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1. EDUCATION TO HANDICAPPED PERSONS—SECTION 4850, G. C., AMENDED BY AMENDED SENATE BILL 65, PASSED JUNE 28, 1945, UPON TAKING EFFECT OCTOBER 16, 1945, WILL AUTHORIZE COUNTY BOARD OF EDUCATION TO ESTABLISH AND MAINTAIN CLASSES AND PROVIDE SUCH OTHER SERVICES TO HANDICAPPED PERSONS—SECTION 4850, ET SEQ., G. C.
2. AMENDED SENATE BILL 65—BY ITS TERMS, STATE DEPARTMENT OF EDUCATION MAY MAKE REIMBURSEMENT TO COUNTY BOARD OF EDUCATION FOR EXPENSES, MAINTENANCE OF CLASSES AND SERVICE CONTEMPLATED BY SECTION 4850, ET SEQ., G. C.

## SYLLABUS:

1. Section 4850, General Code, as amended by Amended Senate Bill No. 65, passed June 28, 1945, will upon taking effect on October 16, 1945, authorize the county board of education, with the approval of the superintendent of public instruction, to establish and maintain classes and provide such other services to handicapped persons as are contemplated by said Section 4850 et seq. of the General Code.

2. Under the terms of Amended Senate Bill No. 65, passed by the 96th General Assembly, and to become effective October 16, 1945, the state department of education may make reimbursement to a county board of education for expenses incurred in maintaining the classes and service contemplated by Section 4850 et seq. of the General Code.

Columbus, Ohio, September 5, 1945

Hon. Clyde Hissong, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

I have before me the communication from your department, requesting my opinion, the request reading as follows:

"The 96th General Assembly enacted Senate Bill No. 65 amending sections 4850 and 4850-1 and enacting supplemental sections 4850-11 and 4850-12. During the last few weeks the department of education has frequently been asked just how the law will apply to counties, cities and rural school districts.

One recurring question that has come from rural districts is this: Under Section 4850, does the county board of education have authority to employ for county wide service a speech supervisor or a circuit teacher to give service to handicapped children and can reimbursement be made to a county board of education under Section 4850-12?

The superintendents who have asked this question believe that the phrase, 'to any board of education,' which occurs in Section 4850 is broad enough to include a county board of education. For practical purposes, the county is a more workable unit for the organization of speech correction and lip reading programs for handicapped children since the average rural district does not have a sufficient number of such children to form a 'teacher unit.'

Will you kindly give us your opinion:

- (a) Under Section 4850, does a county board of education have authority to employ supervisors or circuit teachers to work county-wide with handicapped children?

- (b) Can the state department of education make reimbursement to a county board of education under Section 4850-12?

We shall appreciate your opinion on these questions.”

Prior to the enactment by the 95th General Assembly of the new school code (120 v. 475) provisions were found in Sections 7755 et seq. of the General Code, looking to the establishment and maintenance of special classes for deaf or blind persons over the age of three, and crippled persons over the age of five. Section 7755 read as follows:

“The director of education may grant permission to *any local board* of education to establish and maintain a class or classes for the instruction of deaf or blind persons over the age of three, or of crippled persons over the age of five.”

The words “local board” had no technical or defined meaning, but in view of the classification of boards of education then in force, the words evidently referred to any board of education of a city, village or rural district as distinguished from a county board of education. The classification of school districts under the law then in force was found in Section 4679, General Code, which classified them as city school districts, exempted village school districts, village school districts, rural school districts and county school districts. It follows, therefore, that the old law relative to special classes for handicapped persons did not include within its scope county boards of education.

By the provisions of the new school code a new classification was adopted as shown by Section 4830, General Code, which reads as follows:

“The school districts of the state shall be styled, respectively, city school districts, local school districts, exempted village school districts, county school districts, joint high school districts and joint vocational school districts.”

Section 4830-2, General Code, defines “local school district” as follows:

“Each school district, other than a city school district, exempted village school district, county school district, joint high school district or joint vocational school district, in existence on the effective date of this act, shall be known and styled as a local school district \* \* \*.”

