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1. PHYSICIAN—EDUCATION, LOCAL BOARDS OF—MAY CONTRACT WITH COUNTY BOARD OF HEALTH FOR SERVICES OF SCHOOL PHYSICIANS—CONDUCT PHYSICAL EXAMINATIONS OF SCHOOL CHILDREN IN DISTRICT—MAY FIX COMPENSATION FOR SUCH SERVICE ON BASIS OF PER CAPITA CHARGE FOR EACH SCHOOL CHILD EXAMINED—SECTION 3313.72 RC.
2. SCHOOL PSYCHOLOGISTS MAY BE EMPLOYED TO TEST ABILITIES AND APTITUDES OF PUPILS—VOCATIONAL GUIDANCE AND COUNSELING—EMPLOYEES MUST BE QUALIFIED BY CERTIFICATION—SUPERINTENDENT OF PUBLIC INSTRUCTION—AUTHORITY TO ESTABLISH STANDARDS, RULES AND REGULATIONS—SECTIONS 3319.22, 3319.23 RC.

## SYLLABUS:

1. Local boards of education may under the provisions of Section 3313.72, Revised Code, contract with a county board of health for the services of school physicians to conduct physical examinations of school children in the district, and having the power to enter into such contract may fix the compensation for such service on the basis of a per capita charge for each school child examined.

2. Local boards of education may employ school psychologists for the testing of abilities and aptitudes of pupils, for vocational guidance and counseling, and for teaching appropriate aspects of educational psychology in the schools under the control of such board but such individuals thus employed must be qualified therefor by certification as provided in Section 3319.22, Revised Code, and in the standards, rules, and regulations established by the superintendent of public instruction under authority of Section 3319.23, Revised Code.

Columbus, Ohio, September 11, 1954

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“A State Examiner in making an audit and examination of school districts in the County of ‘G’ finds that the G County Board of Health is being paid at the rate of 10¢ per pupil for

making physical examinations and diagnoses and certain remedial or corrective treatment to the school children of the several school districts in this county.

“The question has been raised whether or not such expenditures are lawful and proper. R. C. 3313.68 provides for the appointment of physicians and dentists by a school board and authorizes the delegation of the power expressed therein to the Board of Health within which the school district is situated, provided such board is willing to assume the same.

“1939 O. A. G. No. 729 (page 921) provides that the boards of education in their discretion may pay to the employees of the Board of Health compensation *in addition* to that provided by the Board of Health but *may not* contribute to the Board of Health a part of the salary of said employees as fixed by the Board of Health.

“An opinion is requested whether or not a per capita charge by the Health District may be made against the School District for such examinations.

“A further opinion is requested as to whether or not a board of education may lawfully contract with a properly qualified psychologist on a per capita basis to test incoming grade school children. There is a question whether or not such service is to be construed as medical service or whether it is to be classified as other contractual services, which a school board has the implied power to employ. If it is considered to be in the nature of medical service, then R. C. 3313.68 would presumably have to be followed.”

The school code now permits school districts and health districts to contract *inter se* for the services of a school physician, and I assume that the per capita charges collected by the county board of health for such services to the school districts was done pursuant to such contract.

The statutory provisions relating to the employing of school physicians, either by original appointment or by contract between the respective districts, will be found in Sections 3313.68 and 3313.72, Revised Code. They read as follows:

Section 3313.68:

“The board of education of each city, exempted village, or local school district may appoint one or more school physicians and one or more school dentists. Two or more school districts may unite and employ one such physician and at least one such dentist whose duties shall be such as are prescribed by law. Said

school physician shall hold a license to practice medicine in Ohio, and each school dentist shall be licensed to practice in this state. School physicians and dentists may be discharged at any time by the board of education. School physicians and dentists shall serve one year and until their successors are appointed and shall receive such compensation as the board of education determines. The board of education may also employ trained nurses to aid in such inspection in such ways as are prescribed by it. \* \* \*

“The board of education may delegate the duties and powers, provided for in this section, to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall co-operate with boards of health in the prevention and control of epidemics.”

