

2547.

APPROVAL, BONDS OF DELAWARE COUNTY, OHIO, IN AMOUNT OF \$8,500 FOR ROAD IMPROVEMENTS.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, November 3, 1921.

2548.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, OHIO, IN AMOUNT OF \$15,000 FOR WATER WORKS.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, November 3, 1921.

2549.

TUBERCULOSIS HOSPITALS—CHILDREN OF COMPULSORY SCHOOL AGE CONFINED IN SUCH HOSPITALS SHOULD BE PROVIDED EDUCATIONAL FACILITIES BY AUTHORITIES OF SUCH INSTITUTIONS.

Educational facilities for children of compulsory school age, confined in tuberculosis hospitals, should be provided by the authorities in charge of such institutions.

COLUMBUS, OHIO, November 5, 1921.

HON. DONALD KIRKPATRICK, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“Is it a duty existing upon the part of a board of education of a district wherein there is situated a district tuberculosis hospital to provide a school and teaching force for the education of minors confined in the hospital, or are the hospital authorities duty bound, under the provisions of the Ohio compulsory school code to provide educational facilities for minors confined in the hospital? Such minors are those afflicted with the disease in varying forms, possessing bright minds and they have possible chance of overcoming the trouble.

“I would be pleased to hear from your office as to the above, as there are some twenty children now in the district tuberculosis hospital outside of Springfield who in a way will be affected by the same. Are the hospital authorities “any other person” as contemplated by that phrase in the compulsory education sections of the code of Ohio?”

A careful examination of Chapter 4 of Division 4 of Title 10 of the General Code, treating of "hospitals," including the sections upon tuberculosis hospitals, shows that no reference is made at all therein as to the schooling of the children of compulsory school age who are inmates of such tuberculosis hospitals, whether county tuberculosis hospitals or district tuberculosis hospitals. The statutes work out with considerable care the manner of providing for these institutions and their later maintenance and operation, but nowhere in sections 3127 G. C. to 3156 G. C. (the chapter on hospitals) has the general assembly set forth by direct statement what provision shall obtain as to the education of the children such as you have described in your statement of facts. It is clear that the general assembly had in mind in the past that children who are afflicted with tuberculosis should be educated, for section 7644-1 G. C. reads as follows:

"The board of education in any city school district may establish such special elementary schools as it deems necessary for youth of school age who are afflicted with tuberculosis, and may cause all youth, within such district, so afflicted, to be excluded from the regular elementary schools, and may provide for and pay from the school funds, the expense of transportation of such youth to and from such special schools."

It will be noted, however, that this law (101 O. L., 319) is limited in its operation to city school districts, and of course does not refer directly to other school districts or school activities in the institutions, but it must naturally follow that if tubercular children in city schools were worthy of having special classes provided for them, the same rights ought to obtain as regards those children who have been taken from city, village and rural schools and placed in a district tuberculosis hospital for "care and treatment" (3146 G. C.). The purpose of the district hospital for tuberculosis is set forth in section 3146 G. C., reading as follows:

"The district hospital for tuberculosis, as hereinafter provided for, shall be devoted to the care and treatment of those admitted to the county infirmary within the district afflicted with tuberculosis, and of other residents of the district suffering from the disease and in need of proper care and treatment."

As to the general supervision of these hospitals and the prescribing of rules and regulations for the government of the same, section 3147 G. C. reads:

"The state department of health shall have general supervision of all hospitals for tuberculosis and shall prescribe and may enforce such rules and regulations for their government as it deems necessary.
* * *"

Under this latter section it appears that the state department of health has general charge of these tuberculosis hospitals and this department, seeking information as to how these schools in practice were being conducted in the state, in the absence of specific mention in the law providing for the same, requested the department of health to furnish a statement of facts as to the manner in which these children in tuberculosis hospitals were being cared for from an educational standpoint, and under date of October 28, 1921, Dr,

R. G. Leland, chief of the division of hygiene, of the department of health, advised as follows:

"Unfortunately our records are not sufficiently complete to give you absolutely accurate data in regard to school facilities for children in tuberculosis hospitals in Ohio and the nearby surrounding states.

The tuberculosis hospitals in Cincinnati, Cleveland, Lucas county, Franklin county and Springfield Lake (near Akron) are all operating schools for their children. The school in the Franklin County Sanatorium, with which I am most familiar, is operated entirely by the superintendent of the sanatorium with very splendid co-operation of the county superintendent of schools. All equipment, text books and supplies are furnished by the sanatorium and the teacher is paid from the sanatorium funds. The curriculum is outlined by the county superintendent of schools and the same supervision is given to this school by the county superintendent as is given schools operated entirely by the board of education. The superintendent of Franklin County Sanatorium feels that in this particular institution, because of the difference in school hours in the institution from the hours of the ordinary schools, it is easier to control the teacher by having her on the sanatorium payroll.