It will be observed, therefore, that the term "local school district" now has a definite and technical meaning and I feel safe in assuming that legislative reference to "local board of education" means the board of education of a "local school district." These definitions become of importance in view of the fact that in the enactment of the new school code those sections relating to the special classes for handicapped persons (Sections 4850 to 4850-10) were changed in their scope, and by their terms appear to be made applicable to all school districts and all boards of education. Section 4850, General Code, as enacted in the new school code gave the superintendent of public instruction authority to "grant permission to *any board of education*" to establish and maintain classes for deaf, blind or crippled persons over the age of five. That section as amended by Senate Bill No. 65 passed by the 96th General Assembly and to become effective October 16, 1945, retains the same language so far as it relates to "any board of education" but enlarges the character of the service to be rendered. It reads as follows:

"The superintendent of public instruction may grant permission to *any board of education* to establish and maintain a class or classes for the instruction of deaf persons over the age of three and blind, crippled or slow-learning persons over the age of five; and further, to establish and maintain child study, counseling, adjustment and special instructional services for persons over the age of five whose learning is retarded, interrupted or impaired by physical or mental handicaps." (Emphasis added.)

Section 4850-1 also underwent amendment and enlargement in said Senate Bill No. 65, and now reads as follows:

"The superintendent of public instruction shall select some competent person or persons to inspect at least once a year all classes and to direct and supervise such other services established under section 4850 of the General Code, and to report concerning the instruction in such classes, the conditions under which they are maintained, the conditions under which any persons enrolled in such classes are boarded; and the extent and nature of all other services related to education affecting physically and mentally handicapped persons.

The superintendent of public instruction shall prescribe standard requirements for day schools for the deaf, blind, crippled, and slow learners, and for other instruction and services for all types of handicapped persons included under section 4850 of the General Code, and for which persons any school

district is entitled to state reimbursement, or aid. Such requirements shall include the conditions under which such schools are conducted, or services are rendered, the methods of instruction, child study, counseling, adjustment and supervision, the qualifications of teachers and the personnel in charge of child study and counseling, the conditions and terms under which they are employed, the special equipment and agencies for instruction provided, and the conditions of the rooms and buildings in which the schools are held."

The change made by the General Assembly from "any local board of education" to "any board of education" seems wholly unambiguous and leaves no room for construction in order to ascertain the legislative intent. "Any board of education" could have no other possible meaning than the inclusion of all of the classes of boards of education that are named in the law and are dealt with in the various provisions of the school code. Throughout the new school code there are a great many sections which refer to "any board of education" or "all boards of education" or "each board of education." On the other hand, there are a great many which, by their terms are limited to city, village and rural boards and districts. In a considerable number, reference is made to "all boards of education except county boards" or "all school districts except county districts." There being no ambiguity in the words used in the statutes under consideration, there is no opportunity or occasion to invoke the rules of construction which are ordinarily employed, for the purpose of ascertaining the intent of the legislature when the language used leaves one in doubt.

The recent amendment to Section 4850 *supra*, indicates an intention also to allow any board of education when authorized by the superintendent of public instruction not only to provide *special classes*, but also to establish *special services* by way of counsel, adjustment and instruction for persons whose learning is retarded, interrupted or impaired by physical or mental handicaps.

In Section 4850-1 *supra*, it will be noted that the superintendent of public instruction is to select persons to inspect "all classes and to direct and supervise *such other services*," etc. and like language is used several times later in the same section. This language seems to me to contemplate that these other services are not necessarily rendered by teachers. Such service as speech correction, might well involve the skill of a physician or

specialist and might not be instructional in its nature, as that term is ordinarily understood.

As originally enacted, the new school code contained provisions found in Section 4850-6 et seq., authorizing the superintendent of public instruction to reimburse boards of education for the expense of maintaining the special classes originally contemplated which, as already shown, were limited to persons who were handicapped by reason of being deaf, blind or crippled. Said Section 4850-6 reads as follows:

“The superintendent of public instruction upon receipt and approval of the report and financial statement provided in Section 4850-7 of the General Code shall present a voucher to the auditor of state in favor of the board of education in an amount equal to the cost of maintaining such special classes and instruction, minus the cost of the instruction of the same number of children of normal needs in the same school grades of the district, but in an amount not to exceed three hundred and seventy-five dollars for nine months in the case of the blind, and three hundred dollars in the case of the deaf or crippled, and proportionate amounts for those instructed more or less than nine months. He shall include in such voucher the cost of boarding persons included in the provisions of Section 4850-10 of the General Code at the rate of not to exceed two hundred fifty dollars for each person so boarded for nine months during the school year and a proportionate amount for each person boarded for more or less than nine months. He may also at his discretion include the costs of transportation under section(s) 4850-9 or 4855 of the General Code, in the voucher in favor of any board of education which has paid the same. Upon presentation of such voucher the auditor of state if satisfied as to the correctness shall draw a warrant on the treasurer of state for the amount.”

