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MENTALLY RETARDED CHILDREN :

1. NOT PRESENTLY ACCEPTED FOR ENROLLMENT IN PUBLIC SCHOOLS—BOARD OF EDUCATION—HAS AUTHORITY TO ORGANIZE AND OPERATE TRAINING SCHOOLS— MAY EXPEND SCHOOL FUNDS FOR PURPOSE—SECTION 3070-17 G. C.
2. CHILD WELFARE BOARD—HAS AUTHORITY TO MAKE AGREEMENTS WITH PARENTS OF THE CHILDREN WHERE THEY MAY CONTRIBUTE TO PROGRAM OF SPECIALIZED TRAINING—SECTIONS 3070-1 ET SEQ. AND 3070-17 G. C.
3. COUNTY COMMISSIONERS—HAVE AUTHORITY TO APPROPRIATE AND PAY FUNDS TO BOARD OF EDUCATION FOR PORTION OF COST OF OPERATING TRAINING SCHOOLS FOR RETARDED CHILDREN.
4. CHILD WELFARE BOARD, COUNTY COMMISSIONERS, BOARD OF EDUCATION OF DISTRICT IN COUNTY—HAVE AUTHORITY TO CONTRACT WITH EACH OTHER FOR SPECIAL TRAINING FOR THE CHILDREN—MAY AGREE ON DIVISION OF COST TO MAINTAIN AND OPERATE TRAINING SCHOOLS.

SYLLABUS:

1. By virtue of the statutes relative to the general powers and duties of a board of education, and of the provisions of Section 3070-17 of the General Code, a board of education has authority to organize and operate training schools for mentally retarded children who are not presently accepted for enrollment in the public schools, and to expend school funds for that purpose.
2. A child welfare board organized pursuant to the provisions of Section 3070-1 et seq. of the General Code, and particularly under the provisions of Section 3070-17, has authority to make agreements with the parents of mentally retarded children, whereby they may contribute to a program of specialized training for mentally retarded children.
3. The county commissioners have authority to appropriate funds and pay the same to the board of education for a portion of the cost of operating training schools for mentally retarded children.
4. The child welfare board of a county, the county commissioners of such county, and a board of education of a district situated in such county have authority to contract with each other to provide special training for mentally retarded children and to provide on such terms as they deem proper for the division of the cost of maintaining and operating such training schools.

Columbus, Ohio, June 30, 1951

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

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

"There are approximately 150 mentally retarded children residing in Summit County, including mentally retarded crippled and cerebral palsied children whose enrollment is not accepted in public school because their mental retardation is below the standards prescribed by the State Superintendent of Public Instruction for admission to any public school in Summit County. (See Section 489-3 and 4, and Section 4850 of the Ohio General Code). The parents of these children do not wish to have their children committed by the probate court to a state institution for care and training. They prefer to have their children with them at home and to receive the training they need in a training school operated jointly by the Child Welfare Board, the County Commissioners and the Board of Education as outlined below. At the present time, no public program of education or training is available in Summit County for these mentally retarded children.

"Parents of mentally retarded children and parents of children who are both mentally retarded and crippled have organized the Summit County Council for the Retarded Child and the

Parents' Cerebral Palsy Unit. The membership of these two organizations includes many interested persons who are not parents of mentally retarded children. The necessary funds for operating these training schools for mentally retarded children are presently provided from various voluntary sources.

"Through the provisions of Section 3070-1 and 3070-17, paragraphs (d) and (i) of the Ohio General Code, it is proposed that the Child Welfare Board and the County Commissioners enter into an agreement with the Board of Education whereby:

"1. The Board of Education will organize and operate training schools for mentally retarded children and be responsible for that part of the cost of operating such training schools which is equal to the cost of educating an equal number of children in elementary school for an equal period of time.

"2. The parents will pay to the Child Welfare Board a part of the cost of operating the training schools, the amount to be paid by parents to be determined and collected by the Child Welfare Board. The total amount collected by the Child Welfare Board will be paid to the county.

"3. The County Commissioners will pay to the Board of Education an amount equal to the excess cost of operating training schools for mentally retarded children, over and above the cost of educating an equal number of normal pupils in the elementary grades for the same period of time.

"I respectfully request your opinion on the following questions pertinent to the above proposed agreement:

"1. Does the Board of Education have authority to organize and operate training schools for mentally retarded children who are not presently accepted for enrollment in the public schools? Does the Board of Education have authority to expend funds for the training of such children?

"2. Does the Child Welfare Board have the authority to make binding agreements with the parents of such mentally retarded children for such a program of specialized training?

"3. Do the County Commissioners have the authority to appropriate funds and pay the same to the Board of Education for any portion of the cost of operating training schools for mentally retarded children?

"4. Do the Akron Board of Education, The Child Welfare Board of Summit County and the County Commissioners of Summit County have authority to contract with each other to provide special training for mentally retarded children under the plan provided in the preceding section?"

