

482.

APPROVAL, NOTES OF ZALESKI VILLAGE SCHOOL DISTRICT, VINTON COUNTY, OHIO—\$3,166.00.

COLUMBUS, OHIO, April 5, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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483.

APPROVAL, NOTES OF WILKESVILLE RURAL SCHOOL DISTRICT, VINTON COUNTY, OHIO—\$9,057.00.

COLUMBUS, OHIO, April 5, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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484.

APPROVAL, NOTES OF SPRINGFIELD TOWNSHIP RURAL SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—\$4,123.00.

COLUMBUS, OHIO, April 5, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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485.

TUBERCULIN TEST—BOARD OF HEALTH OR BOARD OF EDUCATION  
MAY GIVE TO SCHOOL CHILDREN WHEN.

**SYLLABUS:**

*It would be legal for either a board of education or a board of health to give the tuberculin test to school children by means of the injection method or application of a salve, if it is found to be a reasonable measure for the protection of the public health and safety.*

COLUMBUS, OHIO, April 6, 1933.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“The Department of Health is in receipt of request for an opinion with reference to the legality of the application of a tuberculin test to

school children, either by means of the injection method, or application of a salve.

The application of the tuberculin test is for the purpose of diagnosis, and not a treatment of the disease.

I shall be very glad to have your opinion as to whether this diagnostic procedure can be administered under the supervision of a board of education under the authority of Section 7692, G. C., or other statutes, or by an agent of the board of health under authority of Section 1261-26, G. C.,"

Section 7692, General Code, provides for the appointment of a school physician and dentist by every board of education in the state, and in addition, it provides that said board may delegate this duty to the board of health within the school district if such board will assume same.

Section 7692-1, General Code, reads as follows:

"School physicians may make examinations and diagnosis of all children referred to them at the beginning of every school year and at other times if deemed desirable. They may make such further examination of teachers, janitors and school buildings as in their opinion the protection of health of the pupils and teachers may require. Whenever a school child, teacher or janitor is found to be ill or suffering from positive open pulmonary tuberculosis or other contagious disease, the school physician shall promptly send such child, teacher, or janitor home, with a note, in the case of the child, to its parents or guardian, briefly setting forth the discovered facts, and advising that the family physician be consulted.

School physicians shall keep accurate card index records of all examinations, and said records, that they may be uniform throughout the state shall be according to the form prescribed by the state school commissioner, and the reports shall be made according to the method of said form; provided, however, that if the parent or guardian of any school child or any teacher or janitor after notice from the board of education shall within two weeks thereafter furnish the written certificate of any reputable physician that the child, or teacher or janitor has been examined, in such cases the services of the medical inspector herein provided for shall be dispensed with, and such certificate shall be furnished by such parent or guardian from time to time, as required by the board of education. Such individual records shall not be open to the public and shall be solely for the use of the boards of education and health or other health officer. If any teacher or janitor is found to have positive open pulmonary tuberculosis or other communicable disease, his or her employment shall be discontinued upon expiration of the contract therefor, or, at the option of the board, suspended upon such terms as to salary as the board may deem just until the school physician shall have certified to a recovery from such disease."

It can be seen from this section that the school physician may examine and diagnose. The problem then narrows down to one of whether or not the tuberculin test is a diagnosis or an examination. The medical authorities all treat such tests as diagnoses as distinguished from a preventive or a curative measure. Webster's New International Dictionary defines "diagnosis" as follows:

"I. The art or act of recognizing the presence of disease, from its signs or symptoms and deciding as to its character; also, the decision arrived at.

2. Scientific determination of any kind."

Other tests which fall in this class are the Schick test for diphtheria and the Dick test for scarlet fever. These tests, along with the tuberculin test, are considered as diagnoses. They are given for the purpose of ascertaining whether a person has or is subject to the disease for which it is given. It is not given to prevent the disease, as is the vaccination for smallpox, nor is it given to cure the disease.

When the school boards or boards of health started vaccinating school children for smallpox, there was a great deal of litigation and discussion concerning it. It was held in Ohio that an order requiring vaccination of pupils, except in the emergency of an actual impending epidemic, could only be sustained by direct and specific legislation. As a result of similar rulings in other states, most of them passed specific legislation authorizing either the school boards or the boards of health to require pupils to be vaccinated.

The Schick test for diphtheria has been given in the schools of Ohio for a number of years; in other states both it and the tuberculin test have been given without any specific legislation. I have been unable to find any reported cases either in this or any other state and no authorities discussing their legality. Thus, though there are no rules by which we can be guided, it is an indication that these boards have considered themselves able to require such tests under general grants of power.

