

1099

SCHOOLS, IMMUNIZATION OF PUPILS, EXPENSE OF,
BORNE BY WHOM—§3313.671, R.C.

SYLLABUS:

Pursuant to Section 3313.671, Revised Code, the expense of immunization of pupils as provided in said section is to be borne by the particular board of health, municipal corporation or township involved, on application of the board of education of the district or proper authority of a school affected by said section.

Columbus, Ohio, January 20, 1960

Hon. Barnard T. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“We would appreciate your interpretation of the following paragraph from the Compulsory Immunization Law :

“ ‘Boards of health, legislative authorities of municipal corporation, and boards of township trustees on application of the board of education of the district or proper authority of any school affected by this section, at the public expense, without delay, shall provide the means of immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus to such pupils as are not provided therewith by their parents or guardians.’

“Our interest is in finding out who is to provide the funds for the serum to be used in administering the Polio immunizations. The expression ‘at the public expense’ is not clear to us.”
Division (B) of Section 3313.671, Revised Code, reads as follows :

“Boards of health, legislative authorities of municipal corporations, and boards of township trustees on application of the board of education of the district or proper authority of any school affected by this section, at the public expense, without delay, shall provide the means of immunization against poliomyelitis, smallpox, diphtheria, pertussis, and tetanus to such pupils as are not provided therewith by their parents or guardians.”

The phrase “at the public expense” as used in the above quoted section refers to “Boards of health, legislative authorities of municipal corporations and boards of township trustees.” The statute makes it clear that the board of education shall apply to one of the enumerated units of government and the unit “at public expense” shall provide the means for such service. One of my predecessors in Opinion No. 3199, Opinions of the Attorney General for 1931, at page 622, had occasion to consider Section 7686 of the General Code, which provided a system whereby a board of education might apply to the board of township trustees for means of supplying vaccination for smallpox where the parent or guardian had not provided such vaccination. The question answered in this opinion was whether the board of education or the trustees should pay the bill under said Section 7686, General Code, providing :

“The trustees of townships, on application of the board of education of the district, at the public expense, without delay, shall provide the means of vaccination to such pupils as are not provided therewith by their parents or guardians.”

My predecessor, in this case, ruled that the township trustees should be liable for the expense of such vaccinations upon proper application of the school board. The reasoning of the opinion was based upon the wording of

the statute and the duty imposed upon the trustees to provide medical care to indigents upon proper application.

The same reasoning is applicable in the instant situation. The statute imposes the duty on the city and general health districts to diagnose and control communicable diseases, (Section 3709.22, Revised Code); it provides that the board of health shall provide free distribution of antitoxins for treatment of diphtheria, (Section 3709.25, Revised Code). The law further provides that boards of health shall supply gratuitous vaccination, (Section 3707.27, Revised Code). Further, township trustees are given the power to regulate and control smallpox and other loathsome diseases, (Section 505.08, Revised Code); and municipal corporations are empowered to secure their inhabitants from contagious, malignant and infectious diseases, (Section 715.37, Revised Code).

The only powers given to a board of education in regard to the control of communicable diseases is the power to deny admittance for failure to show that the student has been immunized against the enumerated diseases and to apply to the appropriate governmental unit for assistance in supplying the necessary service under Section 3313.671, Revised Code.

A review of the above statutes makes it quite clear that the phrase "at public expense" refers to the governmental unit to which the school applies for assistance since the legislature has seen fit to grant the right of control over communicable diseases to the various governmental units mentioned in Section 3313.671, Revised Code, and then, by the same section, has imposed the duty on these governmental units to supply the required immunization.

Accordingly, it is my opinion and you are advised that pursuant to Section 3313.671, Revised Code, the expense of immunization of pupils as provided in said section is to be borne by the particular board of health, municipal corporation or township involved, on application of the board of education of the district or proper authority of a school affected by said section.

Respectfully,

MARK McELROY
Attorney General