

You are therefore advised in answer to your inquiry that:

1. Under existing law the superintendent of public instruction is without authority to consider cases involving the revocation of teachers' certificates, the sole reference to the same occurring in section 7827 G. C., wherein the board of county school examiners is authorized to conduct a hearing upon the question of revocation of a certificate of a person who is "the recipient of a certificate".

2. Under the provisions of 7847 G. C. the authority given to a board of county school examiners for the revocation of teachers' certificates, as set forth in 7827 G. C., is vested in a city school district in the board of city school examiners.

Respectfully,

JOHN G. PRICE,

Attorney-General.

3226.

BOARD OF EDUCATION—MANDATORY DUTY TO PROVIDE TRANSPORTATION TO CRIPPLED CHILD IF UNABLE TO WALK TO SCHOOL—SCHOOL ASSIGNED—WITHIN OR WITHOUT DISTRICT.

It is the mandatory duty of the board of education of the district in which a crippled child resides to provide for his transportation to the school to which he has been or should be assigned, either within or without the district, if the child is so crippled that he is unable to walk to school.

COLUMBUS, OHIO, June 16, 1922.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request upon the following statement of facts:

"Your opinion is desired on the provisions of the school law for cripples set out in House Bill 200 found in Ohio Laws, Vol. CIX., page 257, so far as it applies to the following facts:

"G. G. is a *cripple*, being partially paralyzed and is *over eighteen years of age*. He is a resident of a rural school district not having a high school, and is a junior and is attending the nearest high school to where he lives in another and adjoining district, and which school is located more than four miles from his place of residence. The school district of his residence, being Jackson Township Rural, is paying the transportation of all high school pupils residing therein under 18 years of age, who live more than four miles from the high school.

"Having particular reference to sections 7755-2 and 7755-3 of the above mentioned act, we would like the following questions answered:

"1. Is it mandatory for the board of education of the district of G. G.'s residence to pay for his transportation to high school?

"2. If direction must first be given to the board of education of this district, who is to give this direction? That is to say, does this section 7755-2, where it names 'superintendent of public instruction' refer to the state commissioner of schools, or does it refer to the county superintendent of schools, or if to neither, to whom does it refer?

"I might further add that I am informed that the health commissioner of Paulding county has given his opinion that G. G. is so crippled that he is unable to walk to school. The county superintendent of schools of Paulding county is of the opinion that this pupil is a proper pupil in the high school to which he is going and that said school is the most available and nearest high school and one in which he is making proper progress."

Sections 7755-2 and 7755-3 G. C., to which you invite attention, as bearing upon this case, read as follows:

"*Section 7755-2:* If a child resident of one school district attends a class for the blind, deaf, crippled or those of defective mentality in another, 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 afford or pay for his transportation to the class in the other district; and the board of education of the district in which the class which he attends is located may provide his transportation to the class. Upon direction of the superintendent of public instruction the board of education of the district in which such child resides shall pay for his transportation and tuition."

"*Section 7755-3:* In case a child is so crippled that he is unable to walk to the school to which he is assigned the board of education of the district in which he resides shall provide for his transportation to such school. This section shall apply whether there is a special class for crippled children to which he is assigned or not. In case of dispute whether the child is able to walk to the school or not, the district health commissioner shall be judge of such ability."

As to section 7755-2 G. C., you will note that its operation is limited to those cases where a child, resident of one school district, attends a class for the blind, deaf, crippled or those of defective mentality in another school district; that is, there must be a class for persons coming under this description and not where the child attends the regular classes in which pupils of sound health and sound body are taught. In the case which you describe apparently there is no class of the type described in 7755-2 G. C. in the high school which this crippled person attends, therefore the provisions of section 7755-2 G. C. do not govern in this case.

Answering your second question first, the "direction" referred to in 7755-2 is in those cases where there is a class operated in the school district for the special teaching of the blind, deaf, crippled or those of defective mentality, and does not refer to the school district which does not operate special classes of this kind. "Direction of the superintendent of public instruction" means the superintendent of public instruction who is provided for in the Ohio Constitution, as amended on September 3, 1912, section 4, Article 6, reading as follows:

"A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law."

