

OPINION NO. 91-064**Syllabus:**

1. Pursuant to R.C. 3313.77, a local board of education is authorized to permit political action committees and school levy committees to use the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, provided such committees request and pay for the use of the equipment and supplies.
2. A local board of education may not deny political action committees and school levy committees the use of the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, solely on the ground that such committees have taken a view on the passage of a school levy or bond issue not favored by the board.
3. R.C. 3313.77(B) prohibits a local board of education from permitting political action committees to hold closed organizational meetings on school grounds.
4. A local board of education is authorized, pursuant to R.C. 3313.77(B), upon the request and the payment of a reasonable

fee, and subject to such regulation as is adopted by the board, to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property, provided the board of education has determined that the posting of such signs on school property promotes the welfare of the community.

5. Any rule adopted by a board of education to regulate the posting of school levy and bond issue signs on school property must be reasonable. However, a board of education may not adopt a rule prohibiting the posting of signs concerning a school levy or bond issue on school property solely on the ground that such signs communicate a view not favored by the board.
6. R.C. 3315.07(C)(1) prohibits a local board of education from publishing and distributing publicly-financed materials supporting or opposing the passage of a school levy and from compensating individuals employed by the board for distributing privately-financed materials supporting or opposing the passage of a school levy. However, officials and employees of a school district may, on their own time, distribute privately-financed materials supporting or opposing the passage of a school levy.
7. Officials and employees of a school district who distribute privately-financed materials supporting or opposing the passage of a school levy are not required to distribute materials which present the opposite position.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for my opinion concerning the use of school property by political action committees and school levy committees. Specifically, you ask:

1. Do local boards of education have the power to permit political action committees and school levy committees to use telephones, postage meters, equipment and supplies of the school district if the cost of such use is recovered by the school district? If so, do the boards of education also have the privilege to deny access to the same school property to opposing groups and organizations?
2. Do local boards of education have the power to permit political action committees to use school buildings, school grounds and other school property for purposes other than meetings of the electors? For example, may a school board permit a political action committee to hold closed, organizational meetings on school property?
3. Do local boards of education have the power to permit political action committees and school levy committees to post signs on school property? Do they have the privilege of selectively allowing the posting of signs? If they do not have the power to permit the posting of such signs, do they have the duty to remove any signs which are posted?
4. Are school officials and employees permitted to publish and distribute publicly-financed newsletters and other printed materials which contain statements advocating the passage or defeat of a school levy? Are school officials permitted to distribute such literature if it is paid for by private sources? If they choose to distribute such literature in their official capacities as school officials, are they also required to distribute literature which reflects opposing viewpoints?

I. Use Of School Equipment And Supplies By Political Action Committees And School Levy Committees

A. A Board Of Education May Authorize The Use Of School Property

A board of education may exercise only those powers expressly granted by statute, *State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 134 N.E. 655 (1921), and those powers necessarily implied by any such express grant. *See State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four), *aff'd sub nom. In re Davis v. Hildebrant*, 241 U.S. 565 (1916); *CADO Business Systems of Ohio, Inc. v. Board of Educ.*, 8 Ohio App. 3d 385, 457 N.E.2d 939 (Cuyahoga County 1983). The statutes which govern the use of school buildings and property, R.C. 3313.75-.78, expressly authorize the use of school property for holding meetings. Specifically, R.C. 3313.77 provides in relevant part:

The board of education of any city, exempted village, or local school district shall, upon request and the payment of a reasonable fee, subject to such regulation as is adopted by such board, *permit the use of any schoolhouse and rooms therein and the grounds and other property under its control*, when not in actual use for school purposes, for any of the following purposes:

....
 (B) Holding educational, religious, civic, social, or recreational meetings and entertainments, and for such other purposes as promote the welfare of the community; provided such meetings and entertainments shall be nonexclusive and open to the general public[.] (Emphasis added.)

Meetings of political action committees and school levy committees supporting or opposing the passage of a school levy or bond issue are both educational and civic in nature. R.C. 3313.77(B), thus, empowers a local board of education to permit, subject to the regulations of the board, the use of any of the "property" under the board's control, when not in actual use for school purposes, for holding meetings of political action committees and school levy committees.

