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CHILDREN IN PRIVATE OR PAROCHIAL SCHOOLS—HOURS OF TERM AND ATTENDANCE—DETERMINED BY BOARD OF EDUCATION—TERM MUST BE MINIMUM OF THIRTY-TWO WEEKS—BOARD OF EDUCATION MAY DETERMINE IF IT SHOULD BE FOR LONGER TERM—PENALTY IMPOSED ON PARENT OR GUARDIAN—FAILURE TO SEND CHILD TO SCHOOL FOR REQUIRED TERM — STATUS, ADDITIONAL PERIOD WHICH BOARD MAY PRESCRIBE — SECTIONS 3321.04, 3321.07, 3321.38 RC, 4849-3, 4849-6, 12974 GC.

SYLLABUS:

Under the provisions of Section 3321.07, Revised Code, Section 4849-6, General Code, the General Assembly has provided that the hours and term of attendance required for children in private or parochial schools must be equivalent to the hours and term of attendance required of children in the public schools of the district, as determined by the board of education, which term must be a minimum of thirty-two weeks, as provided by Section 3321.04, Revised Code, Section 4849-3, General Code, but may be for such longer term as the board of education may determine. However, the provision of Section 3321.38, Revised Code, Section 12974, General Code, imposing a penalty on the parent or guardian who fails to send his child to school for the required term, only embraces the provisions of Section 3321.04, Revised Code, and does not include the additional period which a board of education may prescribe under the provisions of Section 3321.07, Revised Code.

Columbus, Ohio, November 6, 1953

Hon. James W. Dinsmore, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“A question has arisen as to the required time of attendance in parochial school.

“Section 4849-3 G. C. provides in part, as follows :

‘ * * * must send child to a public, private, or parochial school for the full time the school attended is in session, which shall in no event be for less than 32 weeks per school year.’

“Section 4849-6, G.C., provides in part, as follows :

‘ * * * and the hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district.’

“The term of attendance required of children in the public schools of the district is 36 weeks, and the term of four Amish parochial schools is of a lesser duration.

“I would like to have your opinion as to which of the two above cited sections applies and, correspondingly, whether or not the Amish parochial schools must provide a term of the minimum 36 week duration.”

At the outset, a precise delineation of the question which I will seek to answer should be made. Although your question is literally “whether or not the Amish parochial schools must provide a term of the minimum 36 weeks duration,” the solution to that problem does not rest with you. I believe that your inquiry must be interpreted as asking whether the failure of the Amish parochial schools to provide a term in excess of 32 weeks involves any punishable violation of the compulsory school attendance laws.

The two sections to which you refer, are part of the law relating to compulsory attendance of school pupils. Both of these sections were enacted as a part of the new school code of 1943. The pertinent portion of Section 3321.04, Revised Code, formerly Section 4849-3, General Code, reads as follows :

“Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed under an age and schooling certificate and who has not been determined to be incapable of profiting substantially by further instruction, must send such child to a public, private, or parochial school for the full time the school attended is in session, *which shall not be for less than thirty-two weeks per school year.* * * *”

(Emphasis added.)

Section 3321.07, Revised Code, formerly Section 4849-6, General Code, in so far as pertinent, reads as follows :

“If any child attends upon instruction elsewhere than in a public school *such instruction shall be equivalent to the instruc-*

*tion given children of like age and advancement in the public schools of the district in which such child resides. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public school of the district. * * ** (Emphasis added.)

The last clause of Section 3321.04, "which shall not be for less than thirty-two weeks per school year" corresponds with the provisions of Section 3313.48, which is a part of the same school code, and relates to the powers and duties of the boards of education of the several school districts. That section reads as follows:

"The board of education of each city, exempted village, and local school district shall provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Every day school so provided shall continue not less than thirty-two weeks in each school year."

This section, you will note, requires every board of education to provide for the education of the youth of school age within its district, and then makes the mandatory provision that every day school so provided shall be maintained for *not less than* thirty-two weeks in each school year. This provision plainly does nothing but establish a minimum term and does not in any way restrict or limit the discretion of the board of education in establishing and maintaining its schools for a longer period. This minimum term of thirty-two weeks constitutes what is familiarly known as an eight months school year, comprising one hundred and sixty days, whereas a large portion of the schools throughout the state have been, and are being maintained for a period of thirty-six weeks, which is known as a nine months school year, comprising one hundred and eighty days.

Section 3321.07, *supra*, evidently recognizes the fact that schools may be and frequently are continued for a longer period than thirty-two weeks. If, therefore, in a given district a board of education has established the one hundred and eighty day school year for its public schools, the provision of Section 3321.07, Revised Code, plainly has the purpose and effect of providing that pupils who by their own choice or the choice of their parents, are attending a private or parochial school, shall have the same advantages and be under the same obligations as to attendance as the pupils in public schools. There is no inconsistency, so far as I can see, between the two sections.

