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DEAF, STATE SCHOOL FOR THE—WITHOUT AUTHORITY TO SEND DEAF-BLIND CHILD TO INSTITUTION SUCH AS THE PERKINS INSTITUTION FOR THE BLIND AT STATE EXPENSE FOR TUITION—STATE MAY NOT PAY TRAVEL EXPENSES FOR PUPIL AND AN ADULT COMPANION.

SYLLABUS:

The State School for the Deaf is without authority to send a deaf-blind child to such an institution as the Perkins Institution for the Blind at state expense for tuition, together with necessary travel for himself and an adult to accompany him.

Columbus, Ohio, June 23, 1949

Hon. E. R. Abernathy, Superintendent, State School for the Deaf
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“We wish to make provision for the education of a deaf-blind child. Specifically we wish to send him to the Perkins Institution for the Blind, Watertown, Massachusetts. They have an endowed department for the deaf-blind and they will accept him at a tuition rate of \$1000.00 a year. This is much less than we could provide for him here since we would have to provide an individual teacher, at least one person for taking care of him, together with quarters and maintenance, plus special equipment.

“In 1938 we sent two children to Perkins Institution at state expense. This was done under Sections 1873, 1874 and 1875. These sections were repealed in 1943. The new section on admission of pupils which includes not only deaf and partially deaf but also blind-deaf is Section 154-56a.

“Does Section 154-56a provide sufficient authority for this school to send a deaf-blind child to such an institution as the Perkins Institution for the Blind at state expense for tuition together with necessary travel for himself and an adult to accompany him?”

Section 154-3 of the General Code provides for the creation of administrative departments, one of which is the department of education.

The state schools for the deaf and blind are placed under the control and supervision of the department of education pursuant to Section 154-56 of the General Code, which reads:

“The state school for the deaf and the state school for the blind shall be under the control and supervision of the department of education. The superintendent of public instruction, subject to the rules and regulations of the state civil service, shall appoint and fix the compensation of a superintendent for the state school for the deaf and a superintendent for the state school for the blind.”

Superintendents of the state schools for the deaf and for the blind are creatures of this statute and as such have only those powers specifically granted to them by law or necessarily implied therefrom.

Reference to former Section 1873 of the General Code of Ohio was made in your communication and, for comparative purposes only, it is being quoted:

“The state school for the deaf shall also be open to receive such blind and deaf children, residents of the state, as the trustees and superintendent deem to be suitable persons to receive instruction therein. *The superintendent may employ suitable teachers, and nurses, and make necessary arrangements for the instruction and care of blind and deaf children admitted.*”

(Emphasis added.)

It is significant to note that said section invested the superintendent with unlimited discretion in the matter of making necessary arrangements for the instruction and care of blind and deaf children admitted. The foregoing section was repealed on September 16, 1943, and the following analogous sections enacted as of the same date:

Section 154-56a:

“The state school for the deaf shall be open to receive such deaf, partially deaf and blind-deaf persons, residents of this state, who, in the judgment of the superintendent of public instruction and the superintendent of the school for the deaf, due to such handicap, cannot be educated in the public school system of this state and *are suitable persons to receive instructions according to the methods employed in such school.*”

(Emphasis added.)

Section 154-56d:

“The superintendent of the state school for the deaf and the superintendent of the state school for the blind, with the

approval of the superintendent of public instruction *shall for their respective schools and subject to the rules and regulations of the state civil service*, employ suitable teachers, nurses and other help necessary to provide the proper instruction and care for the pupils under their jurisdiction." (Emphasis added.)

Sections 154-56, 154-56a and 154-56d of the General Code are in pari materia and must be construed together. It is to be noted that the law prior to the enactment of said section placed no limitation upon the superintendent, but, as previously stated, gave him unlimited discretion. Under the above emphasized wording of Section 154-56a the legislature has required as a condition of eligibility to such school that handicapped persons who are to be admitted thereto shall be suitable persons to receive instruction according to the methods employed by the school, and by the above emphasized wording of Section 154-56d the legislature has placed specific restrictions upon the superintendent relative to his powers of employment of teachers for such handicapped pupils.

In view of the foregoing, it is my opinion that:

The state school for the deaf is without authority to send a deaf-blind child to such an institution as the Perkins Institution for the Blind at state expense for tuition, together with necessary travel for himself and an adult to accompany him.

Respectfully,

HERBERT S. DUFFY,
Attorney General.