The term "property" is not defined in R.C. 3313.77. However, R.C. 1.59, which sets forth definitions for several terms commonly used in the Revised Code, provides in part: "As used in any statute, unless another definition is provided in such statute or a related statute: (E) 'Property' means real and personal property." *See also* R.C. 2901.01(J)(1) ("[a]s used in the Revised Code: 'Property' means any property, real or personal, tangible or intangible, and any interest or license in such property"). Moreover, *Black's Law Dictionary* 1217 (6th ed. 1990) defines "personal property" as "everything that is the subject of ownership, not coming under denomination of real estate." Thus, telephones, postage meters and other equipment and supplies under the board's control are personal property, and, pursuant to R.C. 1.59, are included within the meaning of "property" as that term is used in R.C. 3313.77. *See generally* R.C. 1.42 ("[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly"). Accordingly, a local board of education is authorized, pursuant to R.C. 3313.77, to permit, subject to the regulations of the board, political action committees and school levy committees to use the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, provided such committees request and pay for the use of the equipment and supplies.¹ *See, e.g.*, 1974 Op. Att'y Gen. No. 74-086 (syllabus) ("[a] municipality and a board of education may jointly sponsor a program through which warm meals are sold to senior citizens at approximately actual cost in a school cafeteria").

¹ R.C. 3315.07(C)(1) prohibits a board of education from using public funds to support or oppose the passage of a school levy or bond issue. Since R.C. 3313.77 requires the payment of a reasonable fee for the use of the equipment and supplies, no public funds are used. Therefore, R.C. 3315.07(C)(1) does not prevent a board from permitting the use of the equipment and supplies under the board's control, when not in actual use for school purposes.

B. A Board Of Education May Not Deny Use Of School Property To Committees Solely On The Ground That They Oppose The Passage Of A School Levy

In your first question you also ask, if a local board of education has the power to permit political action committees and school levy committees to use the telephones, postage meters, and other equipment and supplies under the board's control, may the board deny the use of this property to committees opposing the passage of a school levy or bond issue. The United States Supreme Court has examined the constitutionality of a governmental entity favoring one viewpoint over all other points of view on an issue by granting the use of public property to only those espousing the favored view. The Supreme Court has concluded that:

[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an "equality of status in the field of ideas,"^[2] and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone. (Emphasis added.)

Police Dept. of the City of Chicago v. Mosley, 408 U.S. 92, 96 (1972); *accord Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984); *Bonner-Lyons v. School Comm. of the City of Boston*, 480 F.2d 442 (1st Cir. 1973); *Buckel v. Prentice*, 410 F. Supp. 1243 (S.D. Ohio 1976), *aff'd*, 572 F.2d 141 (6th Cir. 1978).

The United States Supreme Court, has, thus, held that the First and Fourteenth Amendments to the United States Constitution prohibit government from granting the use of public property to individuals and groups whose views it finds acceptable, while denying use to those individuals and groups wishing to express a less favored view. Accordingly, a board of education is not authorized to deny political action committees and school levy committees the use of the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, solely on the ground that such committees have taken a view on the passage of a school levy or bond issue not favored by the board.

II. A Board Of Education Is Not Authorized To Permit Closed Organizational Meetings On School Grounds

Your second question asks whether a local board of education has the power to permit political action committees to use school buildings, school grounds and other school property for purposes other than meetings of the electors. Specifically, you ask: "[M]ay a school board permit a political action committee to hold closed, organizational meetings on school property[.]"

As noted, R.C. 3313.77 authorizes a local board of education to permit political action committees to use school grounds and property, when not in actual use for school purposes, for the holding of educational, religious, civic, social, or recreational meetings. The meetings authorized by R.C. 3313.77(B), however, must "be nonexclusive and open to the general public." Where the intentions of the General Assembly are plainly and unambiguously set forth in an enactment, further recourse to any intrinsic aids of statutory construction to determine legislative intention is unnecessary. *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105-06, 304 N.E.2d 378, 381 (1973). The language of R.C. 3313.77(B) clearly indicates that the

² "A. Meiklejohn, *Political Freedom: The Constitutional Powers of the People* 27 (1948)." *Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 96 n.4 (1972).

