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PROVIDING TRANSPORTATION FOR TRAINEES TO A WORKSHOP FOR THE MENTALLY RETARDED—THE COMMISSIONER MAY ESTABLISH A NEW WORKSHOP TO THE EXTENT FUNDS ARE AVAILABLE—BOARD OF EDUCATION MUST PAY IN SPITE OF THE FACT THAT THERE IS A LACK OF STATE FUNDS—OPINION 3212, OAG, 1962, §§5127.01, 5127.02, 5127.03, 5127.04, R.C.

SYLLABUS:

1. In the operation of training centers or workshops for mentally deficient persons established pursuant to Sections 5127.01 or 5127.02, Revised Code, a county child welfare board or a county department of welfare has authority under Section 5153.161, Revised Code, to provide transportation at public expense for persons enrolled as trainees in such training centers or workshops from such persons' homes to the training center or workshop and return. Whether such transportation is necessary is a question of fact to be determined upon considering all of the circumstances in a given case. (Opinion No. 3212, issued on August 18, 1962, followed.)

2. The commissioner of mental hygiene may approve the establishment of a new training center or workshop under Section 5127.02, Revised Code, to the extent that funds are available from any source to operate said training center or workshop, notwithstanding that no state funds are available under Section 5127.03, Revised Code, for the operation of such training center or workshop.

3. The fact that no state funds are available under Section 5127.03, Revised Code, for the operation of training centers or workshops for mentally deficient persons established pursuant to Sections 5127.01 or 5127.02, Revised Code, does not abrogate the duty of boards of education under Section 5127.04, Revised Code, to pay in accordance with the provisions of that section, the amount required therein, as computed in the manner prescribed by Section 3317.08, Revised Code.

Columbus, Ohio, October 9, 1962

Hon. Robert K. Dean, M. D., Acting Director
Department of Mental Hygiene & Correction
State Office Building, Columbus, Ohio

Dear Sir:

I have a request for my opinion which was submitted by the former director of the department of mental hygiene and correction, Doctor Robert A. Haines, and which reads as follows:

"We submit for your consideration the following questions:

"Section 5127.01, Revised Code, empowers the Commissioner of Mental Hygiene, with the approval of the Director of the Department of Mental Hygiene and Correction, to establish in any county, or district, a training center or workshop for the special training of mentally deficient persons. Section 5153.161 states that the County Child Welfare Board shall administer and supervise the provisions of Sections Nos. 5127.01 to 5127.05, inclusive, of the Revised Code, and exercise such powers and duties as prescribed by the Commissioner.

"In the operation of such training centers or workshops, it is necessary to furnish transportation for trainees to and from their homes. Does the County Child Welfare Board or the County Department of Welfare have the authority and responsibility to provide such transportation at public expense for persons under twenty-one years of age who are enrolled as trainees in this program?

"In the event the Commissioner of Mental Hygiene receives a petition for the establishment of a new training center or workshop at a time when he has no funds available for the Division's contribution to the cost of such specialized training, may the Commissioner approve such new training center or workshop if operational funds are available from other sources?

"Under the circumstances outlined above, if the Commissioner of Mental Hygiene can approve the establishment of a new training center or workshop, even though he is unable to subsidize same, are the local Boards of Education required to pay to the County Child Welfare Board, or the County Department of Welfare, an amount, for each person under twenty-one years of age who has received such training, equal to the computed amount of tuition that would be due such school district if a non-resident pupil attended the schools of such district for the same period of time that the mentally deficient persons from such school district attended the training center, as provided in Sec. 5127.04, Revised Code?"

In regard to your first question, I direct your attention to Opinion No. 3212, Opinions of the Attorney General for 1962, issued August 18, 1962, the syllabus of which reads as follows:

"A county child welfare board does not have a mandatory duty under Section 5127.01, Revised Code, to provide transportation for mentally deficient persons, but under Section 5153.161, Revised Code, the board may provide such transportation as it deems necessary."

According to your letter of request, "it is necessary to furnish transportation for trainees to and from their homes." Whether it is necessary to furnish such transportation is, of course, a question of fact to be determined upon considering all of the circumstances, such as the mental deficiency of the trainees, the ages of the trainees, the number of training centers, the location of such centers, the availability of other transportation, etc. It could conceivably be an abuse of discretion not to furnish transportation if the circumstances warrant it. I express no opinion, however, on the factual question, leaving it to the sound discretion of those concerned.

Having thus answered your first question, I turn now to the next question.

Section 5127.01, Revised Code, provides, in part, as follows:

"The commissioner of mental hygiene, with the approval of the director of mental hygiene and correction, shall establish in any county or district a training center or workshop for the special training of mentally deficient persons, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public schools under sections 3317.01 to 3317.15, inclusive, 3321.01 and 3323.01 of the Revised Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. * * *"

Section 5127.02, Revised Code, provides as follows:

"Upon petition to the county child welfare board in any county by the parents or guardians of eight or more mentally deficient persons of similar handicap, who are ineligible for enrollment in public school because of age or mental deficiency, the board shall forward such petition to the commissioner of mental hygiene. The commissioner shall take such action and make such order as he deems necessary for the special training of the mentally deficient, to the extent that funds are available."

