

**OPINION NO. 83-043****Syllabus:**

A school district which is subject to R.C. 3313.4810 may avail itself of R.C. 3313.488(C) to be released from the provisions of R.C. 3313.488 which would otherwise be applicable.

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**To: Franklin B. Walter, Superintendent of Public Instruction, Department of Education, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 2, 1983**

I have before me your request for my opinion on the following question:

Does a school district subject to R.C. 3313.4810 remain subject to R.C. 3313.488 for the two calendar years specified in R.C. 3313.4810 or may the district avail itself of R.C. 3313.488(C) to be released from the otherwise applicable provisions?

R.C. 3313.4810 imposes specified conditions upon a school district which receives a loan of a certain amount from the Emergency School Advancement Fund, see R.C. 3317.61, and which has previously received a loan from such Fund. It states:

Any school district receiving a loan from the emergency school advancement fund in excess of seven per cent of the general revenue fund of the district during the calendar year in which the loan is received and that has previously received a loan from the fund shall be subject to section 3313.488 of the Revised Code for the duration of the calendar year in which the district receives the loan and during the ensuing two calendar years. The controlling board may not relieve a school district to which this section applies from any requirements imposed under section 3317.64 of the Revised Code to implement recommendations of the superintendent of public instruction for expenditure reduction and may not modify any other requirements imposed under such section upon such a district as a condition for receiving the loan unless expressly authorized to do so by law. The superintendent of public instruction shall, among any recommendations he makes for expenditure reduction under division (C)(3) of section 3317.63 of the Revised Code affecting the number of employees of a school district to which this section applies, provide wherever possible for the retention of teachers who are actually involved in the daily teaching of students in the classrooms. (Emphasis added.)

R.C. 3313.488 provides that it is applicable to school districts which request to be made subject thereto in connection with requests for loans from the Emergency School Advancement Fund, see R.C. 3317.62, and to school districts made subject thereto by order of the State Board of Education, see R.C. 117.09; R.C. 3313.487 (State Board of Education may, upon receipt of a report from the Superintendent of Public Instruction or a certification from the State Auditor, issue

an order making a school district subject to R.C. 3313.488 if it finds that the district is not able to operate an educational program from existing revenue sources during the current and ensuing school years, and shall issue such an order if the school district fails to enter into a loan agreement with a commercial lending institution or make application for a loan from the Emergency School Advancement Fund within forty-five days of the issuance of a certification from the State Auditor). The board of education of a school district which is subject to R.C. 3313.488 must prepare fiscal statements for the remainder of the current fiscal year (R.C. 3313.488(A)) and for the ensuing fiscal year (R.C. 3313.488(B)), setting forth revenues, expenses, and such other information as is necessary to enable the Superintendent of Public Instruction to ensure that the district will not incur any expenses that will further impair its ability to operate an adequate instructional program, and the board "shall not make any expenditure of money, make any employment, purchase or rental contract or give any order involving the expenditure of money, or increase any wage or salary schedule" unless the superintendent of public instruction has, in writing, approved the fiscal statement and approved the expenditure, contract, order, or schedule as being in conformity with the fiscal statement. R.C. 3313.488(A), (B).

R.C. 3313.488(C), the division to which your question relates, sets forth the circumstances in which a school district may be relieved of the requirements of R.C. 3313.488. It states:

The state board of education shall examine any fiscal statement presented to and approved by the superintendent of public instruction under division (B) of this section and shall determine whether the data set forth in the fiscal statement are factual and based upon assumptions that in its judgment are reasonable expectations consistent with acceptable governmental budget and accounting practices. If the state board so determines and finds that the revenues and expenditures in the fiscal statement are in balance for the fiscal year and the fiscal statement will enable the district to operate during such year without interrupting its school calendar, it shall certify its determination and finding to the district at least thirty days prior to the beginning of the fiscal year, and the district shall thereupon cease to be subject to this section. If the state board does not make such determination and finding, the board of education and school district are subject to this division and division (B) of this section in the ensuing fiscal year and each fiscal year thereafter until the state board makes a determination, finding, and certification under this division. (Emphasis added.)

Thus, pursuant to R.C. 3313.488(C), when the State Board of Education determines that a factual and reasonable fiscal statement, approved by the Superintendent under R.C. 3313.488(B), reflects that a school district will be able to operate during the ensuing fiscal year without interrupting its school calendar, the district shall cease to be subject to R.C. 3313.488. Until such a determination is made, the board must comply with the requirements of R. C. 3313.488 for each ensuing fiscal year.