Section 3313.72, 4838-9, General Code, enacted in 1945 and amended in 1953, reads as follows:

“The board of education of a city, exempted village, or local school district may enter into a contract with a health district for the purpose of providing the services of a school physician, dentist, or nurse.”

Former Section 7693, General Code, repealed in 1943, provided that:

“The board of education of any school district may provide and pay compensation to the employees of the board of health in addition to that provided by the city, township or other municipality.”

Construing this section in Opinion No. 1401, Opinions of the Attorney General for 1933, page 1272, the Attorney General said:

“It will be observed from a reading of the foregoing statute, that the authority extended to a board of education to pay compensation to the employes of the board of health in addition to that provided by the subdivision of which they are employes, does not authorize the payment by the board of education to the subdivision but to the employe, and whatever is paid by the board of education is in addition to the salary fixed for the employe by the subdivision employing him.”

This ruling was followed in Opinion No. 729, Opinions of the Attorney General for 1939, page 921, wherein it was held that a board of education by delegation of power to a board of health as provided by Section 7692, General Code, 3313.68, Revised Code, may in its discretion, pay compensation to the employes of the board of health in addition to

that provided for them by the board of health, but *may not* lawfully contribute to the board of health a part of the salary of said employes as fixed by said board of health.

Similarly, in Opinion No. 1401, Opinions of the Attorney General for 1933, page 1272, a board of education was held not authorized to contribute to a city part of the salary of a public health nurse employed by the city health district, but may pay the nurse compensation in addition to that paid by the health district in the event the board of education delegates the duties and powers of a school physician and nurse to the board of health of the city health district. And in Opinion No. 5411, Opinions of the Attorney General for 1942, page 630, he denied a board of education the right to require school teachers or janitors to bear any of the expense of health examinations provided by Section 7692-1, General Code, 3313.71, Revised Code.

It should be noted, however, that these rulings hinged on the provisions of former Section 7693, General Code, which was repealed in 1943 and replaced by Section 4838-9, General Code, now Section 3313.72 of the Revised Code hereinbefore referred to.

It is thus apparent that Section 3313.72 expressly confers upon a board of education the power to enter into a contract with a health district for the purpose of "providing the services of a school physician." This change in the statute was apparently intended to overcome the rulings of the Attorney General on statutory provisions since repealed, and to enable such subdivisions to enter into mutual assistance pacts as will most practicably and economically facilitate "tests to determine diagnoses of all children" and to enable boards of education and boards of health to "co-operate in the prevention and control of epidemics" as contemplated by Sections 3313.68 and 3313.71, Revised Code.

As to your specific question in this connection, i.e., a provision in such a contract for compensating the health district on a per capita basis, I perceive no language in Section 3313.72, *supra*, nor in any other pertinent statute, which would indicate any intent to limit the discretion of the parties in choosing a basis for such compensation. Such being the case I conclude that the selection of such basis rests entirely in the discretion of the parties, and since the basis here selected appears not to be unreasonable, arbitrary or capricious, I must conclude that there has not been any abuse of discretion in this connection.

In the matter of employing a psychologist on a per capita basis for testing pupils we are confronted with an entirely different problem. Psychological testing, either for achievement or for aptitude, while closely related to the science of medicine, is not commonly considered to lie in that field. The purpose of such testing is not to inquire into the physical or mental health of the pupils concerned but rather is to enable the school authorities to assign particular pupils to particular graded courses of study and sometimes to special classes, or even special schools. Such testing is, therefore, more properly regarded as falling within the science of education rather than within the field of medicine. This being so, it follows that the statutes noted above relating to the provision of medical services have no application whatever to the employment of psychologists.

In Section 3319.22, Revised Code, we find the following provision:

"Teachers' certificates of statewide validity shall be issued pursuant to Sections 3319.22 to 3319.31, inclusive, of the Revised Code, or in accordance with standards, rules, and regulations authorized by law. The grades of certificates shall be designated as "temporary certificate(s)," "provisional certificates," "professional certificates," and "permanent certificates." Each of such grades of certificates may be issued in each or any of the following types: \* \* \*

"(K) Pupil-personnel workers, valid for the conduct of all home-school-community relations incident to the adjustment of pupils to the facilities available for their education."

