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LOCAL SCHOOL DISTRICTS AUTHORIZED TO MAKE AND ENFORCE RULES OR REGULATIONS TO SECURE VACCINATION OR IMMUNIZATION OF PUPILS—MINIMUM REQUIREMENTS ESTABLISHED BY SECS. 3313.171, 3313.67, R. C.

SYLLABUS:

The General Assembly, under newly enacted Section 3313.671, Revised Code, has not preempted the field of requiring vaccination or immunization for school pupils but has only promulgated a minimum requirement while specifically authorizing local school districts to continue to make and enforce rules or regulations to secure vaccination or immunization of their pupils, a power which local school districts already had under the provisions of Section 3313.67, Revised Code, which section has not been amended or repealed.

Columbus, Ohio, October 23, 1959

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“I would appreciate your opinion and interpretation of House Bill 323, Section 3313.671 of the Revised Code. This

statute was passed by the current legislature, its primary purpose apparently being to require immunization against certain diseases. This law also provides that a pupil can present a written statement from his parent or guardian objecting to the immunization. It further provides: 'The provisions of this section shall not limit or impair the right of a Board of Education of a city, exempted village, or local school district to make and enforce rules or regulations to secure vaccination or immunization . . .'

"All school districts in Columbiana County have been for several years requiring the vaccinations and immunizations now required in the state law, with the exception of polio. These school regulations do not contain a right of objection by the parent or guardian, except where the pupil may be allergic to certain of the vaccines. A question as to the interpretation of Section 3313.671 (H B 323) thus is presented.

"The question is: Must a school district which has a regulation requiring immunizations, and not allowing for objections by parents or guardians, honor any objections to these immunizations which may be presented to them by pupils before beginning school this fall?

"In view of the imminence of the fall school term, your opinion is requested at the earliest possible time."

In answer to your question, it is well to examine the law as it stood prior to the enactment of Amended H. B. 323. Section 3313.67, Revised Code, read and still reads as follows:

"The board of education of each city, exempted village, or local school district may make and enforce such rules and regulations to secure the vaccination and immunization of, and to prevent the spread of communicable diseases among the pupils attending or eligible to attend the schools of the district, as in its opinion the safety and interest of the public require. Boards of health, legislative authorities of municipal corporations, and boards of township trustees, on application of the board of education of the district, at the public expense, without delay, shall provide the means of vaccination and immunization to such pupils as are not provided therewith by their parents or guardians."

Section 3313.671, Revised Code, contained in Amended H. B. 323, reads as follows:

"(A) No pupil shall be admitted, at the time of his initial entry of each school year, to an elementary or high school for which the state board of education prescribes minimum standards in accordance with the provisions of division (D) of section 3301.07 of the Revised Code, unless such pupil has presented

written evidence, satisfactory to the person in charge of admission, that he has received, or is in the process of receiving, immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus by such means of immunization as may be approved by the department of health pursuant to the powers granted by section 3701.13 of the Revised Code, or unless such pupil has presented a written statement of his parent or guardian objecting to the immunization of such pupil against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus. The provisions of this section shall not limit or impair the right of a board of education of a city, exempted village, or local school district to make and enforce rules or regulations to secure vaccination or immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus of the pupils under its jurisdiction.

“(B) Boards of health, legislative authorities of municipal corporations, and board of township trustees on application of the board of education of the district or proper authority of any school affected by this section, at the public expense, without delay, shall provide the means of immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus to such pupils as are not provided therewith by their parents or guardians.”

It will be noted that the new section preserves the right of a local board “to make and enforce rules or regulations to secure vaccination or immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus of the pupils under its jurisdiction.” This language is almost identical with the permissive language of Section 3313.67, Revised Code.

If this passage were not part of the new act, the question of pre-emption of the field by the General Assembly would have been squarely raised. But, as the General Assembly saw fit to retain the regulatory powers of the local school districts by insertion in the new enactment of almost the exact language contained in the older statute, it may safely be presumed that the legislature intended to leave local vaccination enforcement, in those districts where it existed, unaffected by the new act except for the minimum requirement of vaccination or immunization.

This view is further supported by the fact that Section 3313.67, Revised Code, was not repealed and, therefore, the authorization to adopt local rules or regulations still exists and is, in fact, the same authorization which existed prior to the passage of Amended H. B. 323. As the Columbiana County school districts, referred to in your inquiry, were presumably requiring vaccinations and immunizations under the authority of Section 3313.67, Revised Code, the authority to continue these require-

ments under whatever rules or regulations the local districts see fit to adopt has been specifically preserved by the General Assembly.

It is, therefore, my opinion and you are accordingly advised that the General Assembly, under newly enacted Section 3313.671, Revised Code, has not preempted the field of requiring vaccination or immunization for school pupils but has only promulgated a minimum requirement while specifically authorizing local school districts to continue to make and enforce rules or regulations to secure vaccination or immunization of their pupils, a power which local school districts already had under the provisions of Section 3313.67, Revised Code, which section has not been amended or repealed.

Respectfully,

MARK MCELROY

Attorney General