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1. EXAMINATIONS, HEALTH—BOARD OF EDUCATION HAS AUTHORITY TO REQUIRE TEACHERS AND JANITORS TO SUBMIT TO HEALTH EXAMINATIONS, X-RAY, WASSERMAN OR OTHER BLOOD TESTS, VISION AND HEARING TESTS—SECTION 7692-1 G.C.
2. WRITTEN CERTIFICATE OF REPUTABLE PHYSICIAN STATING EXAMINATIONS MADE AND THE RESULTS, MAY BE FILED IN LIEU OF EXAMINATIONS BY SCHOOL PHYSICIAN OR HEALTH OFFICERS—SUCH PHYSICIAN NOT REQUIRED TO STATE UNDER OATH OR ACKNOWLEDGE BEFORE NOTARY PUBLIC THAT FACTS ARE TRUE.
3. NO AUTHORITY TO REQUIRE TEACHERS OR JANITORS TO BEAR EXPENSE OF SUCH EXAMINATIONS.
4. HEALTH REGULATIONS APPLY EQUALLY TO SCHOOL PUPILS, TEACHERS AND JANITORS—CONDUCT OF EXAMINATIONS.

SYLLABUS:

1. A board of education may in pursuance of the provisions of Section 7692-1, General Code, require teachers and janitors who are employes of the board to submit to health examinations as prescribed therein by the school physician or local health officers functioning in the district where the duties prescribed by said section have been delegated to and assumed by the health officers, and to have X-ray examinations, Wasserman or other blood tests, and vision and hearing tests made, if, in the opinion of the physicians or health officers, such examinations and tests are required for the protection of the health of the pupils and teachers in the schools of the district.

2. School teachers and janitors may, in lieu of submitting to examinations by the school physicians or health officers, as the case may be, file with the board of education a written certificate of a reputable physician stating that the required examinations have been made and setting forth the results thereof.

3. A physician who furnishes a written certificate pursuant to the provisions of Section 7692-1 of the General Code is not required to state under oath that the facts set out therein are true, nor is he required to have his signature thereto acknowledged before a notary public, and, consequently, a board of education may not lawfully impose such requirement.

4. A board of education is not authorized to require school teachers or janitors to bear any of the expense of health examinations provided for by Section 7692-1, General Code.

5. The health regulations prescribed by Section 7692-1, General Code, apply equally to school pupils, teachers and janitors, except that all pupils referred to the school physician shall be examined, whereas only such examinations of teachers and janitors should be made as are, in the opinion of the school physician, necessary to protect the health of the pupils and teachers.

Columbus, Ohio, August 26, 1942

Hon. Kenneth C. Ray, Director of Education,
Columbus, Ohio.

Dear Sir:

You have requested my opinion concerning certain matters involving the interpretation and application of Section 7692-1 of the General Code of Ohio. The pertinent part of your inquiry, after referring to said Section 7692-1, General Code, reads as follows:

“Some boards of education in Ohio are requiring that all employees shall submit to a tuberculosis skin test to be given by the school physician and that those with positive reaction shall have chest X-rays taken at their own expense. In some cases there is required a notorized certificate from a recognized physician that an X-ray has been taken or that other tests have been given. Some boards also require that vision, hearing and Wasserman tests be made of all employees.

The above section of the General Code has raised some very pertinent problems. The Department of Education would like the Attorney General's opinions on the following:

1. Does a board of education of a school district have the legal authority to require its employees to submit to:

(a) Chest X-rays in cases positive reaction to the tuberculin patch test?

(b) Wasserman or other blood tests?

(c) Vision and hearing tests?

2. Is a certificate of good health, by a reputable physician, filed with the clerk of the board of education a good and sufficient compliance with the requirements of the board of education of a school district?

3. May the board of education of a school district require the notarization of such certificate of good health from a reputable physician?
4. May a board of education of a school district compel school employees to pay for health tests required by it?
5. Do the health regulations apply to pupils and employees alike?"

By the terms of Section 7692, General Code, boards of education are authorized to employ school physicians and school dentists and trained nurses to aid the physicians and dentists in making such health examinations and diagnoses of school children as are authorized by law. It is also provided therein that the board of education may delegate the duties and powers therein provided for to the board of health or officer performing the functions of the board of health within the district, if such board or officer is willing to assume the same. Section 7692-1, General Code, provides as follows:

"School physicians may make examinations and diagnosis (diagnoses) of all children referred to them at the beginning of every school year and at other times if deemed desirable. They may make such further examination of teachers, janitors and school buildings as in their opinion the protection of health of the pupils and teachers may require. Whenever a school child, teacher or janitor is found to be ill or suffering from positive open pulmonary tuberculosis or other contagious disease, the school physician shall promptly send such child, teacher or janitor home, with a note, in the case of the child, to its parents or guardian, briefly setting forth the discovered facts, and advising that the family physician be consulted.

School physicians shall keep accurate card index records of all examinations, and said records, that they may be uniform throughout the state (,) shall be according to the form prescribed by the state school commissioner, and the reports shall be made according to the method of said form; provided, however, that if the parent or guardian of any school child or any teacher or janitor after notice from the board of education shall within two weeks thereafter furnish the written certificate of any reputable physician that the child, or teacher or janitor has been examined, in such cases the services of the medical inspector herein provided for shall be dispensed with, and such certificate shall be furnished by such parent or guardian from time to time, as required by the board of education. Such individual records shall not be open to the public and shall be solely for the use of the boards of education and health or other health officer. If any teacher or janitor is found to have positive open pulmonary tuberculosis or other communi-

cable disease, his or her employment shall be discontinued upon expiration of the contract therefor, or, at the option of the board, suspended upon such terms as to salary as the board may deem just until the school physician shall have certified to a recovery from such disease."