I am under the impression that the board of education furnishes more for the Cincinnati, Cleveland and Lucas county schools than is furnished in Franklin county; however, I am unable to enumerate these articles. I am simply able to state that there is a school at Springfield Lake Sanatorium (near Akron).

From the information available in our records I should have to state that nothing definite is known concerning school facilities in the State Sanatorium; Stillwater Sanatorium, Dayton; Mt. Logan, Chillicothe, and Lima District Sanatorium. There is apparently a desire on the part of the management of the Springfield Lake Sanatorium (near Akron) to establish a school in that institution, and it is our understanding that efforts are now being made toward that end.

It is my understanding from conversations I have had with representatives from such institutions as the Detroit Tuberculosis Sanatorium and the Municipal Sanatorium of Chicago, that these institutions have definite curricula of study provided largely by the boards of education.

It is the feeling of this department that in all institutions in which children are accepted for long continuous periods, whether it be for the improvement of their health, or for other reasons, provisions should be made for educational advantages. From our standpoint it is immaterial whether these schools are established and maintained by the institution or by the board of education. Local conditions might offer decidedly different arguments in one or the other locality."

No one can question the propriety of furnishing to these children temporarily detained in tuberculosis hospitals schooling of some kind, if their physical condition permits the same. The whole purpose of the establishment of tuberculosis hospitals is the saving of human life, and if children are placed in these institutions, it is because an attempt is being made to save them for future citizenship. Primarily their health comes first and as to whether each one of them should receive educational training at that time in a more or less degree is a question of administration within the tuberculosis hospital. There

are, however, many indications that would point to the fact that any persons detained in a tuberculosis hospital might really be improving themselves physically if their mind was properly engaged and some of their surplus time taken up in useful endeavor. It would appear that this whole phase of the matter would come under the "care and treatment" mentioned in section 3146 G. C., supra.

While there is no reference made in the statutes governing tuberculosis hospitals bearing upon the education of children who are detained therein, "care and treatment" is sufficiently broad to cover instruction for those children physically able to participate.

As to the compulsory education law, it is not intended that a child who is seriously ill should be pursued or molested with school activities, for the health of the child is first to be taken into consideration. A serious illness itself is sufficient excuse for non-attendance at school. In your statement of facts you describe the children in a tuberculosis hospital as being "afflicted with the disease in varying forms, possessing bright minds and with possible chances of overcoming the trouble." These children are not seriously ill to a degree that their minds might not be occupied with some form of study in more or less degree. They have been taken from the public, private and parochial schools in their respective communities, with two things in view, first the regaining of their own health and saving them for society, and second the protection to the other children who are healthy and who should not be exposed to tuberculosis in any form. As far as the educational policy of the state is concerned, the child who is in a tuberculosis hospital has exactly the same educational rights as a child who is outside. The law on tuberculosis hospitals gives those in charge of these institutions full latitude as to *what this "care and treatment" should be*. It might include some mental work, some educational activity for the children, and it might not, for all the cases are not the same. The compulsory education law of the state mandatorily says that children must be educated until they reach the age of eighteen years, and it would seem that *children, wherever located, should be receiving instruction of some kind to carry out the policy of the law, if their bodily condition permitted such educational instruction*. As pointed out in section 7644-1 G. C., heretofore quoted, the general assembly intended that children afflicted with tuberculosis should be instructed and given special attention, but the section which shows this intent, passed a number of years ago, is limited in its operation to the city school districts, and it is believed that the general assembly in enacting the laws providing for the management, maintenance and operation of tuberculosis hospitals, intended that *the education and instruction of children should be included in the "care and treatment" which is provided in the institution itself*. To cause the local school district, wherein the tuberculosis hospital is located, to provide a school and teaching force for the education of these minors from one or more counties, would be a hardship upon that particular district and is not contemplated by the law, since no provision has been made for the collection from one school district of the per capita cost for this instruction rendered, as is the case with children's homes. This leaves then the instruction of the children in question to the authorities in charge of the tuberculosis hospitals.

In reply to your inquiry, then, you are advised that it is the opinion of this department that educational facilities for children of compulsory school age, confined in tuberculosis hospitals, should be provided by the authorities in charge of such institutions.

Respectfully,
JOHN G. PRICE,
Attorney-General.