As far as the statutes are concerned, where the words "superintendent of public instruction" are used, it refers to the officer who was formerly the state commissioner of common schools and who is the executive head of the school system of the state, and does not mean the county superintendent of schools in a county school district or the city superintendent of schools in a city school district. For those cases which fall within section 7755-2 G. C., the transportation therein mentioned may be furnished by either the district in which the pupil resides or the district in which the pupil attends, and it is not mandatory that such transportation be furnished for cases therein described unless directed to do so by the superintendent of public instruction and then the mandate lies only upon the district in which the child resides. The answer to the case which you describe appears in section 7755-3, supra, for this section says that it shall apply "whether there is a special class for crippled children to which he is assigned or not", and if the child is so crippled that he is unable to walk to a school to which he is assigned, the board of education of the district in which he resides "*shall provide for his transportation to such school.*" This language is mandatory and there is no direction to be given on the part of any official. The board of education is presumed to know the law and if this mandate is not carried out in those cases which fall within 7755-3, then the board is derelict in its duty. You indicate that this person is over eighteen years of age, is a junior in high school and is attending high school nearest to where he lives in another and adjoining district. Since he is over eighteen years of age, the provisions of the compulsory education act (Bing Law) do not apply. However, the 84th General Assembly passed special legislation for the education of the blind, deaf, crippled and those of defective mentality and the case which you describe comes within the language of House Bill 200, an act "relating to special classes for the blind, deaf and crippled and to state subsidies for the same, and to the *transportation and tuition of such children.*" In the opening section of House Bill 200, that is, 7755, the policy of the law is clearly indicated in that the section provides that the superintendent of public instruction may grant permission to any board of education to establish classes for the instruction of the deaf or blind persons over the age of three, or of crippled persons over the age of five. As far as the blind persons are concerned the section specifically states that this instruction may be given to those who are "under the age of forty-five" on the basis that "by so doing the board of education is enabled to further its educational plan for blind persons." The act as a whole is rather indefinite in that it uses the words "child," "person" and "pupil" interchangeably. You do not indicate that the person whom you describe is over twenty-one years of age, but is over eighteen years of age, and as the law recognizes a person less than twenty-one years of age to be an infant, it must be presumed that the "child" mentioned in section 7755-3 refers to those persons who have not yet reached the age of twenty-one years, that is, those who are described in another section of the law as being the persons to whom the schools of the state shall be free. House Bill 200 is special legislation containing special provisions for the education of those unfortunates described in the act, while the provisions of the state compulsory school code are general in their nature, referring to all children between the ages of five and eighteen years.

"The special provisions of any legislative enactment must prevail over general provisions". (State ex rel Myers vs. Industrial Commission, decided May 16, 1922.)

Having discussed the matter as above, it is not necessary to answer your second question bearing upon section 7755-2 other than to say it does not apply in the instant case, and in reply to your first inquiry you are advised that it is the opinion

of this department that it is the mandatory duty of the board of education of the district in which a crippled child resides to provide for his transportation to the school to which he has been or should be assigned, either within or without the district, if the child is so crippled that he is unable to walk to school.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3227.

BRIDGES AND CULVERTS—COUNTY COMMISSIONERS AUTHORIZED TO REPLACE BRIDGES WITHIN A CONSERVANCY DISTRICT—SECTIONS 2432-1 ET SEQ. (109 O. L. 348) INDEPENDENT OF PROVISIONS OF SECTION 2421 G. C.—MAY REPLACE BRIDGES ON CITY STREETS NOT CONSTITUTING PART OF STATE OR COUNTY ROAD.

Sections 2432-1 et seq. G. C. (109 O. L. 348), authorizing the construction by county commissioners of bridges within a conservancy district to replace those bridges which were removed in the carrying out of the conservancy project, are to be read as independent of the provisions of previously existing section 2421 G. C. Accordingly, county commissioners in proceeding under sections 2432-1 et seq. G. C. are not, in the construction of bridges, limited to city streets forming part of a state or county road, but may replace bridges which were removed from city streets not constituting part of a state or county road.

COLUMBUS, OHIO, June 16, 1922.

HON. FOSTER E. KING, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—You have submitted for the consideration of this department the following:

“Under and by virtue of section 2421 G. C. the board of county commissioners is limited in the construction and repairing of bridges over streams to state and county roads.

The supreme court in 59 O. S. 163 held that the county commissioners are not required to construct or keep in repair bridges on streets established by the city and not a part of a state or county road, even though the city receives no part of the bridge fund.

There is and has been established in Hardin county a conservancy district under and by virtue of 104 O. L. 13. In the carrying out of the official plan of the district it became necessary to remove all the bridges across the Scioto river and in the conservancy district and in this county. The work of the district consisted of widening, deepening and straightening the Scioto river.

On account of the increased width of the river and the plan of the said district it became impossible to use the present bridges across the river. A part of these bridges are located in the city of Kenton and in the conservancy district and across the Scioto river. A part of these bridges in the city connect up state and county roads. Some of the bridges in the city are used solely to connect up city streets from one side of the river to the other.