Upon consideration of the terms of the foregoing statutes and the subject matter which they treat, it is manifest that they were enacted in the interests of the public health and welfare and therefore they should be accorded a fair, reasonable and liberal construction, to the end that their purpose should be fulfilled. It clearly appears from the terms of Section 7692-1, General Code, that its provisions with respect to examinations and diagnoses apply equally to children and certain specified employes, except that the examinations and diagnoses of children may be made only when the children have been referred to the school physician for that purpose, whereas examinations of teachers and janitors are to be made when in the opinion of the physician the health of the pupils and teachers requires it. By reason of the provisions that such examinations and diagnoses shall be made by the school physician in proper cases, it follows as a necessary corollary thereto that the children and employes named in the statute must submit to whatever examinations are proper unless they prefer to take advantage of the alternative provided for by the statute, that is, to furnish a written certificate of a reputable physician that they have been examined and continue to furnish such certificate from time to time as the board, in the exercise of a reasonable discretion, may require. When this is done, such employees need not submit to an examination by the school physician, as the statute expressly provides in clear and definite language that in such cases "the services of the medical inspector herein provided for shall be dispensed with."

It will be noted that the statute contains no provisions with respect to the requirements of the written certificate of a physician which may be furnished in lieu of an examination by the school physician. In view of this, it would appear to me that a board of education, which has only such powers which are conferred upon it by law, may not prescribe requirements in connection with such written certificates which the law does not exact. You are therefore advised that it is my opinion that a physician who furnishes such a certificate may not be required to make a statement under oath that the facts set out therein are true. It will be noted that the provisions of the statute with respect to such

certificate prescribe that the same shall state the fact that an examination had been made. It may well be implied, however, that such certificate should show not only the fact of examination but the result thereof as well, else it would not be in fulfillment of the purposes of the law.

It will be observed that so far as physicians are concerned no provision is made in the statute for the administration of any remedial or corrective medical treatment to school employes under any circumstances. The duties and powers extended to the board and to physicians employed by the board are limited entirely to the making of examinations. The only corrective remedy authorized by the statute is suspension or discontinuance of the services of the employe until he recovers if it is found that he is suffering from a contagious or infectious disease. The question therefore arises as to whether or not the specific tests mentioned in your first question and frequently used by diagnosticians may be classified properly as something useful and necessary in making a health examination or are to be regarded as a preventive or corrective, or part of the treatment of the disease. This question was considered at some length by one of my predecessors in an opinion found in the published Opinions of the Attorney General for 1933, page 467. This opinion dealt more particularly with tuberculin tests proposed to be given to school children by the injection method or by the application of salves, although other so-called health tests are mentioned, such as the Schick test for diphtheria and the Dick test for scarlet fever. No reference is made to X-ray examinations to supplement tuberculin patch tests in cases of positive reaction thereto, or to Wasserman or other blood tests, but, in my opinion, these last mentioned tests fall in the same category as do those mentioned in the former opinion so far as the use of such tests is concerned. The Attorney General in said opinion observed that all medical authorities treat such a test as diagnosis, as distinguished from a preventive or curative measure. He further stated that such test "is given for the purpose of ascertaining whether a person has, or is subject to the disease for which it is given. It is not given to prevent the disease, as is the vaccination for smallpox, nor is it given to cure the disease," and concludes, as stated in the syllabus of the opinion:

"It would be legal for either a board of education or a board of health to give the tuberculin test to school children

by means of the injection method or application of a salve, if it is found to be a reasonable measure for the protection of the public health and safety.”

The statute does not limit the extent of the examinations authorized by it, or the nature or kind of tests that may be utilized in making the examinations, except in its direction to the school physicians that they shall make such examinations as in their opinion the protection of the health of pupils and teachers may require. So far as the express provision of the statute is concerned, the matter is left entirely to the “*opinion*” of the school physicians. The board of education is not authorized to require such examinations that in its opinion may be necessary. The legislature, in enacting the statute, apparently felt that a board of education would not be able to approach the subject from a professional point of view, and therefore left the question to the school physicians who, by reason of their professional knowledge and experience, should be entrusted with the determination of the extent and nature of the examinations that would be required for the protection of the health of the pupils and teachers. Of course, in the very nature of things and in practice, the physicians who are employes of the board would be guided to some extent by the wishes and desires of the board.

If in the opinion of the school physicians or the health officers who have assumed the duties of the school physicians as prescribed by Section 7692, General Code, it is necessary to have X-rays taken to supplement the examinations mentioned in said section, it would seem that the teacher or janitor involved would be required to submit thereto. There is no provision in the law, however, that either expressly or impliedly requires teachers or janitors to pay for the taking of X-rays or to bear any expense of the examination. Such a requirement of the board is, in my opinion, no more authorized than would be the requirement that the employe submitting to an examination pay a part of the school physician's salary or a part of the salary of the health officer who made the examination, as the case might be.

In specific answer to the questions submitted, I am of the opinion that:

1. A board of education may in pursuance of the provisions of Section 7692-1, General Code, require teachers and janitors who are employes of the board to submit to health examinations as prescribed

therein by the school physician or local health officers functioning in the district where the duties prescribed by said section have been delegated to and assumed by the health officers, and to have X-ray examinations, Wasserman or other blood tests, and vision and hearing tests made, if, in the opinion of the physicians or health officers, such examinations and tests are required for the protection of the health of the pupils and teachers in the schools of the district.

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Respectfully,

THOMAS J. HERBERT
Attorney General.