In Section 3319.23, Revised Code, we find the following:

"The superintendent of public instruction shall establish standards and courses of study for the preparation of teachers, shall provide for the inspection of institutions desiring to prepare teachers, shall approve such institutions as maintain satisfactory training procedures, and shall properly certificate the graduates of such approved courses and institutions.

"The standards and courses of study for the preparation of teachers together with the standards, rules, and regulations set for each grade and type of certificate and for the renewal and conversion thereof shall be published by the superintendent in accordance with Sections 119.01 to 119.13, inclusive, of the Revised Code, and no change therein shall be effective for at least one year from the first day of January next succeeding the publication of the said change."

I find that the superintendent of public instruction, acting under this authority and mandate, has published under date of September 1, 1952

certain regulations prescribing "standards and courses of study for the preparation of teachers" and "standards, rules, and regulations for each type of certificate" issued to teachers and included therein are standards, etc., for certificates in the case of "guidance counsellors" and "school psychologists." Such regulation describes the "scope of service" of the school psychologist as follows, page 37, pamphlet of September 1, 1952:

"The following duties are construed as coming within the scope of service of the School Psychologist:

- A. Diagnosis of abilities, aptitudes, interests, and personalities;
- B. Guidance in pupil self-correction;
- C. Counseling with teachers, personnel workers, parents, and administrators on problems of promotion, transfer, remedial instruction, personal adjustment, behavior, etc.;
- D. Teaching of the several pertinent aspects of psychology."

In the matter of mentally retarded pupils we find the following provisions in Section 3321.05, Revised Code:

"A child of compulsory school age may be determined to be incapable of profiting substantially by further instruction.

"The department of education may prescribe standards and examinations or tests by which such capacity may be determined, and prescribe and approve the *agencies or individuals* by which they shall be applied and conducted; but the capacity of a child to benefit substantially by further instruction shall be determined with reference to that available to the particular child in the public schools of the district in which he resides, and no child shall be determined to be incapable of profiting substantially by further instruction if the department finds that it is feasible to provide for him in such district, or elsewhere in the public school system, special classes or schools, departments of special instruction or individual instruction through or by which he might profit substantially, according to his mental capacity as so determined. \* \* \*"

This provision, as are those set out in the statutes and regulations above noted, is clearly indicative of a legislative notion that psychological testing, counseling, and vocational guidance are properly placed within the broad field of education and that much if not all of such work will normally be done by persons who have qualified for teachers' certificates of a special sort and who are employed as teachers. In this connection we may observe the following definition of "teacher" in Section 3319.09, Revised Code:

“\* \* \* (A) Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.”

It appears to me clear that the position of school psychologist is an “other educational position” for which “certification” is required.

I do not find, as to the testing of mentally retarded pupils under the provisions of Section 3321.05, *supra*, that the superintendent has had occasion to “prescribe and approve *the agencies or individuals*” to make examinations and tests except by appropriate provisions as to qualification of *teachers* for such purpose. In this situation, and in the absence of further action by the superintendent, it would not appear proper to employ as a school psychologist an individual who is not qualified for a special certificate as such under the superintendent’s regulations and who is employed in the capacity of teacher.

It is clearly provided in the statute, of course, that teachers are to be employed under contract on an annual salary basis. See Section 3319.08, Revised Code. It thus becomes necessary to conclude, in my opinion, that the employment of a school psychologist on a per capita basis is not authorized.

Accordingly, in specific answer to your inquiries, it is my opinion that:

1. Local boards of education may, under the provisions of Section 3313.72, Revised Code, contract with a county board of health for the services of school physicians to conduct physical examinations of school children in the district, and having the power to enter into such contract may fix the compensation for such service on the basis of a per capita charge for each school child examined.

2. Local boards of education may employ school psychologists for the testing of abilities and aptitudes of pupils, for vocational guidance and counseling, and for teaching appropriate aspects of educational psychology in the schools under the control of such board but such individuals thus employed must be qualified therefor by certification as provided in Section 3319.22, Revised Code, and in the standards, rules, and regulations established by the superintendent of public instruction under authority of Section 3319.23, Revised Code.

Respectfully,  
C. WILLIAM O’NEILL  
Attorney General