

2240.

TUITION — RESIDENT SCHOOL PUPILS, DEAF, BLIND OR CRIPPLED — SCHOOL DISTRICT CANNOT PAY SUCH TUITION TO ANOTHER SCHOOL DISTRICT IN AMOUNT IN EXCESS OF SUM EQUAL TO TUITION IN DISTRICT WHERE CLASS IS MAINTAINED FOR CHILD OF NORMAL NEEDS, SAME SCHOOL GRADE AS FIXED BY SECTION 7795-1d G. C.

SYLLABUS:

A school district can not lawfully pay or agree to pay to another school district, tuition for the attendance of its resident school pupils in special classes maintained by the other district for deaf, blind and crippled children, an amount in excess of a sum equal to the tuition in the district in which such class is maintained for a child of normal needs of the same school grade as fixed by Section 7795-1d, of the General Code of Ohio.

Columbus, Ohio, May 1, 1940.

Hon. E. N. Dietrich, Director of Education,
Columbus, Ohio.

Dear Sir;

This is to acknowledge receipt of your request for my opinion, which reads as follows:

"We are enclosing a copy of a tuition contract which a number of districts, sending deaf, blind and crippled children to special classes in other districts, have been asked to sign. It will be noted that the amount of tuition charge set up in this contract is in excess of the per capita cost of education for children of the same school grade in the district maintaining the special school.

Will you give us your opinion regarding the legality of this enclosed contract, and on the general question of the legality of any tuition charge for handicapped children attending state subsidized special schools, which is in excess of the tuition for a child of normal needs of the same school grade. (See 7755-2 Ohio Code)."

An examination of the copy of the "tuition contract" enclosed with your letter, discloses that the board of education in one of the larger school districts in the State, wherein special classes for blind, deaf and crippled children are maintained, in pursuance of Section 7755, General Code, has tendered to the boards of education in nearby districts, the resident blind, deaf and crippled children of which district it is proposed to have attend the said special classes, a contract providing for the admission of those pupils to the said special classes in consideration of the payment of tuition by the board of education of the district of residence of the pupils as provided for therein. The said proposed contract provides that the board of education maintaining such special classes will admit thereto and furnish instruction therein to non-resident pupils during the period from January 29, 1940 to June 14, 1940. The proposed contract further provides:

"2. The Board of the District of Residence agrees to pay to the _____ Board tuition for the admission and instruction of such enrolled pupils according to the following schedule:

		Per Month
I. Classes for Blind	a. Elementary	\$20.66
	b. Junior High	14.31
II. School for Deaf	a. Elementary	35.15
III. School for Crippled	a. Elementary	20.81

3. The tuition charges in the foregoing schedule shall be in addition to the tuition paid for such special classes under the provisions of Section 7755-2 of the General Code of Ohio.

4. The _____ Board agrees to pay to the Board of the District of Residence the amount of such reimbursements as may be made to the _____ Board by the State of Ohio in accordance with the provisions of Sections 7757 and 7758 of the General Code of Ohio for the period covered by this contract and applicable to the enrolled pupils of the District of Residence."

The question presented is whether or not a board of education in a school district having resident school pupils who attend special classes for blind, deaf and crippled children maintained in another district may lawfully pay tuition for such attendance to the extent provided for in the proposed contract.

It of course is a well settled rule of law that boards of education in their dealings with each other and with third persons are controlled and limited entirely by the pertinent statutes dealing with the subject matter of such dealings. This is based on the principle that such boards are purely the creature or creatures of statute. They are organized subject to the control of the Legislature and constitute instruments by which the Legislature administers the department of civil administration of the State which relates to education and the public schools. Ohio Jurisprudence, Vol. 36, p. 168; State ex rel. Clarke v. Cook, 103 O. S., 465; Perkins v. Bright, 109 O. S., 14.

For many years there has existed express statutory authority for boards of education to contract with each other for the admission of resident pupils of one district into the schools of the other district. Section 7734, General Code, provides as follows:

"The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expense so incurred shall be paid out of the school funds of the district sending such pupils."

The provisions of law now contained in the above statute were first incorporated in the law in 1873. (70 O. L., 195, Sec. 64).

In 1876 (73 O. L., 243) the law was enacted in the form it now appears in Section 7734, supra, with the exception of a slight change in phraseology made at the time of the 1880 codification of the statutes.

If no other statutory provision of law relating to the matter existed, the right of one board of education to contract with another board for the admission of its resident pupils to special classes for blind, deaf and crippled children maintained by the other board would be unrestricted. There are, however, statutory provisions in force expressly limiting the amount of tuition that may be paid under such circumstances. These statutory provisions are contained in Section 7755-2, General Code, which provides as follows:

“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 said 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.”

