

lished in law that where a general term follows specific and definite terms, the meaning of the general one must be fixed with a view to the meaning of the specific and definite terms.

In the provision just quoted the specific terms are 'machinery' and 'tools,' and the general term which follows these specific ones is 'other equipment.' Hence, in view of the above rule of law, 'other equipment' would be held to include only those things which would be similar in nature to 'machinery' and 'tools;' that is, such things as would be used by a workman in the building of roads, bridges and the like, which could hardly be said to include articles of wearing apparel, irrespective of whether they be hip or ordinary boots. Therefore, it is my opinion that the county commissioners would have no authority to purchase boots, as suggested, and pay for the same from the proper fund of the county."

I agree with the holding of that opinion.

Consequently, I am of the view that the county commissioners are not authorized under the provisions of either section 2786 or 7200, General Code, to furnish boots or other wearing apparel for the surveyor and his employes and pay therefor from the county treasury.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

955.

PUBLIC SCHOOL FUND—SUBSTITUTE HOUSE BILL NO. 688, 90TH GENERAL ASSEMBLY, IF ENACTED, PROVIDING THEREFOR, MAY NOT BE USED FOR CERTAIN PURPOSES—SMITH-HUGHES ACT AND TRACEY-COPPS ACT DISCUSSED—EXPENSES OF STATE BOARD OF VOCATIONAL EDUCATION—REHABILITATION WORK DISCUSSED.

**SYLLABUS:**

1. *In the event Substitute House Bill 688 of the 90th General Assembly is enacted into law in the form in which it was introduced in the legislature, and a "public school fund" as provided by Section 6 thereof, is thereby created, no part of that fund may be used for the payment of salaries or wages of employes or appointees of the State Board of Vocational Education engaged in directing and supervising the administration of the Smith-Hughes Act or the Tracey-Copps Act in cooperation with the Federal Government; nor may any part of such fund be used to pay the incidental expense of the State Board of Vocational Education or its appointees; nor may any part of the said fund be expended to pay the cost of administration of the division of schools for deaf, blind and crippled children in the Department of Education.*

2. *No part of the state's cost of administration of the Smith-Hughes Act or the Tracey-Copps Act may be paid from the "public school fund" referred to in paragraph 1, above, except such as may be included within the amounts authorized to be paid to the several school districts by Sections 7 and 8 of proposed*

*Substitute House Bill 688, for pupils of school age actually receiving instruction in classes in elementary schools and high schools. No part of the cost of training teachers, supervisors and directors or in furtherance of "schemes of placement" or of cooperation with the Industrial Commission in rehabilitation work or of giving instruction to persons other than children of school age in regularly established classes in the public schools may be paid from the said "public school fund".*

COLUMBUS, OHIO, June 14, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR DR. SKINNER:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Under substitute House Bill 688, now before the Ohio General Assembly, it is proposed that a public school fund be created to defray the current costs of operating public schools throughout the state. Under Section 9 of this substitute House Bill 688, the minimum cost of a foundation program is defined for all schools within the state. In computing this cost, the amount of money provided by the state for the support of vocational education and classes for handicapped children is included.

In view of this fact, the House Committee on Finance eliminated from the Executive Budget the total amount heretofore appropriated by the state to defray the cost of vocational education and education of handicapped children on the assumption that the full amount is taken care of in the proposals made in substitute House Bill 688. There appears to have been an oversight on the part of the House committee members because a part of the fund for vocational education and handicapped children is used to pay state administrative salaries.

What is your opinion in regard to paying these salaries of state administrative officials from the fund proposed under Section 2 and Section 6 of the proposed House Bill 688?”

Proposed Substitute House Bill 688 of the 90th General Assembly is entitled:

“A BILL

To provide for state support of public schools, the creation of a public school fund, and the distribution thereof so as to promote economy and efficiency in the operation of public schools and repealing sections 7575, 7595, 7595-1, 7595-2, 7596, 7596-1, 7596-2, 7597, 7599, 7600, 7600-1, 7601-1, 7602, 7603, 7794, 7796, 7796-1, and 7797 of the General Code.”

The purpose of the bill, as its title indicates, is to provide financial support for local schools in the several school districts of the state from state funds, to the extent of appropriations made by the legislature for that purpose. Funds for that purpose, when appropriated, are to be distributed by the Director of Education in the manner provided for in the said bill. Sections 2, 6 and 7 of the said bill which are the sections most pertinent to your inquiry, read as follows:

"Sec. 2. For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied, annually, a tax of three mills, the proceeds of which shall be retained in the several counties for the support of the schools therein. In addition thereto there shall be a 'state public school fund' as hereinafter created and provided."

"Sec. 6. There shall be and is hereby created a separate and distinct fund from the other funds of the state, to be known as 'the public school fund', which shall consist of all money appropriated thereto by the general assembly, together with all taxes, fines, incomes and moneys derived from all other sources in accordance with law and deposited in the state treasury for the support and maintenance of the public school system and the equalization of educational opportunity therein."

