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SCHOOL—IN COUNTY TUBERCULOSIS HOSPITAL—WITH EXCEPTION OF ACADEMIC AFFAIRS SUPERVISED BY SUPERINTENDENT OF HOSPITAL—TEACHERS NOT MEMBERS OF STATE RETIREMENT SYSTEM UNLESS THEY JOIN—MINIMUM SALARY PROVISION OF SECTION 7600 GENERAL CODE INAPPLICABLE.

SYLLABUS:

1. *A school maintained at a county tuberculosis hospital, as directed and authorized by Section 7644-2, General Code, should be supervised, so far as the arrangement of school curriculum, general organization of the school, grading of pupils, extension of school credits, recommendation of teachers, textbooks and necessary equipment are concerned, by the county superintendent of schools. The administration of the school in other respects than its academic features should be under the supervision of the superintendent of the hospital. The said county superintendent of schools and the superintendent of the hospital should, so far as possible, cooperate in the management and maintenance of the school.*

2. *It is the duty of the trustees of the hospital to employ necessary teachers and purchase necessary textbooks, equipment and supplies for the school, upon the recommendation, so far as is consistent with good management, of the county superintendent of schools.*

3. *A teacher in a school maintained at a tuberculosis hospital by authority of Section 7644-2, General Code, does not become a member of the State Teachers' Retirement System, unless the trustees of said institution accept the requirements and obligations of the law relating to the establishment and maintenance of the State Teachers' Retirement System or the teacher, himself, is a contributor to said system.*

4. *The provisions of Section 7600, General Code, with reference to the minimum salary to be paid to school teachers have no application to the payment of salaries to teachers in a school maintained at a tuberculosis hospital established and maintained by authority of Section 7644-2, General Code.*

COLUMBUS, OHIO, November 16, 1931.

HON. ORVILLE WEAR, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I have been requested by the Board of Education of Springfield Township, to ask your opinion relative to the establishment and operation of a school at the Clark County Tuberculosis Sanitarium, on the following questions:

1. As the school is to be directed and under the supervision of the county superintendent of schools in cooperation with the superintendent of the hospital, what are the powers and duties of the county superintendent of schools and superintendent of the hospital in such matters as the employment of a teacher, arrangement of school curriculum and general organization of the school, selection and purchase of textbooks, supplies, etc.?

2. Is it the duty of the county commissioners to employ the teacher and purchase textbooks and supplies for the school?
3. Will the teacher of this school become a member of the State Teachers' Retirement System the same as other public school teachers of the State?
4. Does the minimum salary law apply to the teacher of this school?"

Provision is made for the education of children of school age who are inmates of a district, county or municipal hospital for tuberculosis by Section 7644-2, of the General Code of Ohio. Said section reads as follows:

"The board of trustees of each district hospital for tuberculosis, the county commissioners of each county maintaining a county hospital for tuberculosis, and the managing officer or officers of each municipal hospital for tuberculosis, shall provide for the education of children of school age admitted to such hospital. The instruction so provided shall be directed by and be under the supervision of the county or city superintendent of schools in cooperation with the superintendent of the hospital. The expense incurred for salaries of teachers in a municipal tuberculosis hospital may be paid by the city board of education; that in a county tuberculosis hospital may be provided from the funds of the tuberculosis hospital or may be prorated, according to the number of children taught, to the county, city and exempted village boards of education of the county. The amount charged against a county school district shall be divided equally between the rural and village school districts within the county school district, and the county auditor shall deduct from the tax funds in the county treasury due to such districts the amounts certified by the county board of education, which amounts shall be transferred to the contingent fund of the county board.

The amounts pro-rated to the city and exempted village district shall be deducted by the county auditor from the tax fund in the county treasury due such districts, and the amount so deducted together with the amount pro-rated to the county board of education and transferred to the contingent fund of the county board shall be paid to the county hospital authorities. The expense of such instruction in the case of a district tuberculosis hospital shall be pro-rated at the end of each month to the local boards of education of the various districts from which children have been received, according to the number of days the children were instructed, and bills for the respective amounts shall be paid by such local boards of education promptly upon presentation."

It will be observed from the terms of the foregoing statute, that the trustees of a district hospital for tuberculosis, the county commissioners maintaining a county tuberculosis hospital and the managing officer or officers of a municipal hospital for tuberculosis are charged with the duty of providing for the education of the children of school age admitted to such hospital. In accordance with the terms of the statute, the instruction so provided in a county tuberculosis hospital shall be directed by and be under the supervision of the county superintendent of schools in cooperation with the superintendent of the hospital.

