

3888.

APPROVAL, REFUNDING BONDS, YORK TOWNSHIP RURAL SCHOOL DISTRICT, UNION COUNTY, \$10,000.

COLUMBUS, OHIO, January 6, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3889.

DEAF, BLIND AND CRIPPLED CHILDREN—HOW INSTRUCTED—
HOUSE BILL NO. 200 (109 O. L. 257) CONSTRUED.

1. *The director of education has power and authority under H. B. 200 (109 O. L., 257) to specify standards for the conduct of classes for the deaf, blind and crippled, which standards may include the services of visiting teachers who shall investigate and advise upon the home conditions of pupils for members of these classes, or children who they think should enter such classes. As to whether such visiting teachers should be employed for this service by local boards of education and then claim reimbursement for such expenditure from state funds, lies within the discretion of the superintendent of public instruction in charge of the administration of this act.*

2. *If the superintendent of public instruction decides after careful investigation that an office and clerical service is required in a school district where special day classes for the blind are operated he has authority to approve such expenditures under the head of "Current Operating Cost" since, under the provisions of section 7757 G. C., the superintendent of public instruction shall be the final authority in deciding all questions relative to what constitutes current operating cost of schools for the deaf, blind and crippled.*

3. *Inasmuch as the director of education is the final authority in deciding all questions relative to what constitutes special appliances and current operating cost (section 7757 G. C.), it is his duty and he has authority to require that all items of expenditure under these headings shall be submitted to him for his approval before the expense is incurred, in order that the appropriation made by the General Assembly for any given year shall not be exceeded, and that such appropriation made by the General Assembly from the public funds shall have a proper check placed upon it.*

4. *The duty of examining into the correctness and propriety for state reimbursement for items of cost arising under the special act providing for the education of deaf, blind and crippled (H. B. 200) properly devolves upon the director*

of education rather than the auditor of state, since the General Assembly has provided in the act that the superintendent of public instruction shall select persons to inspect the classes established and report upon the instruction in such classes, the conditions under which they are maintained, and the conditions under which such blind and crippled persons are boarded (section 7761); and it is further provided that he shall prescribe standard requirements for such schools which receive state aid, which requirements shall include the conditions under which the schools are conducted, the methods of instruction and supervision, the qualifications of teachers and the terms and conditions under which they are employed, the special equipment needed for the instruction provided, and the condition of the rooms and buildings in which the schools are held (section 7761 G. C.), he being by virtue of section 7757 G. C. the final authority in deciding all questions relative to what constitutes special appliances and current operating costs.

COLUMBUS, OHIO, January 6, 1923.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request of December 29, 1922, for the opinion of this department upon the following:

“Under the provisions of sections 7755, 7757 and 7761 G. C., certain duties relative to the establishment of standards, inspections and costs of day schools for the blind devolve upon the director of education. The exact extent and character of his responsibilities arising therefrom are not distinctly understood, and your opinion upon four of the problems that are giving difficulty is hereby requested.

(1) Has the director of education power to specify standards for the conduct of such classes, which include the services of visiting teachers who shall investigate and advise upon the home conditions of the pupils who are members of these classes, or who they think should enter these classes?

If such visiting teachers are employed for this service by local boards of education, is the item a proper one to include in such costs of these schools as is the basis for claim for reimbursement with state funds?

(2) The Cleveland Board of Education maintains an office and employs clerical service for the special day classes for the blind operated under the above sections. Are the salaries of the clerks so employed, and expenses for office equipment and supplies in connection with their work, proper charges for state reimbursement?

Is the authority of the director of education sufficient to enable him to count these expenses under current operating costs, if they seem to him legitimate for the purpose?

(3) Inasmuch as the director of education is the ‘final authority in deciding all questions relative to what constitutes special appliances and current operating cost’ (section 7757), is it his duty, or if not his duty, has he the power to require that all items of expense under these headings shall be submitted to him for his approval before the expense is incurred,

or is it his duty solely to make general regulations as to what may be included, or on the other hand, should he merely approve or reject the items after reimbursement is made at the close of the school year?

(4) Does the duty of examining into the correctness and propriety for state reimbursement of items of cost arising under these sections and section 7758 devolve upon the director of education, or is it the duty of the auditor of state to investigate the expenditures certified by boards of education, upon which reimbursement is claimed?"

