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CHILDREN'S HOME — COUNTY, SEMI-PUBLIC OR DISTRICT —SUPERINTENDENT OF SCHOOLS IN DISTRICT WHEREIN SUCH HOME LOCATED, HAS MANDATORY DUTY TO FILE WITH COUNTY AUDITOR CERTAIN REPORTS RELATIVE TO CHILDREN'S EDUCATION — TIME TO FILE DIRECTORY —WHERE NEGLIGENCE, REPORTS SHALL BE FILED AT LATER TIME — SECTION 7677 G. C.

SYLLABUS:

By force of Section 7677, of the General Code of Ohio, the duty imposed upon the superintendent of schools in a school district wherein is located a county, semi-public or district children's home to file certain reports with the county auditor relative to the education of children in such home is mandatory. The provision of the statute as to the time of the filing of the reports is directory and not mandatory and the superintendent has the power and it is his duty to make such reports at some later time if he neglects to make them at the time designated in the statute.

Columbus, Ohio, December 31, 1940.

Hon. Ralph J. Bartlett, Prosecuting Attorney,
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion with reference to the following matter:

“Where an inmate of a county, semi-public or a district children's home attends school in the district where said home is located,

but was previously a resident of another school district, and where the superintendent of the school district in which said home is located failed to file the report as required by Section 7677 of the General Code for a number of years, may said superintendent now file said reports covering a period of several years past and may the auditor estimate the amounts chargeable for said years and transfer the school funds accordingly, as provided in Section 7678 of the General Code?"

By the terms of Section 7676 of the General Code of Ohio, it is provided that the inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools, and if a school is maintained at the home it shall be under the jurisdiction of the board of education of the school district in which the home is located which board shall employ necessary teachers, provide books and educational equipment and supplies for the school and conduct it in the same manner as a public school in the district. If a school is not maintained at the home, the inmates shall attend the school or schools of the district wherein the home is located. Sections 7677 and 7678, General Code, are as follows:

"Sec. 7677. On or about the first day of February and of August the superintendent of the school district in which the inmates of a county, semi-public or district children's home is located shall furnish the county auditor a detailed report showing the average per capita cost, of conducting a school at such home, or the average per capita cost, except for improvement and repairs, of all the elementary schools in such district in case such inmates attend such a school, for the preceding six months. Such report shall also give the names and former residence of all inmates in attendance at school, the duration of attendance, and such other information as the county auditor may require to carry out the provisions of the next section."

"Sec. 7678. A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of its last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. The county auditor upon receipt of the above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts. In case there are inmates from another county, the county auditor of the county in which the home is located shall certify the amount to the auditor of the county of

such children's residence who shall forthwith issue his warrant on treasurer of the same county for such amount, and shall proceed to apportion the proper amounts to the various school districts of such county in the manner described above."

The manifest purpose of the law as contained in the above statutes is to provide that the expense incident to the education of the inmates of a county, semi-public or district children's home shall be borne by the school district of residence of the inmates at the time of their admission to the home. So that the school district wherein the home is located, which bears the expenditures for the education of those children in the first instance may be reimbursed by the proper school district for the education of those children who lived when admitted to the home, in districts other than the one wherein the home is located, certain procedure is provided. The first step in this procedure is the making of the reports by the superintendent of schools spoken of in Section 7677 supra, so that the auditor of the county who is charged with the duty of apportioning the expense of educating those children among the proper school districts of his county and of sending statements to other counties of the amounts properly due to the district which had originally borne the expense of educating such children will have the proper data to enable him to perform his duties as set out in the statute.

It will be observed that the language of the statute, Section 7677 supra, is to the effect that the reports mentioned above shall be furnished "on or about the first day of February and of August". The substantial legal question presented by your inquiry is whether or not the provision of the statute as to the time of making these reports is mandatory or merely directory. If this provision is directory the reports may be made at a later date if not made on time, and if it is to be regarded as mandatory as to time, the power of the superintendent to make the reports does not exist after the time provided in the statute for the making of the reports. This involves the construction of the language of the statutes involved with the view to ascertaining the intent of the law, keeping in mind at all times its manifest purpose, the ends to be accomplished, and the consequences which would result from construing it one way or the other.

Although the precise wording of the statute does not charge the superintendent with the duty of making these reports on a definite day, the use of the words "on or about" as they are there used does not alone justify a construction of the statute in my opinion, that would permit compliance therewith by filing the reports several months or years after the first days of

February and August in the year wherein the school or schools were maintained and the expense incurred. It will be necessary to look further and to invoke such aids as precedents have established for like situations.

It is clearly the duty of the superintendent to make the proper reports and without a doubt he could be compelled by an action in mandamus to make them. To that extent the provision of the statute as to the making of the reports is mandatory, but if the provision as to the time for making the reports is mandatory, and they may not be made at any other time, the superintendent whose duty it is to make the reports might deprive his school district from being properly reimbursed for the expense of educating non-resident pupils who are inmates of a children's home, by simply failing to perform a ministerial duty. To construe the provisions of this statute as directory, conforms more nearly to the ends of justice.

There are certain well settled rules of statutory construction that are applicable in this situation, and I believe are conclusive, to the effect that a statutory provision such as is here involved, is to be construed as being directory merely unless the context or consequences preclude such a construction. This rule is stated in Corpus Juris, Volume 59, page 1078, as follows:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and made with a view to the proper, orderly and prompt conduct of business is usually directory unless the phraseology of the statute or the nature of the act to be performed and the consequences of doing or failing to do it at such time is such that the designation of time must be considered a limitation on the power of the officer."

And on page 1074 of the same text it is said:

"Where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, it is generally regarded as directory unless followed by words of absolute prohibition."