The statute does not provide in detail, the separate duties of the superintend-

ent of schools and of the superintendent of the hospital, with respect to this instruction, but simply provides that they shall cooperate. It further provides the manner in which teachers who give the instruction, shall be paid and how the same shall be prorated to the several school districts from which the children in the hospital came. The statute does not specifically provide for the expense of text books and supplies. Such expense is, however, a necessary incident of providing instruction for the children who are inmates of hospitals, and in my opinion, should be provided and prorated as is the expense of employing teachers.

As the statute does not specifically set forth the duties of the superintendent of schools and the superintendent of the hospital with respect to this school, the statute should be interpreted reasonably in the light of what are the relations generally, to a school, of a superintendent of schools and those of other managing officers. Generally speaking, a superintendent controls and directs the academic feature of the school work while the other managing officers of the school, such as a board of education, handle the administrative end. It is my opinion, therefore, that the reasonable and proper construction of this statute with reference to the coordination of the work of the superintendent of schools and the superintendent of the hospital is, that the superintendent of schools recommend textbooks and courses of study suitable for adoption in the school, that he visit and inspect the school as often as is reasonably necessary, advise with the teacher or teachers on the proper method of giving instruction in the school and, in proper cases, make regulations for the promotion of pupils and the grading of pupils so that credits received by the pupils in this school may stand on an equality with credits received by pupils in the regular public schools.

The administrative end of the work should be under the supervision of the superintendent of the institution, and the trustees of the institution through the county commissioners should, upon the recommendation of the county superintendent of schools, purchase the necessary textbooks and supplies for the school and employ the necessary teachers therefor.

We come now to your third question, that is, whether or not a teacher in a school such as this, would become a member of the State Teachers' Retirement System, the same as other public school teachers in the state.

In this connection, I direct your attention to Section 7896-22, General Code, which reads in part, as follows:

"The membership of the retirement system shall consist of the following:

(a) * * *

(b) * * *

(c) The teachers in any school or college or other institution supported in whole or in part by the state or any subdivision thereof and wholly controlled and managed by the state or any subdivision thereof shall become members on the same terms and conditions as the teachers in the public schools, provided that the board of trustees or other managing body of such school, college or other institution, if such institution is now in existence or if in existence on said date, shall agree by formal resolution adopted before September first, nineteen hundred twenty-one, to accept all the requirements and obligations imposed by this act upon employers of members. Any institution which comes into existence as such thereafter shall have ninety days in which to accept said requirements and obligations. A certified copy of said resolution shall be filed with the retirement board. When such resolution shall have been adopted

and a copy of it filed with the retirement board, it shall not later be subject to rescindment or abrogation. Service in such schools, colleges or other institutions shall be then considered in every way the same as service in the public schools so far as the purposes of this act are concerned, and

(d) All other teachers who become contributors under the provisions of this act."

From the foregoing, it will be observed that a teacher in a school of the kind here under consideration, does not become a member of the State Teachers' Retirement System unless the board of trustees of the institution accept the requirements and obligations of the act of the General Assembly providing for the State Teachers' Retirement System or, unless the teacher is a contributor to said system in accordance with the provisions of said act.

Your fourth question, which relates to the application of the minimum salary law, refers, I take it, to the minimum salary spoken of in Section 7600, General Code. By the terms of Section 7600, General Code, school districts which do not maintain a salary schedule commensurate with the minimum amount there fixed are not permitted to share in the distribution of the county educational equalization fund, except as to those salaries which are equal to or greater than the minimum amount fixed in the statute. As a school maintained at a tuberculosis hospital, in accordance with the provisions of Section 7644-2, *supra*, does not in any event share in the distribution of the county educational equalization fund, the provisions of Section 7600, General Code, which relate to a minimum salary to be paid to teachers, would have no application.

I am therefore of the opinion, in specific answer to your questions:

1. A school maintained at a county tuberculosis hospital, as directed and authorized by Section 7644-2, General Code, should be supervised, so far as the arrangement of school curriculum, general organization of the school, grading of pupils, extension of school credits, recommendation of teachers, textbooks and necessary equipment are concerned, by the county superintendent of schools. The administration of the school in other respects than its academic features should be under the supervision of the superintendent of the hospital. The said county superintendent of schools and the superintendent of the hospital should, so far as possible, cooperate in the management and maintenance of the school.

2. It is the duty of the trustees of the hospital to employ necessary teachers and purchase necessary textbooks, equipment and supplies for the school, upon the recommendation, so far as is consistent with good management, of the county superintendent of schools.

3. A teacher in a school maintained at a tuberculosis hospital by authority of Section 7644-2, General Code, does not become a member of the State Teachers' Retirement System, unless the trustees of said institution accept the requirements and obligations of the law relating to the establishment and maintenance of the State Teachers' Retirement System or the teacher, himself, is a contributor to said system.

4. The provisions of Section 7600, General Code, with reference to the minimum salary to be paid to school teachers have no application to the payment of salaries to teachers in a school maintained at a tuberculosis hospital established and maintained by authority of Section 7644-2, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.