

3308.

APPROVAL, BONDS OF PORTSMOUTH CITY SCHOOL DISTRICT,  
SCIOTO COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, June 9, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3309.

DISTRICT HEALTH BOARD—HEALTH COMMISSIONER UNAUTHORIZED TO ESTABLISH DENTAL CLINIC—EXCEPTION—FREE DENTAL TREATMENT LIMITED TO CHILDREN OF INDIGENT PARENTS WHO CONSENT THERETO—WORD "SUPERVISION" IN SECTION 1261-26, G. C., DEFINED.

SYLLABUS:

1. *A district health commissioner is not authorized to establish a dental clinic, either upon his own initiative or upon order of the district board of health, for the rendering of remedial or corrective treatment, free of charge, except under the circumstances and to the extent authorized by section 7692, General Code, when the duties and powers with respect to health matters as the same are set forth in said section 7692, General Code, are delegated by a board of education to the board of health or officer performing the functions of a board of health within the school district.*

2. *The rendering of free dental, remedial and corrective treatment for school children is limited to the rendering of such treatment for children whose parents or guardians can not otherwise provide for the same, and consent thereto.*

3. *The dental "supervision" of school children authorized by Section 1261-26, General Code, is limited to the making of examinations and diagnoses and the rendering of such remedial or corrective treatment for the school children as may be prescribed by a board of education or the board of health when the duties with respect thereto are delegated to the board of health, and then only for such school children whose parents or guardians can not otherwise provide for the same, and consent thereto.*

COLUMBUS, OHIO, June 9, 1931.

HON. MARION F. GRAVEN, *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion which reads as follows:

"Mr. S., member of the Wayne County Board of Health, has requested an opinion respecting the powers and duties of the Wayne County Health Board and Health Commissioner with reference to the practice of dental surgery upon the school children of this county.

It appears that the Health Commissioner acting under Section 1261-26 of the General Code, gave the school children medical and dental supervision causing the teeth of the children to be examined by a dentist, and thereafter purchased a dental chair and established a dental clinic

in the City Hall at Wooster, without any authority whatsoever from the County Board, where he has employed a dentist to perform dental surgery upon those school children whose parents for want of means were unable to provide the necessary corrections.

It is contended by certain parents of school children that the Health Commissioner is at the end of his power when he affords dental supervision and they challenge his right to engage in dental surgery upon their children and dictate a dentist to them unknown, and they maintain that they have the right and privilege to select their own dentist.

I have found under Section 1261-22, that the District Board of Health may provide infant welfare stations, prenatal clinics and clinics for the treatment of Trachoma, but I find no statutory authorization for the establishment of a dental clinic for the practice of dental surgery upon school children. I find an opinion of the Attorney General rendered in 1927 in Vol. 4, page 2511 to the effect that a Board of Health and Board of Education may employ a dentist for the dental *supervision* of school children.

It is contended by said parents that the Health Commissioner may make the examinations but the parents have the right to see to the corrections.

The question has been raised by those opposed to the dental clinic that, in the event children who might become infected by negligent treatment would have a right of action for damages against the Board, and that the establishment of a dental clinic is not authorized by statute and is not, therefore, within the scope of the statutory powers conferred upon the Board of Health or the Health Commissioner.

And it is further contended by the parents that the maintaining of this dental clinic where dental surgery is practiced is an arbitrary interference with the rights of the parents to provide and select a dentist to them satisfactory.

It is also contended that at this clinic the dentist selected by the Health Commissioner goes beyond *supervision* and is performing dental surgery.

It is further claimed that the Health Commissioner has failed to procure waivers from the parents of the children so operated upon at this dental clinic. And it is desired to know that if it is lawful to maintain the dental clinic, then is it necessary that waivers be procured from the parents under the existing laws? It is, also, desired that the word '*supervision*' be defined.

Please bear in mind that the Board of Health has never authorized the establishment of this clinic for dental surgery, nor has it ratified the action of the Commissioner in its establishment.

Mr. S. very much desires an opinion respecting the duties of the Board of Health and the Health Commissioner in this matter and will be greatly obliged if the same can be transmitted to me prior to the first day of June to be discussed at the June meeting."