Again, on page 1077 of the same work it is said:

"General statutes directing the mode of proceeding by public officers designed to promote method, system, uniformity and dispatch in such proceeding will be regarded as directory if a disregard thereof will not injure the rights of parties and the statute does not declare what result shall follow non-compliance therewith nor contain negative words importing a prohibition of any other mode of proceeding than that prescribed."

This rule is stated in Ruling Case Law, Volume 25, page 769, as follows:

“The question whether a duty imposed by statute on a public officer the performance or non-performance of which affects the rights of others, is mandatory or merely directory, is a very common but often a difficult one to decide. In general, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated.”

Many authorities are cited in support of the texts quoted above. The courts of Ohio have had occasion to consider and apply this rule in a number of cases. In the case of *Schick v. Cincinnati*, 116 O. S., page 16, this principle of law which was therein considered and applied is stated in the first branch of the syllabus of the case, as follows:

“Statutes which relate to the manner or time in which power or jurisdiction vested in a public officer is to be exercised, and not to the limits of the power or jurisdiction itself, may be construed to be directory, unless accompanied by negative words importing that the act required shall not be done in any other manner or time than that designated.”

See also, *State ex rel. Smith v. Barnell*, 109 O. S., 246; *In re. Bostwick*, 21 O. N. P., N. S., 241, decided by the Common Pleas Court of Franklin County in 1918; *State ex rel. Alcorn v. Mittendorf*, 102 O. S., 229; *Levis' Sutherland Statutory Construction*, Section 612.

By reference to the phraseology of Section 7677, General Code, with respect to the time for filing of reports mentioned, it clearly appears, upon consideration of the nature of the act to be performed, that the designation of time should not be considered as a limitation on the power extended to the superintendent, nor are there negative words contained in the statute importing that the act required shall not be done in any other manner or at any other time than that designated nor are there provisions of other statutes relating to the same subject matter from which such a conclusion may be drawn.

The intent of the law is clear that the school district of last residence before admission into the home, of children in children's homes, should bear the burden of the cost of their education in the common schools and a failure

on the part of officials and public employes to strictly follow the procedure provided for the collection of the cost of such education from the proper district in order to reimburse the district that bore that expense in the first instance, does not and should not relieve the proper district of the burden imposed on it by law.

Upon consideration of the several pertinent statutes, their nature and object, and the consequences which would result from construing the provisions of Section 7677, General Code, with respect to filing the reports mentioned by the superintendent of a school district in which is located a county, semi-public or district children's home as being mandatory or directory, I am of the opinion that the provision of the statute as to time of filing those reports is directory, and if the superintendent fails to make the reports at the times designated in the statute it is within his power and it is his duty to make them at a later time, and when made they will be as effectual for the purpose intended as though made at the time designated in the statute.

This conclusion is not only in line with equitable principles, as, to hold otherwise would lead to the result that the failure through inadvertence or carelessness on the part of a superintendent of schools to perform a ministerial duty strictly at the time fixed by law for the performance of the act would enable a school district which the law clearly intended to charge with the expense of educating its resident children who might be in an orphans home, orphans asylum or children's home to be relieved of such expense, and burden another district with the expense of educating such children which the law just as clearly did not intend, but it conforms to the express intent of the legislature as appears from that provision of Section 7678, General Code, which charges the county auditor, upon the receipt of the reports mentioned, with the duty of making allocations of expense to the proper school districts before making "a semi-annual distribution of taxes collected", not *the* semi-annual distribution nor the next semi-annual distribution. The phrase "a semi-annual distribution" was no doubt used advisedly by the legislature, thereby importing a legislative intent that when the reports are made a duty devolves upon the auditor to make apportionments as provided by the statute, and that duty continues until it is fulfilled.

Of course, in the interests of orderly procedure and to enable school districts to know what obligations they have to meet in due time so that they may be prepared to meet them as they come due, the reports should be made at the times mentioned in the statute and, as stated above, no doubt a superintendent could be required to make them on time if an action in mandamus

were opportunely brought for that purpose. However, that fact does not change the application of the legal principle noted above, which leads to the conclusion that if the reports are not made at the time fixed by the statute they may and should be made later.

It is possible that if a superintendent should fail to make the reports as provided by the statute and that condition should continue for an unreasonable length of time, a court might decide that a failure to bring an action to compel him to make the reports until the obligations created by reason thereof would be unduly burdensome and that because the district to whom payments from the other districts were due under the law had slept on its rights for an unreasonably length of time, it could not require the reports to be made. However, we have no guide as to what would be an unreasonable time, and it is a matter that cannot be disposed of by the Attorney General in an opinion general in terms as is this one, as it in any case depends on circumstances. We do know that the Supreme Court of Ohio, in the case of *State ex rel. v. Eveland, Auditor*, 117 O. S., 59, required a county auditor in an action in mandamus to issue a warrant for the payment of claims such as are here involved in pursuance of his duty as fixed by Section 7678, General Code, that had accumulated over a period of five years and that the question of this being an unreasonable time was not discussed or even suggested so far as the report of the case is concerned. In that case the question of the making of reports by the superintendent as provided in Section 7677, General Code, was not involved. So far as appears, these reports had been regularly and properly made and the question involved was the duty of the auditor to draw his warrant in pursuance of his duty under Section 7678, General Code.

I am therefore of the opinion that the provision of Section 7677, General Code, directing that the superintendent of a school district in which is located a county, semi-public or district children's home shall make certain reports to the county auditor relative to the education of the children in such home on or about the first day of February and August of each year is directory and not mandatory as to the time when such reports should be made and the superintendent has the power and it is his duty to make them at some later time if he neglects to make them at the time designated in the statute, and when made at such later time, the said reports are as effectual for the purposes intended as though made at the time fixed by the statute.

Respectfully,

THOMAS J. HERBERT,
Attorney General.