The above statute was enacted in its present form in 1925. It was first enacted in 1921 (109 O. L., 257). The same provision limiting the amount of tuition that may lawfully be paid for attendance of non-resident pupils in special classes for blind, deaf and crippled children was in the 1921 enactment as in the 1925 enactment. This provision being much later in time and relating to a special subject must prevail over the earlier general provision contained in Section 7734, *supra*.

It is a well established principle of law that statutes relating to a specific subject prevail over those which are general in terms. In the case of *State ex rel. Elliott Company v. Connar, Superintendent*, 123 O. S., 310, it is held:

“Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions.”

In the course of the opinion, on page 314, it is held:

“The authorities are therefore quite uniform that special provisions, and more especially those which are enacted later than general provisions, must control. The case most nearly parallel is

State, ex rel. Steller v. Zangerle, Aud., 100 Ohio St., 414, 126 N. E., 413. The first paragraph of the per curiam opinion states:

'A special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms.'

The same principle has been applied in numerous other decisions of this court, among which may be mentioned Flury v. Central Publishing House of Reformed Church of U. S., 118 Ohio St., 154, 160 N. E., 679; Perkins v. Bright, 109 Ohio St., 14, 141 N. E., 689, and Northwestern Ohio Natural Gas Co. v. City of Tiffin, 59 Ohio St., 420, 54 N. E., 77. This principle is so well settled that further citation of authority is unnecessary."

That the principle stated above is applicable in the present inquiry can not seriously be questioned. Moreover, other statutory provisions relating to the same subject might well be noted. Section 7681, General Code, provides that the schools of each district shall be free to all youths who are children, wards or apprentices of actual residents of the district, and Section 7682, General Code, which is of much later enactment than Section 7734, supra, provides that:

"Each board of education may admit other persons upon such terms or upon the payment of such tuition *within the limits of other sections of law* as it prescribes."

(Underscoring the writer's.)

This subject was considered in an opinion of a former Attorney General. See Opinions of the Attorney General for 1933, page 1789, where it was held:

"1. When two school districts contract with each other for the admission of pupils residing in one district to the schools of the other, and said contract fixes the rate of tuition for said pupils to be paid by the district of the pupils' residence to the district where they attend school, consideration should be given in the fixing of that rate to the limitations on the amount of tuition which may be charged as fixed by Sections 7736 and 7747, General Code.

2. Where such a contract provides for the payment of tuition in excess of the limitations fixed therefor by Sections 7736 and 7747, General Code, the contract is unauthorized and void, and if the children attend school in pursuance of the contract, the amount of tuition that should be paid is that fixed by Sections 7736 and 7747, General Code."

Sections 7736 and 7747, General Code, which at the time of the ren-

dition of the 1933 opinion, fixed the amount of tuition to be paid for attendance of pupils residing in one district and attending school in another district, have since been repealed. However, practically the same provisions are now contained in Section 7595-1d, General Code.

The fact that the contract in question contains the provision set out in clause 4 thereof, as quoted above, is not of importance, in my opinion, so far as the legality of the contract is concerned. While Sections 7757 and 7758, General Code, do provide in substance, that the cost of maintaining special classes for blind, deaf and crippled children over and above the cost of the instruction of children of normal needs in the same school grades of the district shall be paid to the school district maintaining such classes within certain limits set out in the statute, from the state treasury, this can not be done unless an appropriation is made by the Legislature for the purpose and to the extent only that such appropriation is made. The current appropriation as contained in the General Appropriation Act, of the 93rd General Assembly (H. B. 674) is not nearly sufficient to permit the payment to the districts maintaining the special classes in question of the excess over and above normal tuition as set out in this proposed contract. Whether the district will ever receive from the state treasury this amount is purely speculative, as the only way it could be paid would be by an appropriation made in a special session of the General Assembly or by a sundry claim. Even if there was a possibility or probability of this being paid, I know of no rule of law whereby one political subdivision may lawfully advance to another funds for any purpose upon the promise that it will be paid back when the subdivision to which it is advanced is reimbursed.

Basing my conclusion on what hereinbefore has been said, I am of the opinion that the proposed contract in question is not one which may be entered into lawfully between a school district maintaining special classes for blind, deaf or crippled children established and maintained by authority of Sections 7757 et seq., of the General Code of Ohio and school districts having resident pupils who attend or are proposed to attend such special classes.

I am further of the opinion, to state the matter generally, that under the present state of law, a school district cannot lawfully pay or agree to pay to another school district, tuition for the attendance of its resident school pupils in special classes maintained by the other district for deaf, blind and

crippled children, an amount in excess of a sum equal to the tuition in the district in which such class is maintained for a child of normal needs of the same school grade as fixed by Section 7795-1d, of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.