

May 23, 2000

OPINION NO. 2000-030

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311-2053

Dear Prosecutor Heaton:

We have received your request for an opinion on the question whether joint vocational school districts are entitled to the same rights and authorities as city, local, and exempted village school districts in tax abatement matters. You note that city, local, and exempted village school districts are empowered to veto certain types of tax abatements, but that the Department of Development has not recognized such power in joint vocational school districts. You ask that this issue be considered in light of R.C. 3311.19(D), which grants joint vocational school districts the same powers, duties, and authority for management and operation as city school districts and makes joint vocational school districts subject to all provisions of law that apply to city school districts, with specified exceptions.

An examination of your question requires an understanding of the nature of various Ohio school districts and their respective responsibilities. Under Ohio law, city, local, and exempted village school districts are the political subdivisions with the basic responsibility of providing education for children who live within their territory. R.C. 3311.01-.04; R.C. 3313.64; R.C. 3321.03; R.C. 3323.01(G); R.C. 3323.04. Among their responsibilities is the provision of vocational education adequate to prepare a pupil for an occupation. A city, local, or exempted village school district may provide vocational education in one of three ways: (1) by establishing its own program; (2) by contracting for the education; or (3) by being a member of a joint vocational school district. R.C. 3313.90(A).

A joint vocational school district may be created by any combination of city, local, or exempted village school districts or educational service centers to make vocational education available to all school-age youth in the district. R.C. 3311.16-.19. A joint vocational school district encompasses the territory of the participating school districts, but the participating districts do not lose their separate identity or legal existence. R.C. 3311.18. Further, the joint vocational school district does not take over the responsibility of granting diplomas. R.C. 3313.61(I). Thus, a joint vocational school district exists in addition to city, local, and exempted

village school districts within its territory for the purpose of providing vocational education programs for children in those districts.

Your question has arisen because of a provision of law granting joint vocational school districts certain powers of city school districts.¹ Under that provision, a joint vocational school district board of education has “the same powers, duties, and authority for the management and operation” of the joint vocational school district as are granted by law to a board of education of a city school district and is “subject to all the provisions of law that apply to a city school district,” with exceptions for R.C. Chapters 3311 (school districts), 124 (civil service), 3317 (school foundation program), 3323 (special education), and 3331 (age and schooling certificates). R.C. 3311.19(D).² Thus, subject to certain exceptions, a joint vocational school district has the same powers of management and operation as a city school district and is subject to the same laws as a city school district.³

To determine whether the powers of a joint vocational school district board of education include powers regarding tax abatements, we must examine the tax abatement statutes. Your question relates to tax abatement statutes that give certain rights and protections to city, local,

¹ Like joint vocational school districts, cooperative education school districts are granted the same powers, duties, and authority for the management and operation of the district as city school districts and are subject to all provisions of law that apply to city school districts, with specified exceptions. R.C. 3313.52(D). You have not asked about the powers of cooperative education school districts and this opinion does not address them.

² In addition to the exceptions set forth in R.C. 3311.19(D), a number of statutory provisions exclude joint vocational school districts from statutes applicable to city school districts. *See, e.g.*, R.C. 3301.0715 (competency-based education); R.C. 3313.02 (membership of board of education); R.C. 3313.35 (legal counsel); R.C. 3313.97 (open enrollment); R.C. 3321.04 (compulsory attendance); R.C. 3327.01 (pupil transportation).

³ Since 1963, joint vocational school districts have had the powers of city school districts, *see* 1963 Ohio Laws 743-44, 1782 (Am. Sub. H.B. 597, eff. Oct. 7, 1963), and before that they had the powers of local school districts, *see* 1961 Ohio Laws 1544, 1545 (Am. Sub. H.B. 620, eff. Oct. 26, 1961). Exceptions to the grant of city school district powers went into effect in 1993 and did not include any tax abatement statutes. *See* 1991-1992 Ohio Laws, Part I, 1145, 1154 (Sub. S.B. 195, eff. Apr. 16, 1993). At that time, certain tax abatement statutes required that notice of proposed abatements be given to local, county, city, exempted village, and joint vocational school districts for informational purposes, but no school districts were given veto power over tax abatements. *See* 1991-1992 Ohio Laws, Part II, 2642, 2650-52 (Sub. S.B. 363, eff. Jan. 13, 1993) (enacting R.C. 5709.40 and amending R.C. 5709.41).

and exempted village school districts, and you cite R.C. 5709.62 as an example.⁴ R.C. 5709.62 authorizes municipal corporations to create enterprise zones and to grant real and tangible personal property tax abatements to certain enterprises that create and preserve employment opportunities within those zones. Under R.C. 5709.62, a tax abatement may exceed a prescribed percentage only “if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves” the greater percentage. R.C. 5709.62(D). The board of education is entitled to receive notice of the proposed abatement in advance of its approval by the legislative authority, and the board of education is authorized to approve or disapprove the proposed abatement by resolution. The board of education is permitted to propose conditions under which it would grant approval, and may propose an agreement under which the school district would receive compensation for tax revenues lost as a result of the abatement. *Id.*; *see* R.C. 5709.82(B).

