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1. LICE, HEAD—BOARD OF EDUCATION HAS BROAD POWERS TO MAKE RULES AND REGULATIONS TO GOVERN PUPILS AND TEACHERS IN SCHOOLS — AUTHORITY TO ELIMINATE PUPILS — SUSPENSION, EXPULSION — SECTIONS 4750, 7707, 7685 G. C.
2. AUTHORITY, BOARD OF HEALTH TO ACT WHERE SCHOOL AUTHORITIES FAIL — SECTION 4424 G.C.
3. WARDS, JUVENILE COURT, SUBJECT TO RULES AND REGULATIONS MADE BY SCHOOL AND HEALTH AUTHORITIES AFFECTING ATTENDANCE IN PUBLIC SCHOOLS, AS ARE CHILDREN NOT WARDS OF COURT.
4. RULES AND REGULATIONS, SCHOOL AND HEALTH AUTHORITIES, AS TO HEALTH, GENERAL WELFARE AND DISCIPLINE, PUBLIC SCHOOL PUPILS, IF LAWFUL, REASONABLE, MADE IN GOOD FAITH, NOT REVIEWABLE BY COURTS.

SYLLABUS:

1. Under the broad powers extended to boards of education by Section 4750, General Code, to make rules and regulations for the government of pupils in the schools in their respective districts and to teachers by Section 7707, General Code, to guard the health and physical welfare of pupils in their schools and to maintain good discipline over all the pupils under their charge, the said school authorities may take such steps as are reasonably necessary to eliminate from schools under their jurisdiction pupils infested with head lice, subject to the limitations contained in Section 7685, General Code, as to suspension and expulsion of pupils from school.

2. Where there are children in a public school who are infested with head lice, and the school authorities in charge of the school fail to act in the premises, the board of health of the health district in which the school is located may by virtue of Section 4424, General Code, and cognate sections, make such reasonable orders within other provisions of law as are necessary to correct the condition, and it is the duty of the board of education charged by law with the administration of the school to carry out any orders so made by the board of health.

3. Children who are wards of a Juvenile Court are subject to all laws and reasonable rules and regulations lawfully made in good faith by school and health authorities affecting their attendance in the public schools as are children who are not wards of the court.

4. Rules and regulations made by school authorities and health authorities respecting the health, general welfare and discipline of pupils in the public schools within their respective jurisdictions if lawful, reasonable, and made in good faith are not reviewable by the courts.

Columbus, Ohio, May 5, 1942.

Hon. Ralph Finley, Prosecuting Attorney,
New Philadelphia, Ohio.

Dear Sir:

You have requested my opinion concerning a matter which was submitted to you by the health commissioner for the Tuscarawas County General Health District. His letter to you is as follows:

“In the past few years, we have had numerous cases of lice infestation in our public schools. We have handled these cases to the best of our ability, under the laws and regulations bestowing power on the Board of Health in this regard. However, we have encountered difficulties in attempting to exclude these children with head lice infestation from school, inasmuch as there is no law or regulation, to our knowledge which *specifically* covers head lice infestation.

We have encountered a most difficult situation, where such children were wards of Probate Court. Therefore, we ask your opinion, does the Board of Health of a General Health District have the power to exclude children with head lice infestation from school, and if said Board's authority is altered in any way when such children are wards of the Court, and does the Health Commissioner have the final say as to when these children shall be allowed to reenter school? Will it be necessary for the Board of Health to make a regulation specifically covering head lice infestation under Section 4413 of the Ohio General Code?

Very truly yours,

Signed: K. E. Bennett, M. D.

County Health Commissioner."

The law requires that every child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined to be incapable of profiting substantially by further instruction, shall attend a public, private or parochial school and it is made the duty of every parent, guardian or other person having charge of any such child to send the child to school as provided by law. See Section 7762-6 and Section 7763, General Code. In their attendance in school children as well as their parents, guardians or custodians as the case may be, are subject to all reasonable rules and regulations of the board of education that may affect or be applicable to their attendance. Children who are wards of the Juvenile Court are no exception to the rule. Juvenile Courts whether independent or existent within a Probate Court (Section 1639-7, General Code) are empowered under proper circumstances to commit a child to the custody of persons or agencies other than their natural parents or legal guardians. Children so committed are subject to the same laws and regulations with respect to their attendance in school as are other children and the custodians of children so committed are bound to observe the law and reasonable rules, regulations and orders made in pursuance thereof, with respect to the attendance of such children in school as are parents, guardians or other persons who may be in charge of other children.

The boundary between the duties and powers of school and health authorities to act with respect to matters pertaining to health which may be incidental to the operation of the public schools, is not clearly defined by statute nor has the line been definitely drawn by the courts. In some matters their duties and powers are coordinate, while in others they are exclusive in one or the other. Speaking generally, it may be stated that

any power extended to teachers or boards of education in such matters is limited expressly to schools while those of boards of health extend to the public generally, which of course includes school officials and employes and pupils attending the schools.