General Assembly intended that meetings held on school grounds be open to the general public. I find, therefore, that a local board of education is not authorized to permit political action committees to hold closed organizational meetings on school grounds.

III. Posting Of Signs On School Property

A. A Board Of Education May Authorize The Posting Of Signs On School Property

Your third question asks whether local boards of education have the power to permit political action committees and school levy committees to post signs³ on school property. R.C. 3313.77(B) authorizes a local board of education, upon request and the payment of a reasonable fee, and subject to such regulation as is adopted by such board, to permit school property to be used for any purpose which promotes the welfare of the community. As a consequence, the board is vested with discretion in determining whether a particular activity promotes the welfare of the community. The determination of whether the posting of signs concerning a school levy or bond issue on school property promotes the welfare of the community is a factual one which is within the reasonable discretion of a local board of education. *Cf. Jacobs v. Benedict*, 35 Ohio Misc. 92, 95, 301 N.E.2d 723, 726 (C.P. Hamilton County 1973) ("[a] board of education has that power and only that power to make rules and regulations over student conduct and status which are directly related to its function of educating the pupils in its charge. The test applied by the courts is that there must be a rational basis for the rule; it must be reasonable, and there must be a reasonable relationship between the rule and the furtherance of a valid educational purpose"), *aff'd*, 39 Ohio App. 2d 141, 316 N.E.2d 898 (Hamilton County 1973). *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) (*per curiam*) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty"). Accordingly, if a local board of education determines that the posting of signs concerning a school levy or bond issue on school property promotes the welfare of the community, then R.C. 3313.77 authorizes the board, upon request and the payment of a reasonable fee, and subject to any regulation adopted by the board, to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property.⁴

B. Board Of Education May Regulate The Posting Of Signs On School Property

In your third question you also ask, if a local board of education has the power to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property, may the board regulate the posting of such signs. As previously concluded, R.C. 3313.77(B) empowers a board of education, "subject to such regulation as is adopted by such board," to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property. A board, thus, may adopt, pursuant to R.C. 3313.77, rules to regulate the posting of such signs on school property.

Any rule adopted by the board of education, however, must be reasonable. *See generally Brannon v. Board of Educ.*, 99 Ohio St. 369, 124 N.E.2d 235 (1919). In addition, the First and Fourteenth Amendments to the United States Constitution prohibit a board of education from adopting a rule regulating the posting of signs concerning a school levy or bond issue on school property solely on the ground that

³ I assume, for purposes of this opinion, that the signs in question concern a school levy or bond issue.

⁴ Since I have determined that a board of education has the authority to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property, I find it unnecessary to address the portion of your third question concerning the board's duty to remove signs from school property.

such signs communicate a view on the passage of a school levy or bond issue not favored by the board. *See Police Dept. of the City of Chicago v. Mosley; Members of City Council v. Taxpayers for Vincent; Bonner-Lyons v. School Comm. of the City of Boston; Buckel v. Prentice.* See generally 1988 Op. Att'y Gen. No. 88-001 (a religious instruction released-time policy adopted by a board of education pursuant to R.C. 3313.20 and R.C. 3313.47 must comport with the provisions of the United States Constitution and the Ohio Constitution).

IV. Publication And Distribution Of Materials Concerning The Passage Of A School Levy

A. A Board Of Education May Not Financially Contribute To The Support Of Or Opposition To The Passage Of A School Levy

Your final question asks whether a board of education is permitted to publish and distribute publicly-financed newsletters and other printed materials supporting or opposing the passage of a school levy, and whether officials and employees of a board of education are permitted to distribute privately-financed materials supporting or opposing the passage of a school levy. Pursuant to R.C. 3315.07(C)(1),

Except as otherwise provided in division (C)(2)⁵ of this section, no board of education shall use public funds to support or oppose the passage of a school levy or bond issue or to compensate any school district employee for time spent on any activity intended to influence the outcome of a school levy or bond issue election. (Footnote added.)

The language of R.C. 3315.07(C)(1) is plain and unambiguous. Accordingly, I conclude that R.C. 3315.07(C)(1) prohibits a local board of education from publishing and distributing publicly-financed materials supporting or opposing the passage of a school levy. *Cf.* 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915 (syllabus) ("[b]oards of education are without authority to expend public funds in printing and mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted upon by the electors at an election called by such board of education").

