

OPINION NO. 73-067

Syllabus:

The Department of Education has no authority to restrict the payment of subsidies pursuant to R.C. 3301.17, to those commercial driver training schools which have been in operation for 2 years.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, July 11, 1973

I have before me your request for my opinion, which reads as follows:

Section 3301.17 of the Ohio Revised Code authorizes the State Board of Education to promulgate and enforce rules and regulations for driver education courses. Standards adopted by the State Board of Education and effective August 10, 1972, are attached.

In recent weeks, we have received inquiries regarding the validity of Section (E) of standard EDb-801-01 which states:

"A commercial driver training school, licensed under section 4508.03 of the Revised Code, shall have been in operation for a period of two (2) years at the time of contracting with a public school, and shall have been in operation for a period of two (2) years at the time a student is enrolled in the commercial school upon evidence confirmed by a written statement signed by the principal of the pupil's high school, stating that driver education was unavailable or that the student could not enroll in a course of driver education due to scheduling difficulties."

My specific question is: May the State Department of Education enforce Section (E) of standard EDb-801-01 and deny payment to district boards of education for driver

education courses taken by students attending commercial driver training schools which have been in operation for a period of less than two years?

R.C. 3301.17 reads as follows:

The department of education shall expend state funds to provide driver education courses to any child enrolled in a high school for which standards are prescribed by the state board of education.

Such driver education courses shall be provided in accordance with rules and regulations promulgated and enforced by the state board of education. The department of education shall contract for the use of public school facilities to provide driver education courses where practicable, or such courses may be provided at facilities established and operated, under the supervision of transportation coordinators, by the department of education. Whether the department of education contracts to use public school facilities or operates other facilities for driver education purposes, it shall expend an amount which shall not exceed fifty dollars times the number of pupils enrolled in the course.

A commercial driver training school licensed under Chapter 4508. of the Revised Code shall receive a subsidy for each school age child who successfully completes the training school's course and who was unable to enroll in a driver education course conducted at high schools for which the state board of education prescribes minimum standards because such a course was unavailable or because the student could not, due to scheduling difficulties, avail himself of such a course. The inability of a pupil to avail himself of such a course or the unavailability of such a course shall be confirmed by a written statement to that effect signed by the principal of the pupil's high school and submitted by the pupil to the operator of the commercial training school at the time the pupil enrolls in the training course. Each operator seeking reimbursement under this section shall submit such statements to the board of education of the pupil's school district of attendance. No operator shall receive reimbursement for a pupil for whom he does not submit such a statement to the board of education as required by this section. A board of education shall pay to each such commercial driver training school out of funds paid to the district by the state board of education for

the purpose an amount per student not to exceed the amount per student paid to public schools within the district under division (H) of section 3317.06 of the Revised Code.

Such funds shall be used solely for the purpose of promoting highway safety through driver education.

In construing a statute, I must seek the legislative intent, as expressed by the words of the statute. In the second branch of the syllabus of Slingluff v. Weaver, 66 Ohio St. 621 (1902), the Supreme Court of Ohio stated a rule which has been followed consistently:

But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

This principle has been reiterated in a large number of court decisions and Opinions of the Attorney General. Among the more recent are Seely v. Expert, Inc., 26 Ohio St. 2d 61, 71 (1971) and Opinion No. 71-082, Opinions of the Attorney General for 1971.

This rule of statutory construction is clearly applicable in the instant case. R.C. 3301.17 provides that "[a] commercial driver training school licensed under Chapter 4503. of the Revised Code shall receive a subsidy * * *." This language is unambiguous. The Legislature has expressed its intent that any commercial driver training school licensed by the Director of Highway Safety may be eligible for the subsidy. The Director prescribes the requirements for such a license, pursuant to R.C. 4508.03. He has authority to include in such requirements, "such provisions as the director deems necessary to protect adequately the interests of the public, * * *." R.C. 3301.17 confers no authority upon the Department of Education to add to those requirements. I must conclude, then, that Section (E) of Standard EDb-801-01 is invalid as contrary to statute, insofar as it restricts eligible commercial driver training schools to those which have been in operation for 2 years. Accordingly, the Department of Education may not deny payment in the case of driver training schools which have been in operation for less than 2 years.

In specific answer to your question, it is my opinion and you are so advised that the Department of Education has no authority to restrict the payment of subsidies pursuant to R.C. 3301.17, to those commercial driver training schools which have been in operation for 2 years.