By statute, the legislative authority of a political subdivision that grants a tax abatement under specified statutory provisions, including R.C. 5709.62, “may negotiate with the board of education of each city, local, or exempted village school district” within the territory where the abatement is granted and enter into an agreement under which the school district is compensated for tax revenues that it would have received if the tax abatement had not been granted. R.C. 5709.82(B). Negotiation is required in certain circumstances, and if it fails a fifty percent allocation of certain income tax proceeds is mandated. R.C. 5709.82(C) and (D). Payments under that mandated arrangement are made to “the city, local, or exempted village school district.” R.C. 5709.82(D). There is no mention of joint vocational school districts.

We turn now to the question whether, because a joint vocational school district has been granted general powers of a city school district and made subject to laws governing city school districts, a joint vocational school district has notification and veto rights under tax abatement statutes when it is not mentioned in those statutes. An initial examination of R.C. 3311.19 indicates that, where no express exception applies, a joint vocational school district is subject to all laws governing city school districts. R.C. 3311.19(D). No provision in R.C. 3311.19 excepts a joint vocational school district from the operation of tax abatement statutes. Thus, it appears that a joint vocational school district has the same rights and powers as a city school district regarding matters of tax abatement.

⁴ Similar provisions relating to various types of tax abatements appear elsewhere in the Revised Code, granting city, local, and exempted village school districts the right to notice of certain proposed tax abatements and the authority to disapprove them. *See* R.C. 725.02 (municipal development agreements for urban renewal projects); R.C. 1728.10 (community redevelopment corporations); R.C. 3735.671 (community reinvestment areas); R.C. 5709.40 (municipal tax increment financing); R.C. 5709.41 (improvements to property conveyed or leased by municipal corporation engaged in urban redevelopment); R.C. 5709.63 (county enterprise zones); R.C. 5709.632 (urban jobs and enterprise zones); R.C. 5709.73 (township tax increment financing); R.C. 5709.78 (county public infrastructure improvements).

However, an examination of tax abatement statutes supports a contrary conclusion — namely, that when the General Assembly referred to city, local, and exempted village school districts, and not to joint vocational school districts, it intended to include only city, local, and exempted village school districts, which are the governmental units with basic responsibility for providing education for children in each geographical area within the state. In contrast, when the General Assembly intended to include joint vocational school districts, it referred to them expressly.

R.C. 5709.62 and similar statutes grant the right to disapprove a proposed tax abatement, and the corresponding right to receive notice necessary to exercise that right, only to city, local, and exempted village school districts. *See* note 4, *supra*. Similarly, R.C. 5709.82 grants a right to negotiate for compensation for revenues lost through tax abatements, or to receive a mandatory payment, only to city, local, and exempted village school districts. In contrast, joint vocational school districts are expressly mentioned in certain tax abatement statutes and are given limited powers.

In this regard, R.C. 5709.83 requires that, before any of various tax abatements are granted, notice must be given to “the board of education of each city, local, exempted village, or joint vocational school district in which the proposed tax-exempted property is located.” R.C. 5709.83(A). The statute gives all those school districts the right to comment on the proposed abatement, stating: “If the board of education comments on the instrument or application to the legislative authority or housing officer, the legislative authority or housing officer shall consider the comments.” *Id.* However, the statute gives a city, local, or exempted village school district the right, upon request, to meet with the legislative authority or housing officer to discuss the terms of the abatement, but does not give that right to a joint vocational school district. *Id.* Hence, it is clear that the General Assembly intended to treat joint vocational school districts differently than city school districts in matters of tax abatement.

Other tax abatement provisions that expressly mention joint vocational school districts are R.C. 5709.85 and 5709.883. Those provisions require that a county, township, or municipal corporation that grants a tax abatement create a tax incentive review council. The council must include various public officials and representatives, among them an individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the instrument granting the abatement applies. R.C. 5709.85(A); R.C. 5709.883(A). The tax incentive review council reviews the various tax abatements, determines whether there has been compliance with agreements or policies, and makes recommendations to the legislative authority. R.C. 5709.85(C) and (D); R.C. 5709.883(C). The tax incentive review council receives information but has no power to approve or disapprove tax abatements. Thus, joint

vocational school districts are included with other school districts for informational and advisory purposes, but not for purposes of directly approving or disapproving proposed tax abatements.⁵

These statutes present a consistent statutory scheme regarding the powers of various types of school districts, granting city, local, and exempted village school districts authority to veto tax abatement proposals in excess of stated amounts and failing to include any reference to joint vocational school districts in connection with such authority, but including joint vocational school districts for purposes of information, comment, and review. In light of these statutory provisions, we conclude that, in tax abatement statutes, the General Assembly used the terms “city, local, or exempted village school districts” to refer only to those specific types of school districts, and expressly referenced “joint vocational school districts” when it intended that joint vocational school districts be included.

