

OHIO AUDITOR OF STATE KEITH FABER

Auditor of State Bulletin 2021-002

DATE ISSUED: February 19, 2021

TO: Community Schools
Independent Public Accountants

FROM: Keith Faber
Ohio Auditor of State

SUBJECT: Community School Loans to Other Community Schools

Now section 4A-3

Bulletin Purpose

The purpose of this Bulletin is to clearly state that the Auditor of State finds no legal authority allowing Ohio community schools to make loans of public funds, as communicated in section ~~1-12~~ of the [2021 Ohio Compliance Supplement](#). Where such loans are made without legal authority, the Auditor of State shall issue a finding for recovery.

Implementation Date

Upon Issuance

Now section 4A-3

Background

It has come to the Auditor of State's attention that some community schools in Ohio have loaned money to other community schools. Guidance was added to section ~~1-12~~ of the 2021 Ohio Compliance Supplement, explaining types of debt which are allowable/unallowable for Ohio community schools. It also clarified that Ohio Rev. Code Chapter 3314 does not authorize a community school to loan money. Section ~~1-12~~ applies if the community school had any previous debt still outstanding/being repaid or new money loaned to/from the school.

Now section 4A-3

Bulletin Detail

A community school's money is considered public money:

- The Ohio Supreme Court has stated that “community schools fall within the definition of a public office [contained in Ohio Rev. Code § 117.01] because they are entities ‘established by the laws of this state for the exercise of a function of government.’” *Cordray v. International Preparatory School*, 128 Ohio St.3d 50, 53-54 (2010).
- Therefore, any money collected by an official of the school under color of office or by an individual on behalf of the school is “public money” as defined in Ohio Rev. Code § 117.01(C).

Community schools may only expend public money as statutorily allowed:

- A community school “is permitted by law to expend public money only within the scope of its statutory authority and for a proper public purpose, within the reasonable exercise of the entity's discretion.” [1997 Op. Att'y Gen. No. 97-043, at 2-268]
- Unless a specific statute authorizes a public entity to loan public moneys, the public entity is without authority to do so. [2015 Op. Att'y Gen. No. 2015-007, at 17]
- Community schools must act in compliance with Ohio Rev. Code Chapter 3314 and other statutes applicable to community schools. [Ohio Rev. Code 3314.01(B)]
- Neither Ohio Rev. Code Chapter 3314 nor any other statute applicable to community schools permit community schools to loan *public* money. While Ohio Rev. Code §3314.08(G)(1)(a) states a community school may *borrow* money, Ohio Rev. Code Chapter 3314 does not authorize a community school to *loan* money.

For existing loans outstanding at the date of this Bulletin, the community school may either repay the loan in full immediately, or may continue to follow the currently established repayment plan. If an existing loan between community schools is not memorialized by the date of the release of this bulletin, the community schools party to the loan shall execute a loan agreement with reasonable terms in light of the facts surrounding said loan. Such an agreement must be executed within 60 days of the release of this bulletin. Failure to memorialize an existing loan agreement may result in a finding for recovery.

Effective upon the date of this Bulletin, noncompliance and/or a Finding for Recovery may be issued as follows:

- For existing loans outstanding at the date of this Bulletin where:
 - Loan payments are discontinued;
 - Loan agreement / covenants are not complied with; or
 - Repayment plan / loan document is altered.

Auditors will continue to monitor repayments during each audit until repaid in full.

- For any new loans made after the date of the issuance of this Bulletin.

Questions

If you have any questions regarding the information presented in the Bulletin, please contact the Center for Audit Excellence, Community School Specialist, at the Auditor of State's Office at CommunitySchoolQuestions@ohioauditor.gov.

A handwritten signature in black ink that reads "Keith Faber". The signature is written in a cursive style with a large, prominent "K" and "F".

Keith Faber
Ohio Auditor of State