

in accordance with the terms of the United States Public Health Service Milk Ordinance and Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3436.

BOARD OF EDUCATION—JURISDICTION OR AUTHORITY
OVER CHILD—COMPULSORY SCHOOL AGE—DATE OF
ENROLLMENT NOT DATE OF ENUMERATION CER-
TIFICATION — CONDITIONS OR REQUIREMENTS,
RULES AND REGULATIONS—PRIVILEGE OF PUBLIC
SCHOOL ATTENDANCE.

SYLLABUS:

A board of education acquires jurisdiction or authority over a child of compulsory school age about to enter school from the date of the enrollment and not from the date of the enumeration certification, for the purpose of requiring such child to perform certain conditions or meet certain requirements that the board of education may have duly adopted in its rules and regulations as the conditions of the privilege of attending the public school.

COLUMBUS, OHIO, December 20, 1938.

DR. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

“Will you kindly give me at the earliest date possible your opinion as to whether school authorities have jurisdiction over children about to enter school from the date of the Enumeration Certification or from the date of enrollment?”

I am enclosing also a copy of the letter received by the clerks and members of the Board of Education in Miami County in which the Prosecuting Attorney of that county gives them his interpretation of the laws relative thereto. I am giving you this not in order to assist you in arriving at a decision, but in order to give you the picture of the argument between the boards of health, the school authorities and the local medical profession.”

From your communication I assume, and therefore, your request is answered on the assumption that your question is limited to the jurisdiction or authority that a board of education may acquire over a child of compulsory school age, before enrollment, for the purpose of requiring of such child the performance of certain conditions or acts that the board of education may have imposed upon a pupil about to enter school, as distinguished from the jurisdiction that a board of education has in compelling a pupil of compulsory school age to attend school if he has not enrolled in the public school and is not employed on an age and schooling certificate or has not been determined to be incapable of profiting substantially by further instruction or is not attending a private or parochial school.

Section 7794, General Code, which provides for the annual enumeration of all children between five and eighteen years of age, reads in part, as follows:

“An enumeration of all youth between five and eighteen years of age resident within the district, and not temporarily there, shall be taken in each school district annually during the four weeks ending on the fourth Saturday of May. This enumeration shall designate the name of each child, his sex, his age, name of his parent, location of his residence, and what school building and grade he attends, and shall indicate in separate columns whether each child is from five to six years of age or from sixteen to eighteen years of age * *”

In the case of *Board of Education of Albany Village School, District of Athens County, vs. State, ex rel. Brown et al.*, 37 Ohio Appellate, 453 ,at page 456, the court defined Enumerated children as follows:

“Enumerated children include all those between the ages of five and eighteen described in Section 7794, General Code.

* * *

* * *

Enumerated children include all children eligible so far as age is concerned to admission to the public schools.”

It must be observed that enumerated children are eligible to admission to the public schools; but that, there is nothing in the provisions of Section 7794, supra, that can be interpreted or construed as making it compulsory for a pupil that was included in the annual enumeration to attend the public schools. It further must be said that there is nothing in the provisions of Section 7794, supra, from which it can be interpreted or construed that the board of edu-

cation acquires jurisdiction or authority over a child by reason of the fact that such child was included in the annual enumeration.

Section 7762, General Code, reads in part, as follows:

“A child between six and eighteen years of age is ‘of compulsory school age’ for the purpose of this chapter; but the board of education of any district may by resolution raise the minimum compulsory school age of all children residing in the district to seven, subject to subsequent modification to six; and the compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of education of the district in which he resides adopted under section seven thousand six hundred eighty-one of the General Code, next following his arrival at the minimum age prescribed hereby or hereunder. * *”

Section 7762-6, General Code, provides as follows:

“Every child of compulsory school age who is not employed on an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction shall attend a public, private or parochial school under the conditions prescribed in this chapter.”

Section 7763, General Code, reads in part, as follows:

“Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date at which the child begins to reside in the district or within one week after his withdrawal from employment. * *”

It is evident from reading of Sections 7762, 7762-6, 7763, supra, that the compulsory school attendance of a child within the compulsory school age limit, does not begin until the first week of the school term; that, the compulsory attendance of a child is complied with if the child attends a “public, private, or parochial school.”

Section 7689, General Code, provides that the school year shall begin on the first day of July and close on the thirtieth day of June of the succeeding calendar year.

