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EPILEPTIC CHILDREN—WHEN BOARDS OF EDUCATION REQUIRED TO FURNISH HOME TEACHING—EMPLOYMENT OF PRIVATE TEACHERS.

SYLLABUS:

1. *Under Section 7755-4 of the General Code, and its related sections, the Director of Education may require a board of education to furnish home teaching for children of sound mind who are suffering from epilepsy, who on account of said affliction can not be assembled in school, when in his judgment the same will be beneficial to them.*

2. *Boards of education, under such circumstances, may employ private teachers to teach such children at certain hours, and such teachers may be compensated according to the time expended on such teaching.*

COLUMBUS, OHIO, May 7, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion upon the following question:

“Epileptic children who are not suitable persons to be in the schoolroom reside in certain school districts. May the boards of education employ private teachers to teach these children at certain hours, these teachers to be compensated at a reasonable rate according to the time expended in the teaching of the epileptic children?”

Your question arises undoubtedly by reason of the provisions of Section 7755 et seq. of the General Code, which provide for the instruction of deaf, blind and crippled persons. Section 7755 authorizes the Director of Education to grant permission to any local board of education to establish and maintain a class or classes for the instruction of such persons. Section 7755-1, authorizes the Director of Education to arrange with a board of education which maintains a class for the instruction of blind, deaf or crippled persons, etc., for children, non-residents of the district, to pay for the board of such persons, etc. Section 7755-2, provides for the transportation of such children from one district to another under the conditions specified therein. Section 7755-3, also relates to the transportation of a crippled child to the school to which he is assigned. Section 7755-4, provides:

“In case there are in any school district crippled children not able even with the help of transportation to be assembled in a school and instruction for these children is provided in the home, these children shall be counted under the provisions of section 7757, General Code, counting however five hours of instruction of such children by a teacher provided by the board of education as equal to the attendance of one child for five days at school. Upon direction of the director of education a board of education shall arrange for the home teaching of any such crippled child.”

In analyzing the provisions of the section above quoted in connection with its related sections, it appears that under the direction of the Director of Education, a board of education shall arrange for the home teaching of any crippled child in the event that there is in any district such a child not able, even with the help of transportation, to be present in a school. In other words, the section seems to authorize employment of private teachers to teach such children at certain hours and, of course, under such circumstances, such teachers could be compensated at a reasonable rate in accordance with the time expended.

It is believed the sole question presented in your communication is whether or not a child who is subject to epilepsy is a "crippled" child within the meaning of the section hereinbefore referred to. Section 7760, defines a deaf, blind or crippled person as follows:

"Any person of sound mind who, by reason of defective hearing or vision or by reason of being so crippled as to be physically unable to properly care for himself without assistance, cannot properly be educated in the public schools as other children, shall be considered deaf, blind or crippled within the meaning of Sections 7755 and 7757, General Code. But persons with partial hearing or partial vision may also be instructed under the provisions of these sections and of standards prescribed under Section 7761."

Webster has defined a cripple, among other things, as being "one who is partially disabled". The word when used as a verb, is defined by the same authority as follows:

1. To deprive of the use of a limb, particularly of a leg or foot; to lame.
2. To deprive of strength, activity or capacity for service or use; to disable, as to be financially crippled."

While generally speaking, we have in mind a person who is injured in his arms or legs or for some reason his power of locomotion is handicapped, as being one who is crippled, the above definition clearly discloses that the term is much broader and includes more than one who is handicapped in such a way that his power of locomotion is impeded. In other words, one who is *disabled* is included within the terms of said definition. One who is suffering from epilepsy is certainly disabled. While Sections 2035, et seq., of the General Code, provide for the admission of epileptics to the Ohio Hospital for Epileptics, an examination of the statutes relative thereto will disclose that it is not compulsory that such persons be confined in such institution, when not insane or dangerous. These statutes clearly distinguish between "epileptics" and "insane epileptics". There are similar provisions establishing a state institution for the educating of the deaf and blind, yet the sections under consideration in this opinion expressly authorize the teaching of such persons outside of the state institution. Likewise, a state school for crippled children may also be established, yet we have the specific provisions above mentioned authorizing a board of education under the circumstances mentioned herein, to furnish such instruction in the home.

An epileptic has been defined in Words and Phrases, Second Series, Volume II, page 293, as follows:

"A person may be 'epileptic' who has about him anything pertaining to epilepsy. He may be an intelligent and active man or a helpless imbecile.
* * *"

Gould vs. Gould, 61 Atl. 604.

"Proof of epilepsy does not necessarily directly establish insanity, as epilepsy is not as a matter of fact or law insanity, though evidence thereof may bear on the mental condition of the afflicted person to the extent of establishing insanity."

Osborn vs. State, 126 N. W. 737.

While epilepsy is undoubtedly closely associated with mental disorders, it is believed that the fact that one is subject to epilepsy does not necessarily establish that there is defect of mind. In other words, it seems to be a physical ailment which among other ailments does affect the mind. It is believed that in pursuance of the original constitutional mandate requiring the Legislature to provide a common school system,

it has indicated a liberal policy which has as its object, the providing of the opportunity for education at public expense of all children whose mental and physical condition is such as to permit them to profit by such instruction. Thus, some provision has been made for practically every kind of handicap that may exist.

In recent times there has been a tendency on the part of public authorities to provide for the care of the unfortunates of this State in the home, in so far as the same may be done with expediency. It is believed that the history of this legislation justifies and requires a liberal interpretation, to the end that unfortunate children who are afflicted with epilepsy and have a sound mind, may have some advantages with reference to obtaining an education which they otherwise could not obtain. While the question is not free from doubt, in view of the nature of the law being considered, I am inclined to the view that the term "cripple" is sufficiently broad to include one who is suffering from epilepsy if such a child has a sound mind, and in the opinion of the Director of Education his instruction will be profitable. In other words, a cripple is one who is disabled, and an epileptic is certainly disabled.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that:

First, under Section 7755-4 of the General Code, and its related sections, the Director of Education may require a board of education to furnish home teaching for children of sound mind who are suffering from epilepsy, who on account of said affliction can not be assembled in school, when in his judgment the same will be beneficial to them.

Second, boards of education, under such circumstances, may employ private teachers to teach such children at certain hours, and such teachers may be compensated according to the time expended on such teaching.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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APPROVAL, ARTICLES OF INCORPORATION OF THE CAPITAL MUTUAL CASUALTY COMPANY OF COLUMBUS.

COLUMBUS, OHIO, May 7, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of The Capital Mutual Casualty Company of Columbus, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

383.

HOUSE BILL No. 188—PROVISIONS RELATING TO GASOLINE TAXES—NO TAX LEVY IMPOSED—SUBJECT TO REFERENDUM.

SYLLABUS:

House Bill No. 188, enacted by the 88th General Assembly is not a law providing for a