It is my opinion that the tuberculin test, either by injection or salve, must be considered as being given for the purpose of diagnosis. As a result of that conclusion, it would be legal for the school physician to give these tests under authority of Section 7692-1, General Code, unless the test itself be one of such nature that it would be prohibited on the ground of public policy or that the police power could not be extended to cover it.

The only other section applicable to the question involved herein is Section 1261-26, General Code, which reads as follows:

"In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and other charitable, benevolent, correctional institutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.

Provided that in the medical supervision of school children as herein provided, no medical or surgical treatment shall be administered to any

minor school child except upon the written request of a parent or guardian of such child; and provided further, that any information regarding any diseased condition or defect found as a result of any medical school examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian."

It would appear from the broad grant of power in Section 1261-26, providing for prompt diagnosis and control of communicable diseases and for medical and dental supervision of school children, that the board of health also may legally administer the tuberculin test, subject to the condition hereinbefore stated with reference to the power of school physician to give such test. It also would derive power from the board of education to do such acts when the latter has delegated to the board of health the duty of appointing a school physician as provided in Section 7692, General Code.

The rights, duties and power granted to the board of health and the board of education would seem to be in conflict with reference to the medical and dental supervision of school children. However, the sections involved merely call for co-operation between these two boards and particularly so in case of epidemics, as can be ascertained by a thorough study of them. The duty of supervising the health of pupils should rest primarily in the board of education, but where it fails to take necessary steps or where it delegates its powers and duties, then the board of health must, of necessity, assume the medical and dental supervision of the school children.

It is not within the power or authority of such boards to encroach upon the sanctity of the person without some just cause. The health authorities have been given power to make examinations and take all necessary steps to stop the spread of disease in times of epidemics by virtue of the police power. However, there are measures which may be taken when there is an impending epidemic that would not be reasonable under normal conditions.

Lippincott's Quick Reference Book, Medicine and Surgery, by Rehberger, quotes from "New and Non-official Remedies" in reference to the tuberculin test as follows:

"A positive tuberculin reaction merely indicates that the patient has at some time been infected with tuberculosis and not necessarily that he is at present tuberculous; but the occurrence of a focal reaction is good presumptive evidence of an active lesion." "In many advanced or acute cases of tuberculosis, no tuberculin reaction is obtained, so that the result of a tuberculin test is never absolute." "After infancy, an increasing proportion of those who react are found to be free from clinical tuberculosis."

From this it would appear that the medical profession does not consider the tuberculin test as being absolute nor even as being reasonably accurate.

Measures taken to protect and preserve the public health fall within the police power of the state. The test as to whether any particular measure is valid ordinarily depends on whether or not it is reasonable.

The police power of the state embraces reasonable regulations established by direct legislation to protect the public health. The state also may give local boards authority to take appropriate steps to safeguard the public health. Whether a

measure is reasonable under the police power must, in the last analysis, be determined by courts of competent jurisdiction.

In specific answer to your question, it is my opinion that it would be legal for either a board of education or a board of health to give the tuberculin test to school children by means of the injection method or application of a salve, if it is found to be a reasonable measure for the protection of the public health and safety.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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486.

LEGAL SETTLEMENT—POOR RELIEF—RELIEF SECURED FROM MEMBER OF FAMILY DOES NOT PREVENT INDIGENT FROM RECEIVING LEGAL SETTLEMENT.

*SYLLABUS:*

*A woman who is a resident of one county in this state and moves to another county of this state and there resides for twenty-two months and is maintained and supported by her brother but is not aided or assisted by charitable institutions or organizations as mentioned in Section 3477, General Code, has gained a residence in the county where she last resided and said county, township or municipality is responsible for her care and support.*

COLUMBUS, OHIO, April 6, 1933.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date in which you request my opinion upon the following question:

“Your opinion is respectfully desired on a question of county liability for hospital care of an indigent, and involving, I believe, a construction of Sections 3477 and 3479, General Code of Ohio.

The facts are as follows:

Mrs. G. resided in Canton, Stark County, for many years and acquired a residence there. Approximately 22 months ago, she moved to Carroll County, Ohio, from the home of her brother-in-law in Canton, Stark County, where she then stayed, to reside with her brother, Mr. R. At the time she moved to reside with Mr. R., her brother, Mrs. G. had no funds of any kind; is an aged woman, and during the entire 22 months that she resided with her brother, Mr. R., she had been entirely supported by him and was indigent. She has received no public relief either directly or indirectly in either Stark County or Carroll County. Recently, Mrs. G. sustained an injury, requiring hospital attention and expenses.

Question—Since Mrs. G. has not continuously resided and supported herself while in Carroll County, it is contended that the expense of said hospital care should be borne by Stark County.

It has been the custom in this county and adjoining counties to con-