OPINION NO. 72-052

Syllabus:

school district located in one county may make payments for resident pupils pursuant to Section 5127.04, Revised Code, to a county board of mental retardation of another county, where the board of mental retardation of the second county has furnished the training described in Chapter 5127, Revised Code.

To: Martin W. Essex, Public Instruction Supt., Department of Education, Columbus, Ohio
By: William J. Brown, Attorney General, June 26, 1972

I have before me your request for my opinion, which reads as follows:

> "Classes for trainable mentally retarded children are provided by county boards of mental retardation pursuant to Chapter 5126 and 5127 of the Revised Code. Under Section 5127.04 of the Revised Code boards of education are required to pay an amount 'equal to the computed amount of tuition that would be due the school district ... if a nonresident pupil attended the school of such district ..' calculated in the manner prescribed by section 3317.08...'
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> "The Cleveland Heights-University Heights Board of Education (a district located entirely in Cuyahoga County) has requested permission to make tuition equivalent payments to the Geauga County Board of Mental Retardation for pupils attending the Bessie Benner Metzenbaum Opportunity School, a facility operated by the Geauga County Board of Mental Retardation.
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> "May a school district make payments for resident pupils pursuant to Section 5127.04 of the Revised Code to a county board of mental retardation for pupils who are not residents of such county?"

I understand your question to be whether, pursuant to Section 5127.04, Revised Code, a school district of one county may make a tuition equivalent payment for one of its resident pupils to a county board of mental retardation of another county, where the board of mental retardation of the second county has furnished the training described in Chapter 5127, Revised Code.

Section 5127.04, Revised Code, reads, in its entirety, as follows:

> "The county board of mental retardation which during the school year has administered and supervised, pursuant to the provisions of section 5127.01 of the Revised Code, a training center for the mentally retarded shall prepare a statement for each person under twenty-one years of age who has received such training, such statement to show the name of the person, the name of the school district in which the person is a school resident, the name of the board providing the training, and the number of months the person received training. Not later than the thirtieth day of June the board shall forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident and shall forward a certified copy of such statement to the commissioner of mental retardation. Within thirty days after the receipt of such statement the board of education shall pay to the county board of mental retardation submitting the statement an amount equal to the computed amount of tuition that would be due the school district receiving the statement if a nonresident pupil attended the schools of such district for the same period of time that the mentally retarded person attended the training center, such amount to be computed in the manner prescribed by section 3317.08 of the Revised Code."

The language of this Section has been interpreted as imposing a mandatory requirement upon the board of education of the school district where the child is a resident, to pay the tuition equivalent payment as specified by Section 3317.08, Revised Code, to the county board of mental retardation giving training to such child. Opinion No. 18, Opinions of the Attorney General for 1963; Opinion No. 3337, Opinions of the Attorney General for 1962.

Neither of the Opinions cited contains a discussion of the precise multicounty question involved here, although both mention the duty that is legislatively imposed on the Board charged to established schools for the mentally retarded, and the corresponding complex, though clearly stated, legislative plan for funding the schools. Both Opinions are consistent in imposing a mandatory duty on the school boards to participate, under Section 5127.04,

supra, in the financing of these special schools.

It should be noted that Section 5127.04, supra, is couched in general terms and that no language is present which would prohibit the payments about which you ask. Where the Section calls for the preparation of an annual statement by the county board of mental retardation, it requires, so far as residence is concerned, "such statement to show * * * the name of the school district in which the person is a school resident [and] the name of the board providing the training".

Had the legislature contemplated no more than the furnishing of intracounty services, there would have been no need for them to specify that the statement should contain "the name of the board providing the training", since only one such board could exist in each county. Such a restrictive interpretation would seem to be contrary to both the language of the Section and the legislative intent involved in providing and expanding services for the mentally retarded. Further, the Section requires that the county board of mental retardation "forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident". Nowhere in the Section is there any indication that, for such tuition equivalent payments to be made, the person must be a school resident in the same county as has established the county board of mental retardation which is supplying him with services, education and training.

In Wachendorf v. Shaver, 149 Ohio St. 231, 237 (1948), The Supreme Court of Ohio stated:

> "[T]hat nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself; and that the court may write no limitations therein. As variously expressed, the statute may not be restricted, constricted, qualified, narrowed or abridged. * * * Under this rule, where the statute is expressed in general language, it is to be applied to all cases coming within its terms. The Legislature will be pre-

> sumed to have intended to make no limitations to a statute in which it has included by general language many subjects, persons or entities, without limitation.* * *"

Since Section 5127.04, supra, is expressed in general language, and since it places no limitation upon whether a school district located in one county can make tuition equivalent payments to a county board of mental retardation of another county, I can read no such limitation into it.

Supportive of this is the fact that multicounty cooperation existed at the time Section 5127.04, supra, was enacted into law in 1961(129 Ohio Laws, 1616). At that time, not all counties in Ohio had programs for the mentally retarded under Chapter 5127, Revised Code, and several counties cooperated in joint programs. Two counties, Noble and Shelby, still do. See The Annual Financial & Statistical Report of the Ohio Department of Mental Hygiene and Correction for 1961-1962 and 1970-1971. See also two other publications of the Department's Division of Mental Retardation, Eight Years of Progress in Mental Retardation, pages 6-7 (1970) and Good for a Lifetime -- Ohio's Programs for the Mentally Retarded, pages 6-7 (1971). Currently, multicounty cooperation is also possible under Chapters 5126 and 5127, Revised Code. Section 5126.03 (D), Revised Code, provides in part as follows:

> "Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or an organization of the same or another county, to provide the facilities, programs, and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable."

In view of the broad scope of this Section, which was last amended in 1970, it seems clear that the legislature currently looks with favor on such intercounty cooperative programs. Section 5127.04, supra, which provides for the tuition equivalent

payments, refers to these Section 5127.01 programs. As aforementioned, the language of Section 5127.04, supra, does not restrict the tuition equivalent payments in any way, and to so interpret it would seem to contradict the legislative history surrounding the various changes which the legislature has made in these Chapters of the Code. Undoubtedly, the legislature contemplated, at the time they enacted Section 5127.04, supra, that there would be residents of a school district, located entirely within one county, who would be in a program in another county operated by the second county's board of mental retardation, and that such school districts would have to make tuition equivalent payments to those boards of mental retardation in other counties. The rule is stated in Miller v. Fairley, 141 Ohio St. 327, 334 (1943). "[T]hat statutes are to be read in the light of attendant circumstances and conditions, and are to be construed as they were intended to be understood, when they were passed."

Your question presents a unique fact situation, since both Geauga and Cuyahoga counties have county boards of mental retardation supplying services, education and training to the mentally retarded. However, this can in no way affect the operation of the statute.

In specific answer to your question it is my opinion, and you are so advised, that a school district located in one county may make payments for resident pupils pursuant to Section 5127.04, Revised Code, to a county board of mental retardation of another county, where the board of mental retardation of the second county has furnished the training described in Chapter 5127, Revised Code.