Section 5127.03, Revised Code, provides as follows:

"On the thirtieth day of June of each year, the county child welfare board shall certify to the commissioner of mental hygiene:

"(A) The names and residences of the persons enrolled in the training center and workshop pursuant to section 5127.01 of the Revised Code;

"(B) The period of time each deficient person was enrolled;

"(C) An itemized report of expenditures which have been approved by the commissioner;

“(D) The net per capita cost for operating such training center and workshop.

“The division of mental hygiene, upon receipt and approval of the report provided in this section, shall present a voucher to the auditor of state in favor of the agency providing the specialized training in an amount not to exceed three hundred dollars per year for each mentally deficient person under twenty-one years of age who is enrolled in such training center and workshop. Upon presentation of such voucher, the auditor of state, if satisfied as to the correctness of the voucher, shall draw a warrant on the treasurer of state in the amount of the voucher.”

In the event the commissioner of mental hygiene receives a petition for the establishment of a new training center pursuant to Section 5127.02, *supra*, then he should take such action as he deems necessary *to the extent that funds are available*. Before taking any action, however, the commissioner should determine what funds are available. There may be funds available from the county pursuant to Section 5153.161 (D), Revised Code, or from boards of education pursuant to Section 5127.04, Revised Code, or from private individuals pursuant to Section 9.20, Revised Code, or from the state pursuant to Section 5127.03, *supra*. As you can see, the state is not the only source from which funds may be available. Furthermore, such funds as may be available from the state under Section 5127.03, *supra*, are “*not to exceed three hundred dollars* per year for each mentally deficient person under twenty-one years of age who is enrolled in such training center.” (Emphasis added) The words “not to exceed three hundred dollars” imply that the amount of state funds may be less than the three hundred or none at all. Thus, even if funds were available from the state under Section 5127.03, *supra*, the extent of such funds alone would probably never be sufficient for the commissioner to act favorably upon a petition for the establishment of a training center. To interpret Section 5127.02, *supra*, to mean that the commissioner shall take such action as he deems necessary only to the extent that state funds are available under Section 5127.03, *supra*, would practically eliminate any possibility of training centers ever being established under Section 5127.01 or 5127.02, *supra*. Such an interpretation would also ignore the fact that other sources of funds may be available in sufficient extent to permit the commissioner to act favorably upon a petition for the establishment of a new training center even though no state funds are available at the time. In the absence of an express provision requiring that state funds must be

available under Section 5127.03, *supra*, before the commissioner of mental hygiene may act on a petition under Section 5127.02, *supra*, it is my opinion that the commissioner may take such action as he deems necessary, including approval of the establishment of a new training center, to the extent that funds *from any source* are available.

In regard to your last question, Section 5127.04, Revised Code, provides as follows:

“The county child welfare board which during the school year has administered and supervised pursuant to the provisions of section 5127.01 of the Revised Code, a training center for the mentally deficient shall prepare a statement for each person under twenty-one years of age who has received such training, such statement to show the name of the person, the name of the school district in which the person is a school resident, the name of the board providing the training, and the number of months the person received training. Not later than the thirtieth day of June the board shall forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident and shall forward a certified copy of such statement to the commissioner of mental hygiene. Within thirty days after the receipt of such statement the board of education shall pay to the county child welfare board submitting the statement an amount equal to the computed amount of tuition that would be due the school district receiving the statement if a nonresident pupil attended the schools of such district for the same period of time that the mentally deficient person attended the training center, such amount to be computed in the manner prescribed by section 3317.08 of the Revised Code.”

There is nothing in Section 5127.04, *supra*, which makes the provisions of said section contingent upon the receipt of state funds under Section 5127.03, *supra*. The language of Section 5127.04, *supra*, is clear and unambiguous, i.e., upon compliance with the provisions of said section, “the board of education *shall pay*, etc.”

It is my opinion, therefore, and you are accordingly advised:

1. In the operation of training centers or workshops for mentally deficient persons established pursuant to Sections 5127.01 or 5127.02, Revised Code, a county child welfare board or a county department of welfare has authority under Section 5153.161, Revised Code, to provide transportation at public expense for persons enrolled as trainees in such training centers or workshops from such persons' homes to the training center or workshop and return. Whether such transportation is necessary

is a question of fact to be determined upon considering all of the circumstances in a given case. (Opinion No. 3212, issued on August 18, 1962, followed.)

2. The commissioner of mental hygiene may approve the establishment of a new training center or workshop under Section 5127.02, Revised Code, to the extent that funds are available from any source to operate said training center or workshop, notwithstanding that no state funds are available under Section 5127.03, Revised Code, for the operation of such training center or workshop.

3. The fact that no state funds are available under Section 5127.03, Revised Code, for the operation of training centers or workshops for mentally deficient persons established pursuant to Sections 5127.01 or 5127.02, Revised Code, does not abrogate the duty of boards of education under Section 5127.04, Revised Code, to pay in accordance with the provisions of that section, the amount required therein, as computed in the manner prescribed by Section 3317.08, Revised Code.

Respectfully,

MARK McELROY

Attorney General