However, in Ohio, there is no statutory provision as to the dates on which the term of school is to begin and end, except that the length of the school term of elementary schools is fixed by Section 7644, General Code, as not less than thirty-two nor more than forty weeks in each school year. This particular provision in Section 7644, General Code, reads as follows:

“Each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Each elementary day school so established shall continue not less than thirty-two nor more than forty weeks in each school year. * *”

Section 7681, General Code, reads in part, as follows:

“The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, but the time in the school year at which beginners may enter upon the first year’s work of the elementary schools shall be subject to the rules and regulations of the local boards of education. * *”

It is evident from a reading of Sections 7689, 7644 and 7681, General Code, that it is within the discretion of the board of education to set the date on which the term of school is to begin and end for each and every school year.

From the provisions of all the sections hereinabove referred to, the conclusion must be reached that the board of education must determine the date for the beginning and ending of the school term; that a board of education cannot compel a child within the compulsory school age to attend school until the first week of the established school term; and that since a board of education acquires jurisdiction of a school child only by the child’s attendance in school, the board of education cannot acquire any jurisdiction over a child, within the compulsory school age, until the first week of its school term.

That a board of education does not acquire jurisdiction of a child until its attendance at school, is discussed to some extent in the case of *State, ex rel. Milhoof vs. Board of Education of the Village of Barberton*, 76 O. S., 279. In that case the question presented was the authority of a board of education to require the vaccination of

pupils. The court held that a board of education could not compel vaccination of a pupil, but that by virtue of the jurisdiction it acquired to impose certain rules and regulations on pupils through their attendance at school, a board of education could require a pupil to be vaccinated as a condition of attending school. At page 303, the court said:

“Legislation requiring vaccination is mentioned by Mr. Justice Brown, in delivering the opinion of the court in *Lawton vs. Steel*, 152 U. S., 133, 136, as a proper exercise of the police power. While the duty of providing for the education of the children of the state by the support and maintenance of an efficient system of common schools, is one enjoined by the Constitution of Ohio, Article I, Section 7, and Article VI, Section 2, yet it must be conceded that the privilege of attendance upon the public schools of the state is, and of necessity must be, subject to such reasonable restrictions and limitations as may be imposed by the proper authorities, either in the interest of the public health, or to promote the efficiency and general welfare of the schools themselves. In *Bissel vs. Davidson, et al.*, 65 Conn. 183, a statute authorizing the school authorities to require vaccination as a condition precedent to the right to attend the public schools, was held to be a valid enactment, and in discussing the question of the right or privilege of all children of school age to attend the public schools, the court in that case said: ‘This privilege is granted and is to be enjoyed upon such terms and under such reasonable conditions and restrictions as the law-making power, within constitutional limits the question what terms, conditions and restrictions will best subserve the end sought in the establishment and maintenance of public schools, is a question solely for the legislature and not for the courts. The statute in question authorizes the committee to impose vaccination as one of those conditions. It does not authorize or compel compulsory vaccination; it simply requires vaccination as one of the conditions of the privilege of attending the public school.’”

I have been unable to find any case in Ohio wherein there was discussed when a board of education secures jurisdiction over its pupils. However, in the case of *Butler vs. State (Tex.)* 194 Southwestern, 166, the question was discussed whether the jurisdiction of the school authorities began on the beginning of the scholastic year or the beginning of the school term. It was held:

“Acts 34th Leg. c 49, providing that every child in the state who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence for a period of not less than sixty days for the scholastic year beginning September 1, 1916, and that the period of compulsory school attendance at each school shall begin at the opening of the school term, unless otherwise authorized by the district school trustees, was not applicable to a child who became fourteen years of age on the twelfth day of October, the public school term in his district beginning October 30th.”

Section 7692-1, General Code, provides, in part, as follows:

“School physicians may make examinations and diagnosis (diagnoses) of all children referred to them at the beginning of every school year and at other times if deemed desirable. * *”

I am not unaware that the argument may be offered that this provision authorizing a board of education to refer school children to school physicians at the beginning of every school year, vests a board of education with the authority to require children to submit to examinations from school physicians *at the beginning of the school year*, which is July first, and therefore, prior to the customary or usual beginning of the school term in September. Such contention must be refuted when we consider that a board of education does not acquire jurisdiction over a school child until the beginning of the school term; and that any requirement by a board of education for a school child to submit to an examination before the beginning of the school term would be ineffective and unenforcible.

Therefore, in specific answer to your question it is my opinion that, school authorities can acquire jurisdiction over children about to enter school from the date of enrollment and not from the date of the Enumeration Certification.

Respectfully,

HERBERT S. DUFFY,
Attorney General.