Your question is whether a school district which becomes subject to R.C. 3313.488 pursuant to the provisions of R.C. 3313.4810 must remain subject to the submittal and approval requirements of R.C. 3313.488 for "the ensuing two calendar years" referenced in R.C. 3313.4810, or whether it may be released from the otherwise applicable provisions, pursuant to R.C. 3313.488(C), at some time prior to the termination of those two calendar years.

It is a basic rule of statutory construction that the intention of the legislature in enacting a bill is to be determined primarily from the language used, see Stewart v. Trumbull County Board of Elections, 34 Ohio St. 2d 129, 296 N.E.2d 676 (1973), and that such language should be given its usual and ordinary meaning, see Industrial Commission v. Roth, 98 Ohio St. 34, 120 N.E. 172 (1918). The portion of R.C. 3313.4810 which makes a school district subject to R.C. 3313.488 references that section in its entirety; there is no suggestion that the school district is not to be made subject to particular portions of R.C. 3313.488, as, for example, division

(C). Thus, read literally, R.C. 3313.4810 makes a school district to which it applies subject to R.C. 3313.488 for the duration of the calendar year in which the district receives the loan and during the ensuing two calendar years, and R.C. 3313.488(C) permits the school district to be relieved of the submittal and approval requirements of R.C. 3313.488 if it meets the standards set forth in that division.

Such a literal construction is consistent with the remaining portions of R.C. 3313.4810, which specify certain requirements from which a school district may not be relieved. R.C. 3313.4810 ("The controlling board may not relieve a school district to which this section applies from any requirements imposed under section 3317.64 of the Revised Code to implement recommendations of the superintendent of public instruction for expenditure reduction and may not modify any other requirements imposed under such section upon such a district as a condition for receiving the loan unless expressly authorized to do so by law"). It does not render the two-year provision of R.C. 3313.4810 meaningless, see R.C. 1.47(B); Carter v. Division of Water, City of Youngstown, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (none of the language employed in a statute should be disregarded), for, under the construction proposed, even if a school district does not qualify under the exception of R.C. 3313.488(C), the district shall cease to be subject to R.C. 3313.488 at the end of the second calendar year following the year in which the district receives the loan. Further, such a construction coordinates with the overall statutory scheme governing such loans. See generally R.C. 3313.4811 ("Any school district to which [R.C. 3313.4810] applies that makes application for a loan from the emergency school advancement fund shall. . .submit to the controlling board a schedule. . .specifying the maximum expenditures that the district commits itself to make during the remainder of the current calendar year and the ensuing two calendar years. If at the end of any month of that period the district has spent more than the cumulative maximum amount above which the district committed itself not to spend by that time, the district thereby violates the terms of the loan, and the superintendent of public instruction shall prepare a repayment schedule and plan for reduction of expenditures within the terms of the loan"); R.C. 3317.64 (repayment of a loan from the Emergency School Advancement Fund must be made no later than the fifteenth day of June of the second year following the approval of the loan).

The interpretation outlined above is, in addition, consistent with the history of the relevant provisions. R.C. 3313.488(C) was enacted by 1977-1978 Ohio Laws, Part II, 3966, 3977 (Am. H.B. 1285, eff. June 30, 1978) and, thus, was in existence when R.C. 3313.4810 was enacted in 1981. Am. Sub. H.B. 142, 114th Gen. A. (1981) (eff. March 31, 1981). It is presumed that, in enacting legislation, the General Assembly acts with deliberation and with knowledge of all existing laws on the subject. See Eggleston v. Harrison, 61 Ohio St. 397, 55 N.E. 993 (1900). Thus, the failure of the General Assembly to indicate in R.C. 3313.4810 that R.C. 3313.488(C) is not applicable to the school districts subject to R.C. 3313.4810 supports the argument that R.C. 3313.488(C) is, indeed, part of the statutory scheme which the General Assembly intended to make applicable to such school districts.

Based on the foregoing, it is my opinion, and you are hereby advised, that a school district which is subject to R.C. 3313.4810 may avail itself of R.C. 3313.488(C) to be released from the provisions of R.C. 3313.488 which would otherwise be applicable.