It is also apparent that R.C. 3315.07(C)(1) prohibits a local board of education from compensating its officials and employees for distributing privately-financed materials supporting or opposing the passage of a school levy. Since this prohibition only applies to compensation, it may be inferred that board officials and employees may perform this activity when they are not being compensated by the board. *See generally Ohio Savings & Trust Co. v. Schneider*, 25 Ohio App. 259, 262, 159 N.E. 338, 339 (Tuscarawas County 1927) ("[c]ourts must not read into a statute that which does not appear therein. It is presumed that the lawmakers placed in the statute all that was intended").

The language of Ohio Const. art. I, § 11 supports this inference. This section in part provides that "[e]very citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press." *See also* U.S. Const. Amend. I. The officials and employees of a board of education, thus, have a constitutionally granted right of free speech. These individuals, therefore, may, on their own time, distribute privately-financed materials supporting or opposing the passage of a school levy.⁶

⁵ R.C. 3315.07(C)(2) authorizes a board of education to

permit any of its employees to attend a public meeting during his regular working hours for the purpose of presenting information about school finances and activities and board actions, even if the purpose of the meeting is to discuss or debate the passage of a school levy or bond issue.

⁶ My consideration of the question of whether an official or employee of a school district may distribute materials concerning a school levy does not constitute an opinion on the applicability of the ethics provisions of R.C. Chapter 102. Pursuant to R.C. 102.08, the authority to render advisory opinions on the provisions of this chapter is vested in the Ohio Ethics

B. Officials And Employees Of A School District Are Not Required To Distribute Opposing Views On The Passage Of A School Levy

In addition to the foregoing you also ask if officials and employees of a school district choose to distribute privately-financed materials supporting or opposing the passage of a school levy, are they also required to distribute materials which present the opposite position. I note that there is no statutory provision requiring an individual who distributes materials supporting or opposing the passage of a school levy to distribute materials which present the opposite position. To the contrary, Ohio Const. art. 1, § 11 grants an individual the right of free speech, which includes the right to choose what view one will espouse. Consequently, I find that officials and employees of a school district who distribute privately-financed materials supporting or opposing the passage of a school levy are not required to distribute materials which present the opposite position.

V. Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 3313.77, a local board of education is authorized to permit political action committees and school levy committees to use the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, provided such committees request and pay for the use of the equipment and supplies.
2. A local board of education may not deny political action committees and school levy committees the use of the telephones, postage meters, and other equipment and supplies under the board's control, when not in actual use for school purposes, solely on the ground that such committees have taken a view on the passage of a school levy or bond issue not favored by the board.
3. R.C. 3313.77(B) prohibits a local board of education from permitting political action committees to hold closed organizational meetings on school grounds.
4. A local board of education is authorized, pursuant to R.C. 3313.77(B), upon the request and the payment of a reasonable fee, and subject to such regulation as is adopted by the board, to permit political action committees and school levy committees to post signs concerning a school levy or bond issue on school property, provided the board of education has determined that the posting of such signs on school property promotes the welfare of the community.
5. Any rule adopted by a board of education to regulate the posting of school levy and bond issue signs on school property must be reasonable. However, a board of education may not adopt a rule prohibiting the posting of signs concerning a school levy or bond issue on school property solely on the ground that such signs communicate a view not favored by the board.
6. R.C. 3315.07(C)(1) prohibits a local board of education from publishing and distributing publicly-financed materials supporting or opposing the passage of a school levy and from compensating individuals employed by the board for distributing privately-financed materials supporting or opposing the passage of a school levy. However, officials and employees of a school district may, on their own time, distribute privately-financed materials supporting or opposing the passage of a school levy.

Commission. In light of this express statutory grant of power, my predecessors have held that it is inappropriate for the Attorney General to render opinions on these statutes. 1989 Op. Att'y Gen. No. 89-037 at 2-167; 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three).

7. Officials and employees of a school district who distribute privately-financed materials supporting or opposing the passage of a school levy are not required to distribute materials which present the opposite position.