The educational system of the state has its foundation in Article VI of the Constitution of Ohio, where it is provided in Section 2 of that article:

“The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; * * *”

The General Assembly has from time to time made extensive provision for the organization and conduct of the public schools of the state. These laws were codified by an Act passed in 1943 and found in 120 Ohio Laws, p. 475. They comprise Sections 4830 to 4863-7, both inclusive, of the General Code. One of the cardinal principles of the school code is that the educational facilities which are to be afforded to the youth of the State are free to all within school age, whether rich or poor. Section 4838-2, General Code, provides in part as follows:

“The schools of each city, exempted village or local school district shall be free to all school residents between six and twenty-one years of age, * * *”

At a very early date, it was recognized that there were many children who were incapable by reason of some infirmity, of acquiring their education in the regular schools. Accordingly, as early as 1906 we find an Act of the legislature authorizing boards of education to establish schools “for deaf persons over the age of three.” 98 Ohio Laws, 219. This act was later broadened and amended, and now appears in the Code as Section 4850 et seq. Said Section 4850 reads in part, as follows:

“The superintendent of public instruction may grant permission to any board of education to establish and maintain a class or classes for the instruction of deaf persons over the age of three and blind, crippled or slow-learning persons over the age of five; and further, to establish and maintain child study, counseling, adjustment and special instructional services for persons over the age of five whose learning is retarded, interrupted or impaired by physical or mental handicaps. * * *”

Section 4850-1 reads in part as follows:

“The superintendent of public instruction shall select some competent person or persons to inspect at least once a year all classes and to direct and supervise such other services established under section 4850 of the General Code, and to report con-

cerning the instruction in such classes, the conditions under which they are maintained, the conditions under which any persons enrolled in such classes are boarded; and the extent and nature of all other services related to education affecting physically and mentally handicapped persons.

“The superintendent of public instruction shall prescribe standard requirements for day schools for the deaf, blind, crippled, and slow-learners, and for other instruction and services for all types of handicapped persons included under section 4850 of the General Code, and for which persons any school district is entitled to state reimbursement, or aid. * * *”

Section 4850-2, General Code, defines “handicapped pupils.” It reads as follows:

“Any person of sound mind who, by reason of defective hearing or vision or by reason of being so crippled as to be physically unable to properly care for himself without assistance, cannot properly be educated in the public schools as other children, shall be considered deaf, blind or crippled within the meaning of section 4850 and 4850-7 of the General Code. But persons with partial hearing or partial vision may also be instructed under the provisions of these sections and of standards prescribed under section 4850-1.”

Section 4850-4, General Code, provides for the instruction of a child in his home, if by reason of his crippled condition he is unable to attend any school.

Section 4850-9, General Code, provides for the attendance of such handicapped children if necessary in a district other than that of his residence, and for the payment of his transportation. All of these facilities are paid for out of school funds.

Notwithstanding all of these liberal provisions that have been made for the proper education of handicapped children, the General Assembly appears to have considered that there might be circumstances in which the existing school laws would not adequately reach children who, for some reason, required special attention in order that they might acquire an education in so far as they were able. In 1946, Sections 3070-1 to 3070-35, inclusive, of the General Code were enacted. This enactment, in addition to repealing all laws relating to the organization and management of children's homes, undertook to set up additional services for children in

need of special care and treatment. The purpose and scope of this enactment is well set forth in Section 3070-1, General Code, which reads:

“The purpose of sections 3070-1 to 3070-35, inclusive, is to supplement, expand, modernize and integrate child welfare services and the care and placement of children in the several counties of the state, and to this end this act shall be liberally construed.”

It will be found on examination of the various provisions of this act that to a large extent they are charitable in their nature. However, in view of the provisions to which I shall refer, it appears to me evident that the legislature had in mind not only charitable services to children whose parents were not able to provide them, but also the purpose of supplementing and strengthening the system of public education which, as I have indicated, is in no sense charitable, but free to all alike.

The Act provides for the appointment of a child welfare board in each county, and Section 3070-17, General Code outlines at length the powers and duties of this board. Eliminating certain paragraphs which have to do with the custody and placement of children, this section reads as follows:

“The child welfare board shall, subject to the rules, regulations and standards of the division, have the following powers and duties for and on behalf of children in the county deemed by the board to be in need of public care or protective services:

“(a) To make an investigation concerning any child reported to be in need of *care, protection or service*.

“(b) To enter into agreements with *the parent, guardian or other person having legal custody of any child*, or with the division, or another department or any certified organization within or outside the county or any agency or institution outside the state, having legal custody of any child, *respecting the custody, care or placement of any such child or any other matter, deemed to be in the interests of such child*, provided that the permanent custody of a child shall not be transferred by a parent to the board without the consent of the juvenile court. * * *

“(d) To provide *care of all kinds* which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service. Such care shall be provided by the board by its own means or *through other available resources*, in such child’s own home or in the home of a relative or in a certified foster home, receiving home, *school, hospital, convalescent home or other institution*, public or private, within or outside the county or state. * * *

“(1) Subject to the approval of the county commissioners and the division *to establish and operate a training school or to enter into an agreement with any municipality or political subdivision of the county* respecting the operation, acquisition or maintenance of any children’s home, *training school* or other institution for the care of children maintained by such municipality or political subdivision and may, pursuant to such agreement, acquire, operate and maintain such an institution.

