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TUBERCULOSIS HOSPITAL, COUNTY — BOARD OF EDUCATION OF CITY SCHOOL DISTRICT — WITHOUT AUTHORITY TO ESTABLISH AT HOSPITAL A SPECIAL SCHOOL FOR YOUTH OF SCHOOL AGE, INMATES OF SUCH HOSPITAL.

SYLLABUS:

The board of education of a city school district is without authority to establish at a county tuberculosis hospital a special school for youth of school age who are inmates of such tuberculosis hospital.

Columbus, Ohio, July 5, 1944

Hon. Carson Hoy, Acting Prosecuting Attorney  
Cincinnati, Ohio

Dear Sir:

You have requested my opinion as follows:

“I have been requested by the County Superintendent of Schools of Hamilton County to ask your opinion on the following situation:

The Board of Education of the City of Cincinnati has always maintained a public school for tubercular children at the Hamilton County Tuberculosis Hospital. This hospital is owned and operated by the County of Hamilton but is located within the corporate limits of the City of Cincinnati.

In your Opinion No. 6509 (1943) you held that the instruction of children in a County Tuberculosis Hospital must be under the supervision of the County Superintendent of Schools and may not be under the supervision of the City Superintendent of Schools.

However, General Code Section 4836-6 provides that the Board of Education of any city school district may establish such special schools as it deems necessary for youth of school age who are afflicted with tuberculosis.

The Cincinnati Board of Education is willing to continue to operate the school at our Tuberculosis Hospital as a Special School under Section 4836-6 of the General Code and the County Superintendent of Schools is willing that it be so operated.

The specific question that the Superintendent desires answered is whether or not it is within the power of the Board of Education of the City of Cincinnati to designate the Hamilton County Tuberculosis Hospital as a 'Special School for Youth of School Age who are afflicted with tuberculosis', and if this is permissible could the school remain under the supervision of the Superintendent of Schools of the City of Cincinnati rather than that of the County Superintendent."

In my Opinion No. 6509 rendered under date of November 19, 1943, I reached the following conclusion as shown by the syllabus:

"The instruction of children in a county tuberculosis hospital pursuant to Section 4836-7, General Code, must be under the supervision of the county superintendent of schools and may not be under the supervision of the city superintendent of schools."

Section 4836-7, General Code, referred to in such syllabus, provides:

"The board of trustees of each district hospital for tuberculosis, the board of trustees of each county maintaining a county hospital for tuberculosis, and the managing officer or officers of each municipal hospital for tuberculosis, shall provide for the education of children of school age admitted to such hospital. The instruction so provided shall be directed by and be under the supervision of the county or city superintendent of schools in cooperation with the superintendent of the hospital. The expense incurred for salaries of teachers in a municipal tuberculosis hospital may be paid by the city board of education, that in a county tuberculosis hospital may be provided from the funds of the tuberculosis hospital or may be pro-rated, according to the number of children taught, to the county, city and exempted village boards of education of the county. The amount charged against a county school district shall be divided equally between the local school districts within the county school district, and the county auditor shall deduct from the tax funds in the county treasury due to such districts the amounts certified by the county board of education, which amounts shall be transferred to the county board of education fund. The amounts pro-rated to the city and exempted village district shall be deducted by the county auditor from the tax fund in the county treasury due such districts, and the amount so deducted together with the amount pro-rated to the county board of education and transferred to the county board of education fund shall be paid to the county hospital authorities. The expense of such instruction in the case of a district tuberculosis hospital shall be pro-rated at the end of each month to the boards of education of the various districts from which children have been received, according to the number of days the children were instructed, and bills for the respective

amounts shall be paid by such local boards of education promptly upon presentation."

Section 4836-6, General Code, to which you refer in your letter, is as follows:

"The board of education of any city school district may establish such special 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 schools, and may provide for and pay from the school funds, the expense of transportation of such youth to and from such special schools."

You will note that Section 4836-7, General Code, is concerned with the instruction and education of children of school age who are admitted to a district, county or municipal hospital for tuberculosis, whereas Section 4836-6, General Code, authorizes the establishment of special schools by boards of education of city school districts for youth of school age who are afflicted with tuberculosis. The one statute is special in that it provides only for the education of children of school age who are admitted to the hospital, but the other is general in its terms in that it applies to all youth of school age afflicted with tuberculosis.

In *State, ex rel, Steller, v. Zangerle*, Auditor, 100 O. S., 414, it was said by the court:

"A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms."

While section 4836-6, General Code, gives the board of education of a city school district general authority to establish special schools for youth of school age afflicted with tuberculosis, this power must be regarded as limited by the provisions of Section 4836-7, General Code, which give to the boards of trustees of district or county tuberculosis hospitals and the managing officers of municipal tuberculosis hospitals the authority to provide for the education of children of school age admitted thereto. In other words, the power is vested in the board of education to establish schools for tubercular children generally, but the power to provide for the education of tubercular children who are inmates of a hospital is not in such board of education but is in the

authorities in charge of the hospital.

Such a construction of the two sections in question is not only authorized but it appears to me that it is a wise construction to adopt. Under it there can be no unseemly conflict between the board of education of a city school district and the authorities in charge of the tuberculosis hospital over the question of the education of the children of school age who are inmates of such hospital.

Under date of June 14, in response to an inquiry made by me, you stated that it is proposed to use the school maintained at the hospital both for inmates of the hospital and for other children who are not inmates of the hospital who are afflicted with tuberculosis, but not to such an advanced degree as to require hospitalization.

I believe that a proper construction of the pertinent statutes does not authorize the establishment or maintenance of a school for such purposes. For the reasons heretofore stated, I am of the opinion that the instruction of the children who are inmates of a county tuberculosis hospital must be under the supervision of the county superintendent of schools in cooperation with the superintendent of the hospital. The board of education of a city school district may establish a special school for youth of school age who are afflicted with tuberculosis who are not inmates of a hospital. I believe, however, that the instruction of such two classes of tubercular children can not be combined and carried on in a single school. It is permissible for the trustees of the hospital to lease to the board of education of the city school district space in such hospital not needed for hospital purposes, in order that such board of education may establish and conduct therein a school for tubercular children pursuant to Section 4836-6, General Code, but children who are inmates of such hospital should not attend such school.

In summary, the instruction of children who are inmates of a county hospital for tuberculosis must be under the supervision of the county superintendent of schools in cooperation with the superintendent of the hospital, and the board of education of the city school district in which such hospital is located has no authority to establish a school at such hospital for the instruction of children who are inmates thereof. If there is space in such hospital not needed for hospital purposes, the trustees of such hos-

pital may lease it to the board of education of the city school district who may establish and conduct therein a school for tubercular children who are not inmates of such hospital, pursuant to Section 4836-6, General Code.

You are therefore advised, in specific answer to your question, that the board of education of a city school district is without authority to establish at a county tuberculosis hospital a special school for youth of school age who are inmates of such tuberculosis hospital.

Respectfully,

THOMAS J. HERBERT

Attorney General