The questions involved herein all grow out of the proper construction of one legislative act, the same being House Bill 200, as enacted by the 84th General Assembly in the spring of 1921, and the same appearing at pages 257 to 261, inclusive, of 109 Ohio Laws. In order to answer your questions properly and arrive at the legislative intent, it is necessary to consider as briefly as possible the entire act, consisting of sections 7755, 7755-1, 7755-2, 7755-3, 7755-4, 7755-5, 7756, 7757, 7760, 7761, 7761-1 and 7763-5, G. C. In its first paragraph, section 7755 G. C. reads:

"The superintendent of public instruction may grant permission to any city, village or rural board of education, upon its application, to establish and maintain a class or classes for the instruction of deaf or blind persons over the age of three, or of crippled persons over the age of five."

The significant words in the above paragraph are that the superintendent of public instruction (now also Director of Education) "*may grant permission*" to boards of education to establish and maintain classes for the instruction of deaf, blind or crippled persons. In the second paragraph of section 7755 G. C., (too long to quote here) provision is made that "the superintendent of public instruction *may grant permission*" to any board of education to pay for the board of blind persons, where the board in so doing is enabled to further its educational plan for blind persons; the last sentence of the paragraph further qualifies and limits the section by providing that at no time shall the number of blind persons boarded at the expense of the board of education exceed one-fourth of the total enrollment for the year of such classes, "*except by permission of the superintendent of public instruction.*" The next section (7755-1 G. C.) provides that "the superintendent of public instruction *may grant permission* to any board of education" which maintains a class for the instruction of crippled persons, to pay for the board of any crippled person who is being educated in such class provided that such person in the judgment of the board of education and "*the judgment of the superintendent of public instruction*" cannot be transported from their respective homes to and from such class. The effect of this language is a veto upon the part of the superintendent of public instruction of any plan of a board of education to board crippled persons at public expense, without approval of the superintendent of public instruction. The next section (7755-2 G. C.) is upon the tuition of blind, deaf or crippled children or those of defective mentality where sent to another district, and the section closes with language upon the transportation of such child or children to the class in the other district, and it is significant that the closing sentence of this section says "*upon direction of the superintendent of public instruction*" the board of education of the district in which such child resides shall pay for his transportation and tuition. This language is mandatory, placing in the hands of the superintendent of public instruction *the power to direct* that a board of edu-

cation must pay for the transportation and tuition of the children described in section 7755-2 G. C. Section 7756 G. C. provides for the establishment of special classes, the provision being that "a board of education of a given district shall apply of the superintendent of public instruction *for permission to establish*" a special class for such children.

It is understood that these questions have come up largely because of language which appears in section 7757 G. C. relative as to how the expenses of these schools shall be defrayed. Section 7757 G. C. says:

"At the close of each school year the board of education of each school district in which any such classes for the education of the deaf, blind or crippled are maintained shall certify to the auditor of state the names and residences of the persons instructed in such special classes and the period of time each was instructed and the names and residences of the persons boarded at the expense of the board of education and the period of time each was boarded; and the amount expended for special appliances and for the excess of current operating cost of the education of such pupils above the current operating cost of the education of an equal number of pupils of normal needs of the same school grades in the district for the same period of time; and thereupon the auditor of state shall draw his warrant upon the treasurer of state in favor of such board of education in an amount equal to that expended for the aforesaid purposes, but not to exceed three hundred dollars for each deaf or crippled pupil given instruction in such classes within said district for the nine months during the said school year, and a proportionate amount for each deaf or crippled pupil given instruction therein for a part of said school year more or less than nine months, and not to exceed three hundred and seventy-five dollars for each blind person given instruction in such classes within said district for the nine months during said school year, and a proportionate amount for each blind person given instruction therein for a part of said school year more or less than nine months, and two hundred and fifty dollars additional for each blind or crippled person boarded at the expense of the board of education for nine months during said school years and a proportionate amount for each blind or crippled person so boarded for a part of said school year more or less than nine months.

Current operating cost under the terms of this section shall be exclusive of any charges for rental and maintenance or operation of buildings. No charge shall be made against such schools for the deaf, crippled or blind for expenditures other than transportation which would have been incurred had such special classes not been in operation. The superintendent of public instruction shall be the final authority in deciding all questions relative to what constitutes special appliances and current operating cost under the terms of this section."