Section 1261-26, General Code, reads in part, as follows:

"In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt

diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, \* \*

Provided that in the medical supervision of school children as herein provided, no medical or surgical treatment shall be administered to any minor school child except upon the written request of a parent or guardian of such child; and provided further, that any information regarding any diseased condition or defect found as a result of any medical school examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian.'

It will be observed from the terms of the latter part of the above statute that no mention is made of treatment of school children other than medical or surgical treatment. No provision is made whatever for the treatment of the teeth of school children either with or without the consent of the parents or guardians of such children. Neither is the word "supervision" as used in said statute, defined. The fact however that provision is made therein for the free treatment of certain classes of diseases would be some indication at least of an intention on the part of the Legislature that the word "supervision" does not extend to the giving of treatment.

Since the enactment of said section 1261-26, General Code, in its present form, Section 7692, General Code, was amended in 1929 (113 O. L. 51) to read as follows:

"Each and every board of education in this state may appoint at least one school physician and at least one school dentist; provided two or more school districts may unite and employ one such physician and at least one such dentist whose duties shall be such as are prescribed in this act. Said school physician shall hold a license to practice medicine in Ohio, and each such school dentist shall be duly licensed to practice in this state. School physicians and dentists may be discharged at any time by the appointing power whether the same be a board of education or a board of health or health commissioner, as herein provided. School physicians and dentists shall serve one year and until their successors are appointed, and shall receive such compensation as the appointing board may determine. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. The school dentists shall make such examinations and diagnoses and render such remedial or corrective treatment for the school children as may be prescribed by the board of education; provided that all such remedial or corrective treatment shall be limited to the children whose parents cannot otherwise provide for same, and then only with the written consent of the parents or guardians of such children. School dentists may also conduct such oral hygiene educational work as may be authorized by the board of education.

Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the preventing of epidemics."

Since the amendment of Section 7692, General Code, as stated above, it is the duty of each and every board of education, in my opinion, to either employ a school dentist or school dentists or delegate the duties and powers provided for by the statute with relation to school dentists to the board of health or officer performing the functions of a board of health within the school district, and when those duties and powers are so delegated the board of health or officer performing the functions of a board of health to whom they are so delegated should perform them in the manner and to the extent provided for in the statute.

This statute therefore provides a definition for the word "supervision" as used in Section 1261-26, General Code, or rather it fixes duties to be performed by the board of health with respect to school children, when those duties are delegated to the board of health, which are a substitute for or supersede the duties imposed upon a board of health by force of Section 1261-26, General Code, and by so doing supplants the term "supervision." The word "supervision" may now be said to be the making of "such examinations and diagnoses" and the rendering of "such remedial or corrective treatment for the school children as may be prescribed by the board of education; provided that all such remedial or corrective treatment shall be limited to the children whose parents can not otherwise provide for the same, and then only with the written consent of the parents or guardians of such children."

There are no provisions in the statutes anywhere which authorize a commissioner of health on his own initiative, or upon order of a board of health, to establish a dental clinic for the free treatment of the teeth of school children or anyone else other than that contained in section 7692, General Code, which limits the rendering of such treatment to such as may be prescribed by the board of education, and then only to children whose parents or guardians can not otherwise provide for the same, and consent thereto.

Aside from the question of whether or not the rendering of dental treatment to, or the practice of dental surgery on, school children without the consent of their parents or guardians invades constitutional rights, the language of the statutes noted above, clearly indicates an intention on the part of the legislature to provide that such treatment shall not be given and such surgery shall not be performed without the consent of the parents or guardians of the children.

I am therefore of the opinion that the dental supervision of school children which may be exercised by a board of health or health commissioners is confined to those cases where the duties and powers provided for a school dentist by the terms of section 7692, General Code, are delegated to the board of health or health commissioners by a board of education and that the duties and powers in this respect, which may be so delegated, are limited to the making of examinations and diagnoses and the rendering of such remedial or corrective treatment for the school children as may be prescribed by the board of education or the board of health when the duties with respect thereto are delegated to the board of health, in cases where the parents or guardians of the children can not otherwise provide for such treatment, and consent thereto. The term "supervision" as used in section 1261-26, General Code, is limited to the duties and powers conferred upon a school dentist by the terms of section 7692, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*