Broad powers are extended to boards of education by Section 4750, General Code, to make such regulations as may be deemed necessary for the government of the pupils in the schools and by Section 7707, General Code, to teachers in the schools to "guard the health and physical welfare of the pupils in their schools" and to "endeavor to maintain good discipline over all the pupils in their charge," broad enough, I believe, for either the board of education or a teacher to handle a situation such as is described by the health commissioner. Certainly the presence of a pupil with head lice in a school is subversive of good discipline and is not conducive to the physical welfare of the pupil in question or of other pupils in the school.

If the school authorities fail to take necessary steps to correct a condition such as the Health Commissioner inquires about, it becomes important to inquire what power the district board of health has in the premises, to which question his inquiry is particularly directed.

General Health districts and boards of health for such districts were first created by act of the Legislature of Ohio, in 1919 (108 O.L., Pt. I, page 236). The act was codified as Section 1261-16 et seq., of the General Code of Ohio. The pertinent part of Sections 1261-26, 1261-30 and 1261-42, as then enacted, and as they now exist, read as follows:

Section 1261-26.

"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 inspection of schools, public institutions * * * The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease. * * *"

Section 1261-30.

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and im-

posed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act. The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

Section 1261-42.

"The board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. * * *"

By reason of the provisions of Section 1261-30, General Code, supra, which was enacted as a part of the act of the Legislature creating boards of health for general health districts, the provisions of Sections 4413, 4420 and 4424, General Code, which were then in force and applied particularly to municipal health districts were made applicable to boards of health of general health districts. The provisions of Section 4424, General Code, are particularly significant in connection with the subject of this opinion. Said Section 4424, General Code, reads as follows:

"The board of health shall abate all nuisances and may remove or correct all conditions detrimental to health or well-being found upon school property by serving an order upon the board of education, school board or other person responsible for such property, for the abatement of such nuisance or condition within a reasonable but fixed time. A person failing to comply with such order, unless good and sufficient reason therefor is shown, shall be fined not to exceed one hundred dollars. The board may appoint such number of inspectors of schools and school buildings as it deems necessary to properly carry out these provisions."

I would hesitate to say that head lice infestation is a contagious or communicable disease, nor am I able to say from a medical standpoint that head lice may spread disease or that health is in any way affected by them, but it certainly is a nuisance and is communicable, and the presence in a school of a pupil with head lice is certainly a condition that is detrimental to well being, and I am of the opinion that the authority extended to boards of health by the terms of Section 4424, supra, clearly authorizes a board of health to correct any such condition within its jurisdiction in any reasonable way within other provisions of law that it may in its discretion see fit to employ and when orders are made by a

board of health to correct such a condition they should be carried out by the school authorities in charge of the school in which the condition exists. Conceivably, a definite all inclusive definition of the term nuisance cannot be given. Adopting the words of the Supreme Court in the case of *Columbus Gas Company v. Freeland*, 12 O. S., 399:

“It is evident that, what amount of annoyance or inconvenience will constitute a legal injury, resulting in actual damage, being a question of degree dependent on varying circumstances, cannot be precisely defined, and must be left to the good sense and sound discretion of the tribunal called upon to act.

Regard should be had to the notions of comfort and convenience entertained by persons generally of ordinary tastes and susceptibilities.”

In an earlier case, *Cooper v. Hall*, 5 Ohio Rep., 321, the Supreme Court said:

“The term nuisance signifies anything that causes hurt, inconvenience, annoyance or damage. If a thing complained of causes neither of these it is difficult to discover upon what principles it can be called a nuisance. But if it causes either, in the least degree, the person creating it must be answerable for consequences.”

In *Ruling Case Law*, Vol. 20, page 300, it is said:

“A nuisance is anything which endangers life or health, gives offense to the senses, violates the laws of decency or obstructs the reasonable and complete use of property.”

See further:

Ohio Jurisprudence, Vol. 30, page 300; *Cardington v. Fredericks*, 46 O.S., 442; *Martin v. Coles*, 14 O.App.; 209; *Grundson v. Ashland*, 25 O.N.P. (N.S.) 493.

It is stated in *Corpus Juris*, Vol. 29, at page 242:

“It is a well recognized principle that the protection of the public health is one of the first duties of government.”

And on page 248, of the same volume, the following language appears:

“Powers conferred upon boards of health to enable them

effectually to perform their important functions in safeguarding the public health should receive a liberal construction * * * Whether an order is reasonable or unreasonable is a judicial question. Before an ordinance or regulation of a board of health can be said to be unreasonable, however, it should clearly so appear."

Similar language will be found in American Jurisprudence, Vol. 25, pages 286 and 291.

In the case of *Williams v. Scudder*, 102, O.S., 305, on page 307, it is said:

"Public health is the very heart of public happiness. The constitutional guarantees of life, liberty and the pursuit of happiness are of little avail unless there be clearly implied therefrom the further guarantee of safeguard of the public health, in order that life, liberty and the pursuit of happiness shall be practical and plenary."