In the above section it will be noted that the board of education of each school district "shall certify to the auditor of state" the facts required in that section and that thereupon "the auditor of state shall draw his warrant upon the treasurer of state in favor of such board of education in an amount equal to that expended for the aforesaid purposes, but * * * not to exceed three hundred and seventy-five dollars for each blind person given instruction in such classes." It is understood that in one school district of the state (if not more) the contention is made by those

in charge of the education of the blind in that district that all that is necessary in order to secure reimbursement (even in an unlimited amount) is to certify to the auditor of state the facts mentioned in section 7757 G. C., and the amount of money which has been expended for various purposes in the education of the blind of that district, and that the superintendent of public instruction has no authority in the administration of this law to limit the number of employes, the kind of employes, the salary of the employes, or a number of things which the board of education in that district places under the head of "Current Operating Cost." In the furtherance of carrying out the provisions of House Bill 200 as to special classes for deaf, blind and crippled and providing state subsidies for the same, the eighty-fourth General Assembly provided nearly half a million dollars for the biennium as indicated by the following:

"SCHOOLS FOR DEAF, BLIND AND CRIPPLED CHILDREN.

Maintenance—

H. Fixed Charges and
Contributions—

H 8. Contributions.....	\$222,000.00	\$240,000.00	\$462,000.00
Total Maintenance	\$222,000.00	\$240,000.00	\$462,000.00"

The above item appears in the "Miscellaneous Budget" of the Act for General Appropriations and the money is not allotted to the Department of Education, but in practice has been disbursed by the auditor of state and the auditor, in his desire to conserve the public funds and having no inspectors of his own for this particular purpose has had the director of education pass upon these certificates from boards of education as to their expenditures for special classes for deaf, blind and crippled; and the director desires to know if he must do these things for the auditor of state and to what extent is he clothed with authority in a general way under this special act for the education of deaf, blind and crippled. There is no question but what it was the intent of the General Assembly that a close check should be kept upon the expenditures of these public funds aggregating nearly half a million dollars, and it was desired that one of the state departments should do this. Referring to the act itself, the language relative to the auditor of state appears in one section (7757 G. C., supra) while reference has been made to the superintendent of public instruction in nearly every one of the sections composing the act. Quotations have been made from the law showing that the superintendent of public instruction should have general supervision over the activities growing out of this law as indicated by the frequent references, such as "may grant permission," "in the judgment of the superintendent of public instruction," "upon the direction of the superintendent of public instruction," "shall apply to the superintendent of public instruction for permission to establish," etc.

This commendable activity for the education of these unfortunate persons, started in 1910, greatly extended and appropriated for in a largely increased amount by the eighty-fourth General Assembly, will likely continue in future years and future appropriations for the purposes intended will be much larger as the years go by, if the activity is continued. It is, therefore, imperative on behalf of the public furnishing these funds that such a construction be placed upon the act as the legislature intended, that some state department should have the final word upon what are legitimate items of expense and those which should be disallowed; and

it is believed that the General Assembly intended that this power should be lodged in the superintendent of public instruction when it enacted this significant sentence as the closing language of section 7757 G. C., to wit:

“The superintendent of public instruction shall be the final authority in deciding all questions relative as to what constitutes special appliances and current operating cost under the terms of this section.”

If the superintendent of public instruction did not have this authority, then the board of education having once been permitted to establish the class, could go ahead and make such expenditures as to the number of appliances and the number of employes and their salaries as the board saw fit, and not until the close of each school year as appears in section 7761 G. C. would the superintendent of public instruction know what had been approximately spent in that particular district. The result would be that the appropriation made by the General Assembly, and intended for the use of all the state, would be depleted and a deficit would occur, since the amount of bills throughout the state might exceed the amount of the legislative appropriation. Thus, you advise this department verbally that in a certain given period the entire amount of the subsidies requested from the state under this act for the education of deaf, blind and crippled amounted to \$285,000 and that of this \$285,000 the sum of \$152,000, or more than half, was filed as the expenses of this one school district in its program of education for the deaf, blind and crippled. It is understood, too, that the superintendent of public instruction has suggested the curtailment of this expense in the particular district in order to meet the appropriation of the General Assembly for the state at large, but has been told that he has no authority upon a number of these matters of the administration of the act, since the certification shall be made to the state auditor under section 7757 G. C., and thereupon “the auditor of state shall draw his warrant upon the treasurer of state in favor of such board of education.”