⁵ Senate Bill 19, appearing in 1993-1994 Ohio Laws, Part I, 101 (Am. Sub. S.B. 19, eff. July 22, 1994), is the legislation that initially granted city, local, and exempted village school districts veto authority over various types of tax abatements. *See* R.C. 725.02; R.C. 1728.10; R.C. 3735.671; R.C. 5709.40; R.C. 5709.41; R.C. 5709.62; R.C. 5709.63; R.C. 5709.632; R.C. 5709.73; R.C. 5709.78. Senate Bill 19 amended R.C. 5709.82(B), which authorizes legislative authorities that grant tax abatements to negotiate with the board of education to provide compensation for the loss of tax revenue, so that instead of referring to “any school district,” it refers expressly to “each city, local, or exempted village school district.” 1993-1994 Ohio Laws, Part I, 191. Senate Bill 19 also enacted the requirement in R.C. 5709.82(C) and (D) that negotiation be attempted in certain circumstances and, if it fails, an amount of income tax must be paid to the “city, local, or exempted village school district.” *Id.* at 191-92.

The Legislative Service Commission’s Analysis of Senate Bill 19 refers to the city, local, or exempted village school district as “the” school district for tax abatement veto purposes, thereby indicating that those districts with basic educational responsibilities are the only districts to which the veto provisions were intended to apply. *See* Ohio Legislative Service Comm’n, Analysis, Sub. S.B. 19 (Preliminary Summary) (Apr. 22, 1994), at 9 (stating that enterprise zone, urban renewal, community urban redevelopment, and tax increment financing exemption percentages may exceed a specified limit “with the approval of the school board of the school district in which the exempted property is located”). Senate Bill 19 included joint vocational school districts with city, local, and exempted village school districts on tax incentive review councils under R.C. 5709.85, thereby indicating that the General Assembly was aware of joint vocational school districts and expressly mentioned them where it sought to include them. 1993-1994 Ohio Laws, Part I, 193-94. Under Senate Bill 19, notice for informational purposes under R.C. 5709.83 was granted to “each school district.” *Id.* at 192. Express reference to joint vocational school districts in R.C. 5709.83 was added in Am. Sub. H.B. 283, 123rd Gen. A. (1999) (eff. June 30, 1999, with amendment eff. Sept. 29, 1999).

The express grant of tax abatement veto powers to city, local, and exempted village school districts and not to joint vocational school districts is consistent with the statutory organization of school districts that gives city, local, and exempted village school districts basic responsibility for providing education to children in their districts and gives them the option of creating a joint vocational school district as a supplemental entity to provide vocational education. This reading of the law grants tax abatement veto rights in each geographical area to the single school district that has basic educational responsibility for that area.

The purpose of statutory construction is to give effect to the intention of the legislature. “Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained.” *Cochrel v. Robinson*, 113 Ohio St. 526, 527, 149 N.E. 871, 872 (1925) (syllabus, paragraph 4). To give effect to the intention of the General Assembly in tax abatement matters, we conclude that, notwithstanding R.C. 3311.19(D), a joint vocational school district does not have notification, veto, negotiation, or compensation rights under tax abatement statutes, such as R.C. 5709.62 and R.C. 5709.82, that grant such rights to city, local, and exempted village school districts but do not mention joint vocational school districts.⁶

Therefore, it is my opinion and you are advised, that, notwithstanding R.C. 3311.19(D), a joint vocational school district does not have notification, veto, negotiation, or compensation rights under tax abatement statutes, such as R.C. 5709.62 and R.C. 5709.82,

⁶ We note that the tax abatement provisions are more recent and more specific than the grant of authority made by R.C. 3311.19(D) and, therefore, prevail over that general grant of authority to the extent that conflicts occur. *See* R.C. 1.51; R.C. 1.52; notes 3 and 5, *supra*.

The Honorable Gerald L. Heaton

-7-

that grant such rights to city, local, and exempted village school districts but do not mention joint vocational school districts.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 23, 2000

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311-2053

SYLLABUS:

2000-030

Notwithstanding R.C. 3311.19(D), a joint vocational school district does not have notification, veto, negotiation, or compensation rights under tax abatement statutes, such as R.C. 5709.62 and R.C. 5709.82, that grant such rights to city, local, and exempted village school districts but do not mention joint vocational school districts.