

2324.

APPROVAL, BONDS OF PLAIN TOWNSHIP RURAL SCHOOL DISTRICT,
STARK COUNTY, \$35,000.00.

COLUMBUS, OHIO, March 30, 1925.

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

2325.

APPROVAL, BONDS OF PLAIN TOWNSHIP RURAL SCHOOL DISTRICT,
FRANKLIN COUNTY, \$25,000.00.

COLUMBUS, OHIO, March 30, 1925.

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

2326.

APPROVAL, BONDS OF NIMISHILLEN TOWNSHIP RURAL SCHOOL
DISTRICT, STARK COUNTY, \$25,000.00.

COLUMBUS, OHIO, March 30, 1925.

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

2327.

BOARD OF EDUCATION—AUTHORITY TO REQUIRE PUPILS ATTEND-
ING PUBLIC SCHOOLS TO BE VACCINATED, DISCUSSED—SECTION
7686 G. C. CONSTRUED.

SYLLABUS:

1. *A board of education under the provisions of section 7686 G. C., may in the exercise of a sound discretion, make and enforce rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among the pupils attending, or eligible to attend, the public schools, as in its opinion the safety and interests of the public require, and may enforce a rule excluding from the schools all children who have not been vaccinated; but cannot require a pupil against his will or the will of its parents to submit to actual vaccination.*
2. *While the parents of children thus excluded are not liable to prosecution*

under the compulsory education act, such exclusion can not be pleaded as an excuse for failure to provide their children with the education required by the statute. Children so deprived of school advantages may be declared "dependent", and any person causing or contributing to such dependency is liable to prosecution therefor.

COLUMBUS, OHIO, March 31, 1925.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of yours of recent date in which you request the opinion of this department, as follows:

"The Board of Education of Roseville, Ohio, have a compulsory order to compel students to be vaccinated, all but a few families have complied with that order and they are keeping their children out of school rather than have them vaccinated.

"The county school authorities and truant officer have ordered these children back in school. They went to school and were sent home because they were not vaccinated.

"Can the local board compel vaccination?"

"Could the county school authorities file an affidavit against the parents of these children for keeping them out of school under these circumstances?"

The Supreme Court of Ohio in the case of *State ex rel. vs. Board of Education of the Village of Barberton*, 76 O. S. 297 has fully established the validity of section 7686 G. C., the syllabus of the case being as follows:

"1. Section 3986, Revised Statutes, authorizing and empowering the boards of education of each school district, 'to make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among the pupils attending or eligible to attend the schools of the district, as in its opinion the safety and interests of the public require,' is a valid enactment, not repugnant to the constitution of the state of Ohio, nor violative of the Fourteenth Amendment to the Constitution of the United States. And under the power thereby conferred, boards of education, in the exercise of a sound discretion, may exclude from the public schools all children who have not been vaccinated.

"2. The enactment of said statute by the general assembly was but a reasonable exercise of the police power of the state, and under its provisions, the validity of the action taken by a board of education in excluding from the public schools all children who have not been vaccinated, or who do not furnish a physician's certificate excusing them from vaccination, does not depend upon the actual existence of smallpox in the school district or community, nor upon the apprehended epidemic of that disease.

"3. Whether a rule or regulation adopted by the board of education under favor of the provisions of above section 3986, is a reasonable rule or regulation, is to be judged of in the first instance by the board of education, and the courts will not interfere, unless it be clearly shown that there has been an abuse of official discretion."

In the case of *State vs. Turney*, 13 C. C. (N. S.) 33, in which the same section is further considered, the court held:

"A parent who sends his child to a public school and is willing to con-

tinue to do so, but the child is excluded for failure to comply with a rule of the board of education requiring vaccination, is not liable to conviction under the compulsory education act."

In *re Martha G. Hargy and Harry E. Hargy*, 23 O. N. P. (N. S.) 129, a prosecution was attempted under the provisions of section 1645 G. C. which defines the term "dependent child", and among other things, provides that the term "dependent child" shall mean any child who is prevented from receiving proper education or proper physical, mental or surgical examination and treatment because of the conduct, inability or neglect of its parents, step-parent, guardian or other person in whose care it may be.

Under this provision an attempt was made to declare the Hargy children dependents and to prosecute the parents for contributing to such dependency. In the decision by Hoffman, J., the cases hereinabove referred to were reviewed and concurred in, and the following ruling made:

"1. The court construes Section 1645, General Code, as requiring parents to provide their children with a proper education, which means an education substantially equivalent to that furnished by the public schools.

"2. Boards of education may exclude children from the public schools for non compliance with existing rules and regulations relating to vaccination.

"3. While the parents of children thus excluded are not liable to prosecution under the compulsory education act, such exclusion can not be pleaded as an excuse for failure to provide their children with the education required by the statute. Children so deprived of school advantages may be declared 'dependent', and any person causing or contributing to such dependency is liable to prosecution therefor."

In view of the above decisions of the courts of Ohio, I am of the opinion that the board of education of the Roseville Village School District, under the provisions of section 7686 G. C., may in the exercise of a sound discretion, make and enforce rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among, the pupils attending, or eligible to attend, the public schools, as in its opinion the safety and interests of the public require, and may enforce a rule excluding from the schools all children who have not been vaccinated; but can not require a pupil against its will or the will of its parents to submit to actual vaccination.

The answer to your second question is found in the third paragraph of the syllabus in the Hargy case, as follows:

"While the parents of children thus excluded are not liable to prosecution under the compulsory education act, such exclusion can not be pleaded as an excuse for failure to provide their children with the education required by the statute. Children so deprived of school advantages may be declared 'dependent', and any person causing or contributing to such dependency is liable to prosecution therefor."

Respectfully,
C. C. CRABBE,
Attorney General.