A further examination of the closing sections of the law indicates that the General Assembly intended that the superintendent of public instruction should have charge of the administration of this act and that the duties of the auditor of state were but perfunctory in making the proper payments as a fiscal officer after the expenditure of public funds had been checked up by another department that is in a position to know whether the obligation had been properly created. Thus, in section 7761 it is the superintendent of public instruction who shall require from each board of education that maintains such schools a financial statement showing the expenditures during the preceding school year, “for special appliances and for the excess of the current operating cost of such pupils above the current operating cost of the education of an equal number of pupils of normal needs of the same school grades in the same school district for the same period of time during said school year;” the same section provides that the “superintendent of public instruction shall select some competent *person or persons to inspect* all classes established under section 7755 G. C. at least once a year, and to *report concerning the instruction* in such classes, the *conditions under which they are maintained*, and the conditions under which such blind and crippled persons are boarded.” Further along, the concluding paragraph of section 7761 G. C., says:

“The superintendent of public instruction shall prescribe standard requirements for day schools for the deaf, blind and crippled, which receive state aid, which requirements shall include the conditions under which

such schools are conducted, the methods of instruction and supervision, the qualifications of teachers and the conditions and terms under which they are employed, the special equipment and agencies for instruction provided, and the conditions of the rooms and buildings in which the schools are held, and he shall prescribe conditions under which blind and crippled persons may be boarded at the expense of a board of education."

Section 7761-1 G. C. also reads:

"The superintendent of public instruction shall have authority to arrange a plan of co-operation among boards of education which maintain special classes for the blind, for investigation into broader opportunities for the future employment of the pupils and better methods for their instruction. The cost of such investigation shall be charged to the current operating cost of the school for the blind. The superintendent of public instruction shall prescribe minimum standard requirements concerning the extent of such co-operation and the general methods of such investigation."

It has been necessary to make reference to and quote from, the sections of this special act as above, in order to make clear that the actual administration of the law was to be placed in the hands of the superintendent of public instruction, now also the director of education, and you are therefore advised in answer to your specific question that:

(1) The director of education has power and authority under House Bill 200 (109 O. L., 257) to specify standards for the conduct of classes for the deaf, blind and crippled, which standards may include the services of visiting teachers who shall investigate and advise upon the home conditions of pupils for members of these classes, or children who they think should enter such classes. As to whether such visiting teachers should be employed for this service by local boards of education and then claim reimbursement for such expenditure from state funds, lies within the discretion of the superintendent of public instruction in charge of the administration of this act.

(2) If the superintendent of public instruction decides after careful investigation that an office and clerical service is required in a school district where special day classes for the blind are operated, he has authority to approve such expenditures under the head of "current operating cost" since, under the provisions of section 7757 G. C., the superintendent of public instruction shall be the final authority in deciding all questions relative to what constitutes current operating cost of schools for the deaf, blind and crippled.

(3) Inasmuch as the director of education is the final authority in deciding all questions relative to what constitutes special appliances and current operating cost (section 7757 G. C.), it is his duty and he has authority to require that all items of expenditure under these headings shall be submitted to him for his approval before the expense is incurred, in order that the appropriation made by the General Assembly for any given year shall not be exceeded, and that such appropriation made by the General Assembly from the public funds shall have a proper check placed upon it.

(4) The duty of examining into the correctness and propriety for state reimbursement for items of cost arising under the special act providing for the education of deaf, blind and crippled (H. B. 200) properly devolves upon the director of education rather than the auditor of state, since the General Assembly has pro-

vided in the act that the superintendent of public instruction shall select persons to inspect the classes established and report upon the instruction in such classes, the conditions under which they are maintained, and the conditions under which such blind and crippled persons are boarded (section 7761); and it is further provided that he shall prescribe standard requirements for such schools which receive state aid, which requirements shall include the conditions under which the schools are conducted, the methods of instruction and supervision, the qualifications of teachers and the terms and conditions under which they are employed, the special equipment needed for the instruction provided, and the condition of the rooms and buildings in which the schools are held (section 7761 G. C.), he being by virtue of section 7757 G. C. the final authority in deciding all questions relative to what constitutes special appliances and current operating costs.

Respectfully,
JOHN G. PRICE,
Attorney-General.
