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SYLLABUS:

1. A local school district may make payments for the tuition of a mentally retarded child to a school operated under the auspices of the county child welfare board, which payments are either in excess of or less than the sum defined in Section 5127.04, Revised Code, provided the school is one established pursuant to Section 5153.16, Revised Code, and not one established under Section 5127.01, Revised Code.

2. The problem of providing transportation for retarded children to and from schools for retarded children established pursuant to Section 5153.16, Revised Code, should be decided by agreement between the school boards and the board of county commissioners and the child welfare board as provided for in Section 5153.16, Revised Code; the transportation problem in regard to schools for retarded children established pursuant to Section 5127.01, Revised Code, is a matter to be decided by the child welfare board, there being no authority for school boards to provide such transportation.

Hon. Fred V. Skok Columbus, Ohio, January 25, 1963
Prosecuting Attorney
Lake County
Painesville, Ohio

Dear Sir:

Your request for an opinion, made to my predecessor, reads as follows:

“In past years Mentor Village Exempted School District together with several other Boards of Education in Lake County supported a private school for the education of retarded children. When you rendered an opinion to the effect that public money could not be expended for such a purpose the private school previously referred to was then subjected to the supervision of the Lake County Commissioners and the Lake County Welfare Department.

“Payment of tuition for those students attending the aforementioned school for retarded children was made thereafter in accordance with a written agreement between the Lake County Commissioners and the participating Boards of Education. The sum payable as tuition and agreed upon varied from district to district but in most cases equaled the per pupil cost of students attending school within the district. When Section 5127.04 of the Revised Code became effective in October of 1961 the sum payable by the Board of Education to the Welfare Department apparently became fixed by law. As the sum paid previously by the Boards of Education as tuition for students attending the school for retarded children was in excess of the sum fixed by Section 5127.04 the question has arisen as to the propriety of payments in excess of the sum allowed by the section just mentioned.

“A second question has arisen pertaining to the transportation of mentally regarded children to a school beyond the territory limits of the school district in which they reside. This office is not unmindful of your Opinion No. 3212 which provides in effect or holds that a County Welfare Board may furnish transportation for retarded children. The question raised by the Board of Education for Mentor Township in this instance is the propriety of the assumption by the local school board of responsibility for providing transportation. It would also be helpful if your office would name the subdivision or board which has the pri-

mary responsibility of providing such transportation.

“As may be perceived by the statement of facts mentioned above there are two basic questions which need clarification.

“1. May a local school district make payments for the tuition of a mentally retarded child to a school operated under the auspices of the County Child Welfare Board, which payments are either in excess of or less than the sum defined in Section 5127.04 of the Revised Code of Ohio?

“2. If the County Child Welfare Board declines responsibility for providing transportation for retarded children must, or may, the local school district furnish such transportation?”

As indicated in your request, Opinion No. 997, Opinions of the Attorney General for 1959, page 675, holds that public money may not be expended for the purpose of supporting a private school for retarded children. You indicate that, after the issuance of that opinion, a private school for retarded children in your county, which had been supported by several boards of education, became subject to the supervision of the board of county commissioners and the county welfare department, and that payment of tuition for those students attending the school was made thereafter in accordance with a written agreement between the board of county commissioners and the participating boards of education. I assume that said agreement was entered into pursuant to Section 5153.16, Revised Code, which provides, in part, as follows:

“* * * the (child welfare) board may enter into an agreement with a municipal corporation, a board of education, and the board of county commissioners, or with any of them, to provide for the maintenance and operation of children’s training schools; such agreement may provide for the contribution of funds by any such municipal corporation, board of education, or board of county commissioners, in such proportions and amounts as their agreements state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them; provided that municipal corporations, school boards, and boards of county commissioners may expend moneys from their general funds for maintaining and operating such joint children’s training schools;

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A children's training school established pursuant to Section 5153.16, *supra*, and operated jointly by the board of county commissioners and the county welfare department (same as child welfare board, see Section 5153.02, Revised Code) should be distinguished from a training center or workshop for mentally deficient persons established under Section 5127.01, Revised Code, with the approval of the director of mental hygiene and correction. Section 5127.04, Revised Code, referred to in your request, provides for payment by boards of education to the child welfare board for each person under twenty-one years of age who has received training in a training center pursuant to Section 5127.01, *supra*. Section 5153.16, *supra*, on the other hand, provides for payment by boards of education "in such proportions and amounts as their agreements state."

Thus, in answer to your first question, a local school district may make payments for the tuition of a mentally retarded child to a school operated under the auspices of the county child welfare board, which payments are either in excess of or less than the sum defined in Section 5127.04, *supra*, provided the school is one established pursuant to Section 5153.16, *supra*, and not one established under Section 5127.01, *supra*.

In regard to your second question, the problem of transportation would be a matter to be decided by agreement pursuant to Section 5153.16, *supra*, if the school is one established under that section. If the school is one established under Section 5127.01, *supra*, however, then the problem of transportation is a matter for the child welfare board to determine. Opinion No. 3212, Opinions of the Attorney General for 1962, issued August 18, 1962. In this regard the Supreme Court in *State ex rel Summit County Child Welfare Board v. Luidens, Commissioner of Mental Hygiene*, 174 Ohio St., 53 (Dec. 5, 1962) refused to issue a writ of mandamus to compel the commissioner of mental hygiene to determine whether a county child welfare board may incur expenses for transportation of mentally retarded children to training centers established under Section 5127.01, *supra*. If the county child welfare board should decline to provide such transportation, then I know of no authority which would authorize a local board of education to provide the transpor-

tation. Under Section 5127.04, *supra*, the only duty of a board of education is to make the payments provided for in that section toward the support of the training center established pursuant to Section 5127.01, *supra*.

Accordingly, it is my opinion and you are advised :

1. A local school district may make payments for the tuition of a mentally retarded child to a school operated under the auspices of the county child welfare board, which payments are either in excess of or less than the sum defined in Section 5127.04, Revised Code, provided the school is one established pursuant to Section 5153.16, Revised Code, and not one established under Section 5127.01, Revised Code.

2. The problem of providing transportation for retarded children to and from schools for retarded children established pursuant to Section 5153.16, Revised Code, should be decided by agreement between the school boards and the board of county commissioners and the child welfare board as provided for in Section 5153.16, Revised Code; the transportation problem in regard to schools for retarded children established pursuant to Section 5127.01, Revised Code, is a matter to be decided by the child welfare board, there being no authority for school boards to provide such transportation.

Respectfully,

WILLIAM B. SAXBE

Attorney General