

OPINION NO. 99-024**Syllabus:**

Pursuant to R.C. 3313.37, the board of education of a city, local, or exempted village school district is authorized to construct a school building upon real property located in another school district.

To: Tim Oliver, Warren County Prosecuting Attorney, Lebanon, Ohio

By: Betty D. Montgomery, Attorney General, March 22, 1999

We have received your request for an opinion concerning "the authority and propriety of a school district constructing a school building upon real property located in another school district." You indicate that this issue has arisen from a situation in which a local school district is negotiating for the purchase of real property located in a different school district for the purpose of constructing a school building.

To address your concerns, let us look to the statutes governing school districts. As creatures of statute, boards of education of school districts have only the powers that they are given by statute. *See, e.g., State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 134 N.E. 655 (1921). Boards of education are designated as bodies politic and corporate, with power to enter into contracts and to acquire, hold, possess, and dispose of real and personal property. R.C. 3313.17.

It has long been established that, for school purposes, a board of education may acquire real property located outside the school district. There is express statutory authority for the board of education of a city, local, or exempted village school district to:

build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights-of-way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, *either within or without the district*, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.

R.C. 3313.37 (emphasis added); *see Sterkel v. Mansfield Bd. of Educ.*, 172 Ohio St. 231, 232, 175 N.E.2d 64, 65 (1961) (“[R.C. 3313.37] has authorized a school board to purchase or lease real estate as sites for schoolhouses or to be used as playgrounds for children *either within or without the district*, since the enactment of Senate Bill No. 43 by the Eighty-third General Assembly on April 4, 1919 (108 Ohio Laws, Pt. 1, 187)” (emphasis added)).¹ Thus, pursuant to R.C. 3313.37, the board of education of a city, local, or exempted village school district is authorized to construct a school building upon real property located in another school district.

You are concerned, also, with the “propriety” of a school board’s decision to construct school facilities on real property located outside the school district. With respect to the location of school facilities, the statutory standard is that the board of education “shall provide for the free education of the youth of school age within the district under its jurisdiction, *at such places as will be most convenient for the attendance of the largest number thereof.*” R.C. 3313.48 (emphasis added).

This statutory language has been construed by the courts to grant “at most, ... the qualified right of students of the district, when considered as a whole, to expect that their schools will not be located in such a manner that they will be convenient only for the attendance of a minority of the district’s students - where, for example, all schools might be clustered in one sparsely populated corner of the district.” *Association for the Defense of Cent. High Sch. v. Columbus Bd. of Educ.*, 10 Ohio App. 3d 126, 127, 460 N.E.2d 725, 727 (Franklin County 1983); *see Lewis v. East Clinton Local School Dist. Bd. of Educ.*, No. CA96-03-003, 1996 WL 468759 (Ohio Ct. App. Clinton County Aug. 19, 1996); *see also* R.C. 3313.49 (board of education may close a school “because of disadvantageous location or any other cause”). This provision does not preclude a school district from selecting a location that is outside the district.

Thus, in determining the location of school facilities, the board of education has the responsibility of selecting sites that are convenient for the students as a whole, R.C. 3313.48, and is granted the authority to select sites “either within or without the district,” R.C. 3313.37. A board of education has broad discretion in selecting school locations, and a court will not interfere with the board’s exercise of discretion absent a showing of fraud, collusion,

¹ *Sterkel v. Mansfield Bd. of Educ.*, 172 Ohio St. 231, 175 N.E.2d 64 (1961), holds that, although a board of education may by voluntary agreement purchase property outside the school district, the board’s authority to acquire property by eminent domain does not extend beyond the boundaries of the school district. *See* 1978 Op. Att’y Gen. No. 78-051, at 2-121 (significance of *Sterkel* case is that “in the absence of express authority no subdivision of this state may take property outside of its geographical boundaries by eminent domain”). Your request does not raise any issues concerning eminent domain, and this opinion does not consider that aspect of the *Sterkel* case.

or abuse of discretion. *Brannon v. Board of Educ.*, 99 Ohio St. 369, 124 N.E. 235 (1919); *Lewis v. East Clinton Local School Dist. Bd. of Educ.*; 1931 Op. Att'y Gen. No. 3087, vol. I, p. 441.

Therefore, it is my opinion, and you are advised, that pursuant to R.C. 3313.37, the board of education of a city, local, or exempted village school district is authorized to construct a school building upon real property located in another school district.