135.21 of the Revised Code.

R.C. 117.17 provides in part as follows:

> A public officer or employee who collects or receives payments due the public shall deposit all public moneys received by him with the treasurer of the taxing district once every twenty-four consecutive hours.

R.C. 135.17 provides as follows:

> Each treasurer may at all times keep in the vaults of his office such amount, as a cash reserve, as is prescribed by the proper governing board, which amount shall not be required to be deposited pursuant to sections 135.01 to 135.21, inclusive, of the Revised Code. Each treasurer shall deposit or invest all the remaining public moneys in his possession in accordance with sections 135.01 to 135.21, inclusive, of the Revised Code.

The language of R.C. 117.17 clearly authorizes a public officer or employee, other than the treasurer, to collect or receive payments of money in the first instance. Thus, an employee of the board of education may be designated to collect or receive money earned through the operation of student activities. The employee who performs this function, however, is required to deposit all funds so collected with the treasurer within twenty-four hours. R.C. 117.17.

Similarly, the person designated to receive custody initially may not retain custody until such funds are placed in the depository, nor may such person make the deposit himself. R.C. 3313.51 and R.C. 135.17 authorize only the treasurer to receive custody of funds for deposit, and thereafter to deposit such funds. See 1956 Op. Att'y Gen. No. 7107, p. 663, 665.

I am aware of no statutory authority which would authorize the treasurer to delegate his duty to receive custody of funds for deposit and thereafter to deposit such funds. Furthermore, nothing in the language of R.C. 3315.062 evidences a legislative intent to authorize such a delegation in regard to money collected from the operation of student activities.

Consequently, it is my opinion that, while the treasurer may authorize an employee to collect money in the first instance, the treasurer may not authorize that individual to retain custody until such time as the money is deposited, nor may the treasurer authorize such person to deposit the money so collected.

As I advised in response to your second question, student activity funds are subject to the certification requirements of R.C. 5705.41(D) and R.C. 5705.412. R.C. 5705.41(D) expressly requires the fiscal officer of the subdivision, which in school districts is the treasurer of the board of education, to certify such expenditures. R.C. 5705.412 expressly requires the treasurer, as well as the president of the board and the superintendent of the schools, to certify such expenditures. I can find no statute which would authorize the treasurer to delegate his duty to certify expenditures. Thus, in response to your fourth question, it is my opinion that the treasurer of a school board may not delegate the authority to certify contracts or orders for expenditures as required by R.C. 5705.41(D) and R.C. 5705.412.

In regard to your fifth question, it is my understanding from communications with your office that you are inquiring as to whether the treasurer may appoint someone in his office to assume, on a regular basis, the treasurer's duty to attend board meetings under R.C. 3313.26. R.C. 3313.26 provides:

> The treasurer of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall be a public record. The record of proceedings at each meeting of the board shall be read at its next succeeding meeting, corrected and approved, which approval shall be noted in the proceedings. After such approval, the president shall sign the record and the treasurer attest it.

The section specifically requires the treasurer to attend board meetings and to record and attest to the proceedings.

No statutory provision authorizes the treasurer to delegate his duty to attend board meetings. Although R.C. 3313.23 authorizes the board to appoint a temporary substitute in the treasurer's absence, such provision is limited in scope and in no way confers upon the treasurer the authority to delegate performance of his duties. See 1956 Op. Att'y Gen. No. 7107, p. 663 (discussing duties of "clerk," individual now known as "treasurer").

Thus, in answer to your fifth question, it is my opinion that the treasurer has no authority to delegate his duty to attend board meetings and to record and attest to the proceedings, as required by R.C. 3313.26.

In conclusion, it is my opinion, and you are advised, that:

1. The amount expended from the general fund under R.C. 3313.53 for directing, supervising and coaching student activities should not be included in calculating the amount of money expended from the general fund for the support of student activities for the purpose of conforming to the limitation of R.C. 3315.062.

2. Student activity funds established by the board of education of any school district except a county school district must be budgeted and appropriated in accordance with the procedures set forth in R.C. Chapter 5705, including the certification requirements of R.C. 5705.41(D) and R.C. 5705.412.

3. Pursuant to R.C. 117.17, the treasurer may delegate to an employee the authority to receive custody of funds initially, but the treasurer may not authorize said employee to retain custody of the funds for longer than twenty-four hours, or to deposit the funds himself. R.C. 117.17, 135.17, 3313.51.

4. The treasurer of a school board may not delegate to another the authority to certify contracts or orders for expenditures pursuant to R.C. 5705.41(D) and R.C. 5705.412.

5. The treasurer of a school board may not delegate to an employee the duty to record, transcribe or attest to the minutes of each board of education meeting as required by R.C. 3313.26.

OPINION NO. 80-061

Syllabus:

1. Under 29 U.S.C. §§207 and 213, there is a presumption that an employee of a county children services board, or of any other "employer" as defined in R.C. 4111.01(D), is not exempt from the overtime provisions of R.C. 4111.03.

2. A social worker, as defined by the Mahoning County Children Services Board job description of a "child welfare caseworker 2,"