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DEAF-MUTE CHILD—LOCAL SCHOOL BOARDS—WITHOUT AUTHORITY TO PAY TUITION AND TRANSPORTATION FOR DEAF-MUTE CHILD—RESIDENCE IN DISTRICT—ATTENDANCE AT PRIVATE SPECIAL SCHOOL LOCATED OUTSIDE OF DISTRICT.

SYLLABUS:

Local school boards are without authority to pay tuition and transportation for a deaf-mute child residing in their district for attendance at a private special school located outside of their district.

Columbus, Ohio, January 16, 1950

Hon. Howard G. Eley, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir :

Your letter requesting my opinion reads as follows :

“One of our local school boards has requested that I write you for your opinion as to whether they have the power to pay tuition and transportation for a deaf-mute child residing in their district for attendance at a private special school located outside of their district, the tuition and transportation not to exceed that amount expended by the board for normal children, computed under General Code Section 4848-4.

“General Code Section 4850-9-10 and Attorney General’s Opinion No. 3421 have been carefully read and considered. However, it is not clear whether the handicapped child must attend a state institution to come within the Code sections or the Attorney General’s Opinion, or whether the same would be applicable to a private institution.”

It is noted that no date was specified concerning Attorney General’s Opinion No. 3421 to which you refer. After much checking I am convinced that said opinion was one rendered in 1931, found in Opinions of Attorney General for that year, Volume 2, at page 966, wherein the payment of tuition of a child who is a resident of one school district and attends in another district a class for the blind, deaf or crippled, was discussed. The then Attorney General held that :

“When a child who is a resident of one school district attends in another district a class for the blind, deaf or crippled, or a class in which some special instruction needed by the child because of his handicap, is provided, the board of education of the district in which he resides may not be compelled to pay his tuition or any part thereof unless such payment is directed by the Director of Education, or unless an agreement has been entered into between the two boards of education whereby the board of education of the district of the child’s residence had agreed to pay tuition for the child.”

Sections 4850 to 4850-13, inclusive, of the General Code, relate to special classes for handicapped children and the board’s power concerning same, the pertinent statutes being Sections 4850-9, 4850-9a and 4850-10, which read as follows :

Section 4850-9:

“If a child who is a school resident of one school district attends in another district a class in which some special instruction needed by the child because of his handicap is provided, the board of education of the district in which he is a school resident shall pay his tuition in a sum equal to the tuition in the district in which such class is located for a child of normal needs of the same school grade and the determination of the amount and payment of such tuition shall be in the manner provided for by sections 4848-4 and 4848-5 of the General Code. The board of education of the district in which such child is a school resident may pay his transportation to the class in the other district; and the board of education of the district in which the class he attends is located may provide his transportation to the class. Upon direction of the superintendent of public instruction the board of education of the district in which such child resides shall pay for his transportation and the tuition.”

Section 4850-9a:

“Where a child who is a school resident of one school district attends in another district a class in which some special instruction needed by the child because of his handicap is provided and the per capita cost of such instruction exceeds the sum of the per capita amount received by the district of attendance under the provisions of the foundation program law and the per capita amount received from the division of special education of the state department of education, then the board of education of the district in which such child is a legal school resident is authorized to pay direct to the board of education of the school district that is providing the instruction such part of such excess cost as agreed upon in contracts entered into by the boards of education of the districts concerned at the time the district operating the special class accepts the child for enrollment in the special class.”

Section 4850-10:

“The superintendent of public instruction may arrange with any board of education which maintains a class for the instruction of blind, deaf or crippled persons, or affords special instruction for such children who are not school residents of the district, to pay for the board of any such persons under such standards and with such restrictions as the superintendent of public instruction may prescribe.”

The above statutes are clear in that they provide for contractual arrangements between boards of education in different districts; they

are equally clear in that no powers are conferred upon the board to negotiate with other than boards of education. To do so would be an attempt to confer upon themselves (boards of education) authority not granted.

In the case of *Verberg v. Board of Education of the City School District of Cleveland, et al.*, 135 O. S. 246, the court held in the first branch of the syllabus:

“Boards of education are creatures of statute and have only such jurisdiction as thus conferred. They may not, under their rule-making power granted by statute, confer upon themselves further jurisdiction or authority. (*Davis et al., Civil Service Comm. v. State, ex rel. Kennedy, Dir. of Public Service*, 127 Ohio St., 261, approved and followed.)”

In the case of *State, ex rel. Clarke v. Cook, Auditor*, 103 O. S. 465, the court held:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State ex rel. Locher, Pros. Atty. v. Menning*, 95 Ohio St., 97, approved and followed.)”

In view of the foregoing, it is my opinion that local school boards are without authority to pay tuition and transportation for a deaf-mute child residing in their district for attendance at a private special school located outside of their district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.