

Note from the Attorney General's Office:

1931 Op. Att'y Gen. No. 31-3421 was overruled by
1967 Op. Att'y Gen. No. 67-051.

the end of the time fixed by the court. Although this case was decided by the Supreme Court prior to the enactment of section 2148-5, General Code, which section incorporates the provisions of section 2132, General Code, nevertheless that case can be cited as an authority for the general proposition that all sentences to the Ohio Reformatory for Women must be general and not fixed or limited in their duration. The only difference between these statutes is that the provisions of section 2148-9 applied to sentences for misdemeanors and felonies, whereas the provisions of section 2148-5 apply to sentences for felonies.

I believe the court, in making that entry, was merely endeavoring to comply with the statutory provisions relative to the sentencing of a female to the Ohio Reformatory for Women and that the sentence indicates that the convicted person was to serve for an indeterminate term of years of not less than three or more than thirty, the same to be terminated by the Ohio Board of Clemency, at its discretion, after the prisoner had served the minimum term provided by section 12416, General Code. If the court intended, by its entry, to impose a life sentence on the prisoner it would have used language indicative of that intention.

It is therefore my opinion that:

1. The word "may", as used in section 12416, General Code, is directory and not mandatory and that a person convicted of maiming or disfiguring another by the use of corrosive acid can be sentenced for a term of years of not less than three nor more than thirty or for life, the latter sentence being discretionary with the trial judge.

2. A female over sixteen years of age sentenced to "be imprisoned in the Ohio Reformatory for Women at Marysville, Ohio, until released according to law", after being convicted of using corrosive acid in maiming and disfiguring another, is eligible for parole after serving the minimum term provided for by section 12416, General Code, to wit, three years.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3421.

SCHOOL PUPIL—RESIDING IN ONE DISTRICT AND ATTENDING SCHOOL IN ANOTHER IN CLASS FOR CRIPPLED CHILDREN—TUITION NOT CHARGEABLE TO SCHOOL DISTRICT OF CHILD'S RESIDENCE—EXCEPTIONS NOTED.

SYLLABUS:

When a child who is a resident of one school district attends in another district a class for the blind, deaf or crippled, or a class in which some special instruction needed by the child because of his handicap, is provided, the board of education of the district in which he resides may not be compelled to pay his tuition or any part thereof, unless such payment is directed by the Director of Education, or unless an agreement has been entered into between the two boards of education whereby the board of education of the district of the child's residence had agreed to pay tuition for the child.

COLUMBUS, OHIO, July 11, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of the following request for my

opinion submitted over the signature of Wm. K. Divers, Assistant Prosecuting Attorney of Hamilton County, Ohio:

"This office has received a request from the Wyoming Village Board of Education for an opinion on the following set of facts:

'In the school year 1929-1930, one of our pupils was sent by its parents to the Cincinnati School for Crippled Children, and we have just received a claim from the Cincinnati Board of Education for the tuition, which they quote as being provided for in Section 7760 of the General Code.'

A further investigation of the facts would seem to indicate that the Director of Education of the State of Ohio had made no order concerning the child in question, nor had the Cincinnati Board of Education notified the Wyoming Village Board of Education of their intention to collect tuition for the child in question from said Wyoming Village Board of Education.

Under the circumstances we are in doubt as to the construction of Section 7755-2 of the General Code, which we consider applicable. We have conferred with the City Solicitor of Cincinnati, Counsel for the Cincinnati Board of Education, and are authorized to include his request with ours for an opinion from your office. We feel that such an opinion is desirable in view of the fact that there should be a uniform ruling through the state on the question involved."

Sections 7755-2 and 7760, General Code, which are referred to in the above letter read as follows:

"Sec. 7755-2. If a child resident of one school district attends in another district a class for the blind, deaf, or crippled, or a class in which some special instruction needed by the child because of his handicap is provided, the board of education of the district in which he resides may pay his tuition in a sum equal to the tuition in the district in which such class is located for a child of normal needs of the same school grade. The board of education of the district in which such child resides may pay for his transportation to the class in the other district; and the board of education of the district in which the class he attends is located may provide his transportation to the class. Upon direction of the director of education the board of education of the district in which such child resides shall pay for his transportation and tuition."

"Sec. 7760. Any person of sound mind who, by reason of defective hearing or vision or by reason of being so crippled as to be physically unable to properly care for himself without assistance, cannot properly be educated in the public schools as other children, shall be considered deaf, blind or crippled within the meaning of sections 7755 and 7757, General Code. But persons with partial hearing or partial vision may also be instructed under the provisions of these sections and of standards prescribed under section 7761."

The authority for the establishment and maintenance by a local board of education of special classes for blind and deaf children over the age of three years and for crippled children over the age of five years, is contained in Sections 7755 to 7761-1, inclusive of the General Code.