It will be noted upon examination of the several statutes empowering boards of health to deal with matters relating to public health that the powers so conferred are very broad. Indeed it may be said that those powers are practically unrestricted except as they may be limited by the Constitution. Broadly speaking, courts will not interfere with reasonable regulations promulgated by boards of health so long as they are justified by public necessity and do not contravene constitutional guarantees.

After considerable search, I have found but one reported case where the problem of a pupil afflicted with head lice in a public school was involved. That case, *Carr v. Town of Dighton*, 229 Mass., 304, 118 N.E., 525, was decided by the Supreme Court of Massachusetts, in 1918. In that case, which was an action for damages against the Town of Dighton, for wrongful exclusion of the children of Charles E. Carr, for having been infested with head lice, there was involved a statute of Massachusetts, making cities and towns liable where a school committee in charge of a school unlawfully excluded a child from school. The court in its opinion did not comment upon the effect of the presence in school of a pupil infested with head lice. There seemed to have been no question raised as to the right and propriety of excluding such children from school if it were done in the manner provided by law. The conclusions of the court are stated in the syllabus of the case, the material part of which reads as follows:

"In the exercise of their broad powers giving the school committee general superintendence of all public schools, the decision of the committee involving the exercise of judgment and discretion, as to excluding from school a child because afflicted with head lice, is not reviewable by the courts when they act in good faith in determining the fact on which the decision is based.

In an action against a town for the wrongful exclusion of plaintiff school children by the school committee from the public schools as afflicted with head lice, whether the school committee acted in good faith, *held* a question of fact for the jury on all the evidence, including the failure to give the children an opportunity to be heard.

If the school committee of a town had given school children a fair and impartial hearing before excluding them from the schools as afflicted with head lice, their decision would have been final."

It should be noted, however, that the suspension and expulsion of school pupils is reposed by law exclusively in the school authorities by Section 7685, of the General Code. This section reads as follows:

"No pupil shall be suspended from school by a superintendent or teacher except for such time as is necessary to convene the board of education, nor shall one be expelled except by a vote of two-thirds of such board, and after the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against it. No pupil shall be suspended or expelled from any school beyond the current term thereof."

As the above statute is special so far as the subject of suspension or expulsion of school pupils is concerned and expressly designates the teacher and the board of education to deal with the subject, it follows in my opinion that a board of health cannot directly in the first instance suspend or expel from school a pupil therein for any reason but may order the proper school authorities who are charged primarily with the supervision of the school to carry out such reasonable orders as may be necessary to eliminate from the school a pupil who has head lice, and this applies to children who are wards of a Juvenile Court, as well as others.

Referring to the Commissioner's specific question, I would not say that the board of health has the final word, as he puts it, as to when children who have been suspended from school or sent home on account

of being infected with head lice in pursuance of orders of the board of health, may re-enter school. Under the provisions of Section 7685, General Code, it seems clear that the matter is left to the board of education. However, if the board of education fails to cooperate with the board of health in the matter it may be necessary for the board of health to make orders from day to day, looking to the correction of the condition mentioned, and under the board's broad general powers of medical supervision of school children as extended by Section 1261-26, General Code, the board clearly has the right to make examinations to determine when head lice infestation of a school pupil exists and when the condition has been sufficiently corrected to permit of the child's return to and remaining in school, and to make orders accordingly if the findings with respect thereto are made in good faith on the basis of concrete evidence and are reasonable. This applies to any and all pupils in the schools who are wards of the Juvenile Court as well as to others.

Based on the foregoing observations, I am of the opinion:

1. Under the broad powers extended to boards of education by Section 4750, General Code, to make rules and regulations for the government of pupils in the schools in their respective districts and to teachers by Section 7707, General Code, to guard the health and physical welfare of pupils in their schools and to maintain good discipline over all the pupils under their charge, the said school authorities may take such steps as are reasonably necessary to eliminate from schools under their jurisdiction pupils infested with head lice, subject to the limitations contained in Section 7685, General Code, as to suspension and expulsion of pupils from school.

2. Where there are children in a public school who are infested with head lice, and the school authorities in charge of the school fail to act in the premises, the board of health of the health district in which the school is located may by virtue of Section 4424, General Code, and cognate sections, make such reasonable orders within other provisions of law as are necessary to correct the condition, and it is the duty of the board of education charged by law with the administration of the school to carry out any orders so made by the board of health.

3. Children who are wards of a Juvenile Court are subject to all laws and reasonable rules and regulations lawfully made in good faith

by school and health authorities affecting their attendance in the public schools as are children who are not wards of the court.

4. Rules and regulations made by school authorities and health authorities respecting the health, general welfare and discipline of pupils in the public schools within their respective jurisdictions if lawful, reasonable, and made in good faith are not reviewable by the courts.

Respectfully,

THOMAS J. HERBERT
Attorney General.