This section, as well as the sections referred to therein, appear to relate only to provisions for blind, deaf and crippled persons.

In Amended Senate Bill No 65 above referred to, there are added two sections, to wit, 4850-11 and 4850-12. These sections deal with new types of service which are expressly stated to be other than those provided for in the original act. These new sections read as follows:

“Section 4850-11. At the close of each school year, the board of education of each school district in which any classes for the education of slow-learners are maintained or *in which child study, counseling, adjustment and instructional services are rendered to physically and mentally handicapped persons other*

than those for which provisions are made in Sections 4850-2 to 4850-10 of the General Code, may certify to the superintendent of public instruction the names and residences of the persons instructed in such special classes, the period of time each was instructed, the names and addresses of persons transported at the expense of the board of education and the period of time during which each was transported, and the amount expended for the current operating cost of the education in such classes, together with statements showing the per capita cost of the education of normal children in the district in the same school grades during the same period of time; and the nature, extent and cost of child study, counseling, adjustment and instructional services rendered to physically and mentally handicapped persons. The superintendent of public instruction shall be the final authority in deciding all questions relative to what constitutes a suitable program of child study, counseling, adjustment and instructional services for physically and mentally handicapped and what comprises the current operating cost on the basis of what tuition rates are to be fixed." (Emphasis added.)

"Section 4850-12. The superintendent of public instruction upon receipt and approval of the report and financial statement required by Section 4850-11 of the General Code shall present a voucher to the auditor of state in favor of the board of education in an amount equal to seven hundred fifty dollars (\$750.00) for each approved teaching unit of slow-learners, which in no case shall be comprised of less than 12 pupils, plus any cost for the transportation of non-resident pupils to such classes; one thousand dollars (\$1,000.00) for each approved teaching unit, comprised of *twenty-four or more pupils served by a teacher on circuit*; and such additional amount for the maintenance and supervision of child study, counseling and adjustment services to physically and mentally handicapped persons as the financial condition of the board of education and funds available to the superintendent of public instruction will permit.

Upon presentation of such voucher the auditor of state if satisfied as to the correctness thereof, shall draw a warrant on the treasurer of state for the amount. The total amount to be expended under the provisions of this act during the years 1945 and 1946 shall not exceed the sum of \$850,000."

(Emphasis added.)

It is manifest that in the average county there may be only one or two persons in certain districts who would properly become beneficiaries of the special services contemplated by the statutes under consideration,

and it would therefore obviously be impracticable for a local board to provide teachers or other attendants for such a small number, and certainly impossible to have large enough classes or units of service to enable the board to obtain the reimbursement contemplated by Section 4850-12 supra. The General Assembly evidently recognized this situation in providing for the subsidy of \$1,000 "for each approved teaching unit, comprised of twenty-four or more pupils served by a teacher *on circuit*". This number might readily be served by a teacher or other employe who could cover a large part or all of a county, serving the small groups of children in the various school districts, and this manifestly would be an appropriate service for the county board of education to undertake and one which no local board could perform.

If it be objected that under the general provisions of the school code it is contemplated that teachers are to be employed only by boards of education other than county boards, it may be answered that those regulations were made by the General Assembly and it is entirely within its power to enlarge the functions and authority of county boards if it sees fit so to do. And that, in my opinion, is what it has done in this instance.

Specifically answering your questions, it is my opinion :

1. Section 4850, General Code, as amended by Amended Senate Bill No. 65, passed June 28, 1945, will upon taking effect on October 16, 1945, authorize the county board of education, with the approval of the superintendent of public instruction, to establish and maintain classes and provide such other services to handicapped persons as are contemplated by said Section 4850 et seq. of the General Code.

2. Under the terms of Amended Senate Bill No. 65, passed by the 96th General Assembly, and to become effective October 16, 1945, the state department of education may make reimbursement to a county board of education for expenses incurred in maintaining the classes and services contemplated by Section 4850 et seq. of the General Code.

Respectfully,

HUGH S. JENKINS

Attorney General