

OPINION NO. 67-051**Syllabus:**

The special school district, Toledo City School Board of Education, can require tuition payments from the resident school district, Ottawa Hills Board of Education, even in the absence of a prior agreement between the boards of education and without a directive from the state board of education to the Ottawa Hills Board of Education to pay. (Opinion No. 3421, Opinions of the Attorney General for 1931 is hereby overruled).

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William B. Saxbe, Attorney General, June 2, 1967

I have before me your request for my opinion to the following question:

"We have had a request from the Board of Education of Ottawa Hills regarding the cost of tuition for a child 3 years 8 months old, a resident of Ottawa Hills, who is a student in a school for deaf children, operated by the Board of Education of the City of Toledo. The mother of this child applied to the Superintendent of Ottawa Hills for schooling for the child and was advised that there were no provisions for children under 6 years old. She then enrolled the child in the City of Toledo schools, which are operated for that purpose for such children, under authority of Section 3323.01 of the Revised Code. No arrangement was made by the respective Boards of Education for the payment of tuition. The Board of Education of the City of Toledo, presented its bill to the Board of Education of Ottawa Hills which questioned the payment under the authority of the aforesaid Attorney General's Opinion 3421, written on July 11, 1931. At that time the Attorney General interpreted Section 7755-2 of the General Code and held that because no prior agreement had been entered into between the two Boards of Education, the Board of Education of the district in which the child resides may not be compelled to pay the child's tuition or any part thereof, unless such payment is directed by the Director of Education.

"I am writing to you to inquire if changes in the wording of these statutes would affect your opinion so that without a prior agreement between the Boards of Education, and with the approval of the Director of Education, the Board of Education of Lucas County can require the payment of the Board of Education of Ottawa Hills for the tuition of this child."

The syllabus of Opinion No. 3421, Opinions of the Attorney General for 1931 states:

"When a child who is a resident of one school district attends in another district a class for the blind, deaf or crippled, or a class in which some special instruction needed by the child because of his handicap, is provided, the board of education of the district in which he resides may not be compelled to pay his tuition or any part thereof, unless such payment is directed by the Director of Education or unless an agreement has been entered into between the two boards of education whereby the board of education of the

district of the child's residence had agreed to pay tuition for the child."

The applicable sections of the General Code upon which Opinion No. 3421, supra, was based stated:

"'Sec. 7755-2. If a child resident of one school district attends in another district a class for the blind, deaf, or crippled, or a class in which some special instruction needed by the child because of his handicap is provided, the board of education of the district in which he resides may pay his tuition in a sum equal to the tuition in the district in which such class is located for a child of normal needs of the same school grade. The board of education of the district in which such child resides may pay for his transportation to the class in the other district; and the board of education of the district in which the class he attends is located may provide his transportation to the class. Upon direction of the director of education the board of education of the district in which such child resides shall pay for his transportation and tuition.'"

General Code Section 7755-2, supra, has been recodified and amended and now appears as Section 3323.10, Revised Code, and reads as follows:

"If a child who is a school resident of one school district attends in another district, a class in which some special instruction needed by the child because of his handicap is provided, the board of education of the district in which such class is located may require the payment by the board of education of the district in which he is a school resident of a sum not to exceed the tuition in the district in which such class is located for a child of normal needs of the same school grade and the determination of the amount of such tuition shall be in the manner provided for by sections 3317.05 and 3317.06 of the Revised Code. The board of the district in which such child is a school resident may contract with the board of another district for the transportation of such child into any school in such other district, on terms agreed upon by such boards. Upon direction of the state board of education the board of the district in which such child resides shall pay for his transportation and the tuition."

My first observation is that the Toledo City School District was under no mandatory obligation to admit this child to the special school, since this child was a non-resident of the Toledo School District. Although Section 3323.10, supra, permits a handicapped child to attend a

special school outside of his district of residence, his admittance is left to the discretion of the special school district.

Section 7755-2, General Code, as construed by Opinion No. 3421, supra, permitted the resident school district to pay tuition for a resident handicapped student attending a special school in another district. This opinion held that in the absence of a contractual obligation between the two school districts, the district maintaining the special school could not demand payment of tuition from the resident district.

Under the provisions of Section 3323.10, supra, three distinct payment plans are established. First, the special school district "may require" tuition. Secondly, the two districts "may contract" for transportation, and thirdly, upon direction of the state board of education, the resident district "shall pay" for both tuition and transportation.

The cardinal rule of statutory interpretation is to ascertain the intention of the legislature. This intention is to be gathered from the provisions enacted. Thus, the intention of the legislature in enacting a statute must be determined primarily from the language of the statute itself. Also, in the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will be given their common, ordinary and accepted meaning in the connection in which they are used.

In Section 3323.10, supra, the legislature specifically provided that the two districts "may contract" for the transportation of students on terms agreed upon by such boards. In the preceding sentence the legislature provided that the special school district "may require" the payment of tuition by the resident district. This indicates a legislative intent of not requiring a contract between the districts for tuition, but grants the special school district the power to demand tuition payment from the resident district in an amount to be determined as provided therein.

Therefore it is my opinion and you are hereby advised that the special school district, Toledo City School Board of Education, can require tuition payments from the resident school district, Ottawa Hills Board of Education, even in the absence of a prior agreement between the boards of education and without a directive from the state board of education to the Ottawa Hills Board of Education to pay. (Opinion No. 3421, Opinions of the Attorney General for 1931 is hereby overruled)