

2538.

SCHOOLS—BOARD OF EDUCATION—BOARD MAY NOT DIRECT OR ORDER MINOR CHILD TO SUBMIT TO AN EXAMINATION BY ANY PERSON OTHER THAN SCHOOL PHYSICIAN OR ASSISTANT.

SYLLABUS:

A board of education may not advise, counsel, direct or order any minor child to submit to an examination by any person other than the school physician or his duly employed assistant physician unless an examination by said school physician discloses an underlying pathological condition requiring treatment by a specialist.

COLUMBUS, OHIO, June 4, 1925.

DR. P. C. HARRIS, *Secretary, Ohio State Board of Optometry, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“The school board of Lima is discriminating between oculists and optometrists in the examination of children's eyes as you will see by the enclosed letters.

“We would like to have an opinion from your department as to what should or could be done in a case like this which is similar to the situation that existed in Cleveland.”

You submit with your inquiry a letter as follows:

“We have just completed a vision survey of the schools of the city and in this survey, we find that your child Lucille has a vision of 10/20 for the right eye and 12/20 for the left eye. We consider that in cases where the vision ranks this low steps ought to be taken to correct the situation and we would like very much if you would cooperate with us in sending your child to one of the following oculists for a more detailed examination:

(Names of Oculists)

“These oculists have entered into an agreement with the board of education to do this work and we are sure that the work will be done entirely satisfactory to everyone concerned.

“The expense of examination will be \$3.00. We want the parents to bear this expense where they can, but in case they can not, the board of education will take care of the case. We are very anxious that your child have this examination so that corrections can be made. Low vision is always a serious handicap to any child in school work. If you desire to follow the above plan, will you please get in touch with the principal of the school where your child is attending, stating to the principal the times when it will be possible for your child to go to the oculist for the examination and then the principal will arrange with the school nurse so that there will be no congestion and as little delay in having the examination made as possible.

“We feel that a great majority of these cases that we have found of low vision can be corrected by the proper fitting of glasses. In cases where this is not possible, we are preparing to open a school especially suited for children of low vision. We shall not, however, ask any child to go to this school unless it is agreeable to the parents that they attend, but we believe

it will be a great opportunity for those we can take. It will not be possible at the present time to take very many."

Section 7690 of the General Code, relating to the control of schools, provides in part as follows :

"Each board of education shall have the management and control of all the public schools of whatever name or character in the district."

Section 7692, General Code, provides for the appointment of a school physician. Section 7692-1 G. C., provides as follows :

"School physicians may make examinations and diagnosis of all children referred to them at the beginning of every school year and at other times if deemed desirable. They may make such further examination of teachers, janitors and school buildings as in their opinion the protection of health of the pupils and teachers may require."

The above section provides authority for the board of education for examination of the pupils of the schools. Your question is whether the board of education may, in pursuance of such authority granted them, advise or direct the students after such examination to particular classes or schools of physicians or eye specialists.

In the case of Harry D. Williams et al, plaintiff, vs. Robinson C. Jones, the court of common pleas of Cuyahoga county, Ohio, which was a case asking for an injunction restraining the defendants from advising, consulting, or ordering any minor child suffering from defective vision attending the public schools and submitting to an examination to his or her eyes to any particular class or school of physicians or eye specialists.

The court, in its journal entry, provided as follows :

"It is ordered and decreed that the defendant, his agents and representatives acting for and on his behalf, be perpetually enjoined and restrained from advising, counseling, directing or ordering any minor child suffering from defective vision attending the public schools or applying for a work permit, to submit to an examination of his or her eyes by any particular class or school of physicians or eye specialists, or by any other person or persons other than the school physician or his duly employed assistant physicians.

"It is further ordered and decreed, that in conducting the physical examination preliminary to the issuance of a working permit to any school child, to determine the physical fitness of said child to work, the said defendant, his agents and representatives, and each of them, be enjoined and restrained from advising, counseling, directing or ordering any minor child attending the public schools applying for a work permit to undergo any examination of the eye by any person other than the school physician or his duly employed assistant physicians.

"That in conducting the physical examination preliminary to the issuance of a working permit to any school child to determine the physical fitness of said child work, the said defendant, his agents and representatives and each of them, be enjoined and restrained from refusing to accept certificates issued by these plaintiffs and other duly qualified and licensed optometrists, who may certify that said minors' eyes have been correctly and

properly examined and defects of vision corrected, unless the examination of said child's eyes by the school physician or his assistant reveals an underlying pathological condition requiring treatment by a specialist in diseases of the eye and a refraction in accordance with such treatment, or for other good cause which does not show discrimination against optometrists as a class."

Applying the rule laid down by this case, it is believed that a board of education has no authority to advise, counsel, direct or order any minor child attending the public schools to submit to an examination by any particular class or school of physicians or eye specialists or any other person or persons other than the school physician or his duly employed assistant physician unless the examination by said school physician shows an underlying pathological condition requiring treatment by a specialist in diseases of the eye and a refraction in accordance with such treatment.

You are, therefore, advised that a board of education may not advise, counsel, direct or order any minor child to submit to an examination by any person other than the school physician or his duly employed assistant physician unless an examination by said school physician discloses an underlying pathological condition requiring treatment by a specialist.

Respectfully,
C. C. CRABBE,
Attorney General.

2539.

TRANSFER OF LIBRARY PROPERTY BY MUNICIPALITY TO TRUSTEES
OF PUBLIC LIBRARY—TAX LEVY PROVIDED IN SECTION 7639 G. C.
IS OUTSIDE LIMITATIONS OF SMITH ONE PER CENT LAW.

SYLLABUS:

1. *A transfer of its library property by a municipal corporation (under the provisions of section 3711, General Code) to the trustees of the public library of the school district within which such municipal corporation is situated, upon such lawful terms and conditions as provided in said section, contemplates a consideration. It need not be a money consideration but may be any adequate consideration of substantial value agreed upon in the terms and conditions in the transfer.*

2. *The tax levy provided for in section 7639 of the General Code of Ohio is outside of the limitations imposed by the Smith one per cent tax law and is also not subject to the control of the budget commission.*

COLUMBUS, OHIO, June 4, 1925.

HON. EUGENE WRIGHT, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following questions:

"The board of education of Logan city school district maintains a library for the schools and the city of Logan also maintains a public library. It is the desire of the city of Logan to transfer its property composing said