“The board may enter into an agreement with a municipality, a *board of education, and the county commissioners* or with either or any of them to provide for the maintenance and operation of *children’s training schools*. Such agreement may provide for the contribution of *funds by any one or all of them*, in the proportions and amounts as their agreement shall state, and for the operation and supervision of *such training schools* by any one of them, or by the joint action of two or more of them. *Notwithstanding any other provision of the law, municipalities, school boards and county commissioners are hereby authorized to expend moneys* from their general funds for the purpose of maintaining and operating such joint *children’s training schools*.
* * *”

(Emphasis mine.)

Particular attention is directed to paragraphs (b), (d) and (i). Considering paragraph (i), it will be observed that the board is authorized to establish and operate a training school or to enter into an agreement with a municipality, county commissioners and a board of education, or either of them, to provide for maintenance and operation of such children’s training schools. It is further provided that such agreement may provide for the contribution of funds by any or all of them, in the proportions and amounts agreed upon, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them. It is further provided that “notwithstanding any other provisions of the law, municipalities, school boards and county commissioners are hereby authorized to expend monies from their general funds for the purpose of maintaining and operating children’s joint training schools.”

These provisions would seem clearly to be intended to tie in with the provisions of Section 4850 et seq. to which I have referred, and to provide means for supplementing the services that might be provided under those sections and particularly for taking care of conditions arising out of disease, such as cerebral palsy, which is not specifically mentioned in those sections, and which might require a degree of special care that

would not be required in the case of children who are handicapped, as that term is defined in the section quoted.

I would also call particular attention to paragraph (d), which indicates the purpose of the legislature to make the act helpful to all children who may be in need of special care. It is there made the duty of the board "to provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service."

The provision of paragraph (b) authorizing agreements to be entered into with the parents or guardian or other person having the legal custody of a child, or with the division of social administration or another department or any certified organization or institution within or without the county or the state, not only as to custody, but as to "any other matter deemed to be in the interest of such child," appears to me as intended to give these persons or organizations the opportunity, if they desire, to make additional contributions to the public funds which are available in order to secure even more perfect care and attention to the children for whom these training schools are intended.

In the case you present, I note that an organization of charitably minded people, which includes parents of handicapped children and others, proposes to make certain contributions representing a part of the cost of operating these training schools, which contributions are to be collected by the child welfare board and paid over to the county, and that the county in turn, will pay to the board of education, presumably including such contributions, an amount equal to the excess cost of operating training schools for mentally retarded children, over and above the cost of educating an equal number of normal pupils in the elementary grades for the same period of time.

These contributions both on the part of these individuals and organizations and on the part of the county itself, if any county funds are involved, are clearly within the purview of paragraph (i) supra, although it would appear that all such expenses could be properly paid out of the school funds; however, there can be no objection in view of the provisions of this law, to these payments being received and applied to the fund in accordance with the plan which you have suggested.

I again call attention to the fact that this entire law relating to the

child welfare board is to be liberally construed for the purpose of accomplishing its stated ends.

I note an opinion found in 1946 Opinions of the Attorney General, page 133, wherein it was held that a child welfare board may establish and maintain day care centers for children of working mothers, but that they could not extend the facilities of such centers to children whose mothers were financially able to provide private care for their children. This opinion seemed to proceed upon the theory that such an institution would be within the scope of the child welfare act, but that the service would be strictly of a charitable nature and that it could not therefore be extended gratuitously to mothers who were quite able to pay the cost. A similar decision was reached by the Common Pleas Court of Cuyahoga County very shortly after the opinion just referred to was rendered. This was in the case of *Ferrie v. Sweeney*, 34 O. O., 272.

With these two opinions, I have no quarrel, since they both dealt with services that were manifestly of a charitable character. They are, however, in my opinion entirely differentiated from the question here, because we are dealing with one of the problems of public education, which, as I have pointed out, is in no sense charitable. The child welfare act in my opinion was intended to be broader than mere charity, particularly when it deals with the problem of public education of an unfortunate class of children.

In view of the foregoing, it is my opinion and you are advised :

1. By virtue of the statutes relative to the general powers and duties of a board of education, and of the provisions of Section 3070-17 of the General Code, a board of education has authority to organize and operate training schools for mentally retarded children who are not presently accepted for enrollment in the public schools, and to expend school funds for that purpose.

2. A child welfare board organized pursuant to the provisions of Section 3070-1 et seq. of the General Code, and particularly under the provisions of Section 3070-17, has authority to make agreements with the parents of mentally retarded children, whereby they may contribute to a program of specialized training for mentally retarded children.

3. The county commissioners have authority to appropriate funds

and pay the same to the board of education for a portion of the cost of operating training schools for mentally retarded children.

4. The child welfare board of a county, the county commissioners of such county, and a board of education of a district situated in such county have authority to contract with each other to provide special training for mentally retarded children and to provide on such terms as they deem proper for the division of the cost of maintaining and operating such training schools.

Respectfully,

C. WILLIAM O'NEILL

Attorney General