There is no authority for the maintenance of these special classes except by permission granted by the Director of Education, in accordance with Section 7755,

General Code. The cost of this maintenance, over and above the cost of maintenance for classes of the same grade for normal children, is paid from the state treasury. See Sections 7757 and 7758, General Code. The remainder of the cost is borne by the local district.

No specific authority is contained in these statutes for a district maintaining these special classes to admit children from other districts, other than that contained in Section 7755-2, General Code, quoted above, and no mention is made of the payment of any part of the tuition of non-resident pupils by the district of their residence in any statute except said Section 7755-2, General Code.

It will be observed from the provisions of said Section 7755-2, General Code, that authority is extended to a board of education to pay the tuition of a resident child who attends special classes for crippled children maintained by another district, but no obligation is imposed upon the board to pay this tuition unless it be by direction of the Director of Education. I have no doubt but that a board of education might lawfully refuse to admit such children to its special classes for blind, deaf and crippled children unless the Director of Education ordered or directed the payment of tuition or an agreement was made by the district where they reside to pay their tuition.

In the case to which you refer, the child, who was a resident of the Wyoming Village School District, attended special classes for crippled children in the Cincinnati City School District. If not by express permission of the Cincinnati School Board, it was, at least, by its acquiescence. It appears that the Director of Education had not directed the payment of tuition for this child and apparently there was no agreement between the two boards of education with reference to the payment of this tuition or any part of it.

Before a board of education can be charged with the payment of tuition for pupils residing within the district who attend school in another district there must necessarily be some statute authorizing the charge or a lawful contract whereby the district becomes obligated to pay such tuition. In the case of *State ex rel v. Bushnell*, 95 O. S. 203, where the subject of high school tuition was under consideration, it was held in substance, that a board of education can not be compelled to pay the tuition of a pupil who resides in its district and who attends a high school elsewhere unless a valid statute imposes such duty specifically upon such board of education. By the terms of Section 7734, General Code, it is provided that a board of education in any district may contract with the board of another district for the admission of pupils into any school in such district on terms agreed upon by such board. In construing this statute the Supreme Court in the case of *Board of Education v. Board of Education*, 50 O. S. 439, held:

“The attendance of such pupils in the school of such other district, without objection by either board, creates no liability against the board in whose district such pupils reside.”

The Cincinnati Board of Education, in the instant case, might have protected itself by refusing to permit the child to attend classes for crippled children within its district without an agreement with reference to tuition, and having not done so, it can not now be heard to complain.

I am therefore of the opinion, in specific answer to your question, that, when a child who is a resident of one school district attends in another district a class for the blind, deaf or crippled, or a class in which some special instruction needed by the child because of his handicap, is provided, the board of education of the district in which he resides may not be compelled to pay his tuition or any part thereof, unless such payment is directed by the Director of Education, or unless

an agreement had been entered into between the two boards of education whereby the board of education of the district of the child's residence had agreed to pay tuition for the child.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3422.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN SENECA COUNTY, TIFFIN, OHIO.

COLUMBUS, OHIO, July 11, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3423.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HAZEL RAINES IN FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, OHIO, July 11, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed, encumbrance record No. 812 and certificate of the board of control, relating to the proposed purchase by the state of Ohio of a certain tract of real estate owned of record by one Hazel Raines in Franklin Township, Ross County, Ohio, which tract of land is more particularly described as follows:

“Beginning at the center of the bridge over the Davis Hollow run and in the Wood's Hollow township road, a 6" elm on the east bank or the run bears S 43½ deg. W. 59 links; thence up the Davis run for a new division line S 61 deg. E. 22 rods 19 links to a stake on the north bank of the run, from which a 6" white oak bears N. 75 deg. 15' E 25 links; thence S 77 deg. E 10 rods 22½ links to a stake in the run, a 5" white oak bears N 32 deg. W 9 links; thence S 65 deg. E 19 rods 8½ links to a stake from which a double white oak bears S 41½ deg. E 29 links; thence N 88 deg. E 37 rods 13 links to a stake, from which a 6" white oak bears N. 64 deg. E 9½ links; thence N 66½ deg. E 19 rods 16 links to a stake, from which a 14" black oak bears N 61 deg. E 48 links; thence N 71 deg. E 36 rods 11 links to a stake from which a double white oak, each 6" in diameter, bears N 2½ deg. W 16 links; thence N 82½ deg. E 19 rods 5 links to a stake on a point between the branches of said run and 18 links above a 15" hickory, marked, and in the line of the State lands and at the head of a run; thence S 2 deg. 33' W 82 Rods 13 links to a stone; thence S 88 deg. 36' W 221 rods 12½ links along a hillside on the north