By way of side-light on the situation that has doubtless arisen in the district to which your letter refers, and as strongly indicative of the general legislative policy, I call attention to a change which has been made in the law by the 100th General Assembly. This change is embodied in Amendment Substitute Senate Bill No. 23, passed July 13, 1953. This Act amends Section 3317.02, Revised Code, Section 4848-1, G.C., to read as follows:

"Section 3317.02 (4848-1). There shall be paid to each school district in each calendar year an amount equal to twenty-five cents a day for not to exceed one hundred eighty days for each pupil of school age in average daily membership in part-time, continuation, and evening schools, and, for regular day school, an amount equal to sixty dollars for each pupil in average daily membership in grades one to eight, inclusive, an amount equal to thirty dollars for each pupil five years of age or over in average daily membership in kindergarten classes, and an amount equal to seventy dollars for each pupil in average daily membership in grades nine to twelve, inclusive, during the school year next preceding such payments. No payment shall be made under this section for one-teacher and two-teacher elementary schools maintained in local school districts.

"The payment shall be made *only for a school year of not less than one hundred eighty days*, inclusive of such legal school holidays established by section 3313.63 of the Revised Code as occurred during regular school weeks and on which days schools were not in session; inclusive of such other days, not exceeding two, approved by the superintendent of public instruction for the professional meeting of teachers when such days occurred during a regular school week and the schools were not in session; and inclusive of all days that schools were not in session because of disease epidemic, temporary circumstances rendering the buildings unfit for school use, or other public calamity."

(Emphasis added.)

Section 4848-1, General Code, Section 3317.02, R.C., prior to this amendment, contained substantially the same provisions with a slightly different table of payments, but contained in addition, the following sentence:

"* * * If the board of education of any school district maintains a school year of less than 180 days, the payments under this section and the amounts computed under paragraphs (a), (b), (c), and (d) of section 4848-4 of the General Code shall be such fraction of the amounts specified therein as is determined by using the number of days of the district's school year as the numerator, and 180 as the denominator."

There it will be noted that while the foundation program payment was based on a school year of not less than one hundred eighty days, a provision was made giving to those schools which maintained a school year of less extent, a proportionate allowance from the school foundation both that provided for in that section and also the benefits provided for by Section 4848-4. But under the amendment, school districts which failed to provide a full one hundred and eighty day term, would be deprived of any participation whatever in the foundation program. Accordingly, it would be most natural, and in fact almost compulsory for the board of education in every school district to reform its plan so as to come within the provision of the new law, and have a share in the very substantial benefits of the school foundation program.

Returning to your basic inquiry, the question naturally arises as to the extent to which the obligation which appears to be imposed upon private and parochial schools by the statutes above quoted, may be enforced. The penalty for violation of the requirement that a parent or guardian must send the child to a public, private or parochial school is found in Section 3321.38 of the Revised Code, Section 12974, G. C. Section 3321.38 reads as follows:

“(A) No parent, guardian, or other person having care of a child of compulsory school age shall violate section 3321.01, 3321.04, 3321.10, 3321.19, 3321.20, or 3321.14 of the Revised Code. The court may require a person convicted of violating this section to give bond in the sum of one hundred dollars with sureties to the approval of the court, conditioned that he will cause the child under his charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law.

“B” No parent, guardian, or other person shall fail or refuse to pay a fine and costs for violating division (A) of this section of the Revised Code or fail to give bond as provided for in this section.

“C” This section does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation of such sections; nor shall forfeiture of the bond relieve such person from prosecution and convictions upon further violation of such sections.

Sections 4109.05 to 4109.07, inclusive, of the Revised Code apply to this section.”

It is significant that Section 3321.04 is mentioned but not Section 3321.07. While I have no doubt that the legislature intended to couple to-

gether the provisions of these two sections, yet, the failure of the penalty statute to include Section 3321.07 forces me to the conclusion that it does not subject a parent or guardian to the penalty of the law for failure to comply with the latter section. Neither does it impose any penalty upon those in charge of a private or parochial school if they fail to give instruction for that period longer than thirty-two weeks which has been established by the board of education of the district.

Accordingly, it is my opinion and you are advised that under the provisions of Section 3321.07, Revised Code, Section 4849-6, General Code, the General Assembly has provided that the hours and term of attendance required for children in private or parochial schools must be equivalent to the hours and term of attendance required of children in the public school of the district, as determined by the board of education, which term must be a minimum of thirty-two weeks, as provided by Section 3321.04, Revised Code, Section 4849-3, General Code, but may be for such longer term as the board of education may determine. However, the provision of Section 3321.38, Revised Code, Section 12974, General Code, imposing a penalty on the parent or guardian who fails to send his child to school for the required term, only embraces the provisions of Section 3321.04, Revised Code, and does not include the additional period which a board of education may prescribe under the provisions of Section 3321.07, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General