"Sec. 7. There shall be apportioned and paid to each school district of the state from the public school fund an annual amount equal to seventeen dollars for each pupil in average daily attendance in the elementary schools thereof during the school year next preceding such apportionment and an amount equal to twenty-nine dollars for each pupil in average daily attendance in the high schools there during the school year next preceding such apportionment, as determined by the director in the manner hereinafter provided."

Section 8 of the said bill provides for additional aid to the several school districts, to be distributed thereto by the Director of Education, under some circumstances.

The substantial legal questions presented are:

(1) Whether or not under this bill, the salaries and expenses of the chief of the division of vocational education, his assistants and other employes therein, and of the director of special classes, and other employes in the division of schools for the deaf, blind and crippled children in the department of education should, or may be paid from the state "public school fund" created by Section 6 of the said Substitute House Bill 688, if and when the same is enacted into law. In other words may the cost and expense of such direction and supervision of vocational education and special classes in local schools for deaf, blind and crippled children, as the law directs shall be made by the state department of education, be paid from this fund?

(2) May that part of the funds necessary for the actual operation of vocational education and rehabilitation activities, and for the conducting of special classes for deaf, blind and crippled children in the several school districts, which the law provides shall be paid from the state treasury, be paid from the state "public school fund" created by Section 6 of said Substitute House Bill 688, if the same is passed by the legislature?

In 1917, Congress passed what was known as the Smith-Hughes Act. This was an act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries, and to provide for co-operation with the states in the preparation of teachers of vocational subjects. It provided

for a federal appropriation of funds for the uses of the several states to carry out the purposes of the act. In Section 5 of this act it was provided that in order for a state to secure the benefits of this appropriation the state must, through the legislative authority thereof, accept the provisions of the act, and designate or create a state board consisting of not less than three members with all necessary power to co-operate with the federal board of vocational education in the administration of the act as provided therein.

It was further provided therein that each state accepting the provisions of the act, must provide from its own funds for a portion of the expense necessary to carry out its purposes.

The legislature of Ohio accepted the provisions of the Smith-Hughes Act by an act of the General Assembly passed March 21, 1917, by the terms of which a "state board of education" to consist of the superintendent of public instruction and eight appointive members, was created, with power to co-operate with the federal government in carrying out the provisions of the said Smith-Hughes Act (107 O. L. 579), Sections 367-1 to 367-7, inclusive, of the General Code.

In 1920, Congress passed a similar act known as the Tracey-Copps Act, to provide for the promotion of vocational rehabilitation of persons disabled in industry, and their return to civil employment. Somewhat similar provisions were made in this act with reference to co-operation with the several states in the administration of the act as were made in the former act. It provided in the said act that in order to secure the benefits of the federal appropriations authorized by the act to carry out its purpose,

"any state shall, through the legislative authority thereof, (1) accept the provisions of the act; (2) empower and divest the board designated or created as the state board for vocational education to co-operate in the administration of the Vocational Education Act approved February 23, 1917 (the Smith-Hughes Act) to co-operate as herein provided with the Federal Board for vocational education in the administration of the provisions of this act, etc."

The provisions of the Tracey-Copps Act were accepted by the legislature of Ohio by act of the Assembly passed April 29, 1921, and the state board of education theretofore created to co-operate in the administration of the Smith-Hughes Act was duly designated as the state board for the purpose of co-operating with the federal board for vocational education in carrying out the provisions and purposes of the Tracey-Copps Act (109 O. L. 310), Sections 367-8 to 367-12, inclusive, of the General Code.

Upon the adoption of the so-called Administrative Code in 1921 (109 O.L. 105) there was enacted Section 154-49, General Code, and the provisions of the act of 1917 referred to above creating a "state board of education" were repealed. Said Section 154-49, General Code, reads as follows:

"A state board of vocational education is hereby established in the department of education, in order to carry out the provisions of the law accepting the acts of Congress providing for co-operation with the states in the promotion of such education. Such board shall be composed of the director of education, the director of commerce, the director of agriculture, the director of industrial relations, and the director of finance. The director of education shall be chairman and

executive officer of the board. Upon the recommendation of the director of education, the board may employ such technical assistants as may be necessary and prescribe their duties and compensation. In all other respects, the state board of vocational education shall exercise the powers and perform the duties vested in the state board of education by sections 367-5, 367-6 and 367-7 of the General Code."

Since 1921 there has existed in the state department of education, the state board of vocational education as created by the above statute, and through this board and its employes vocational education and rehabilitation, as a part of the public school system of the state both as a separate activity of the state public school system and in co-operation with the federal government as provided by the said Smith-Hughes Act and the Tracey-Copps Act, has been directed and supervised.

The cost and expense of this supervision has been heretofore borne from appropriations made by the General Assembly, for that specific purpose. The General Appropriation Act of the 89th General Assembly carried an appropriation for the biennium ending December 31, 1932, for the "Department of Education, State Board of Vocational Education (Regular), State Board of Vocational Education (Smith-Hughes) and Vocational Education (Tracey-Copps) for "Personal Service" and operating "Maintenance," a total sum of \$72,185 including \$5,000 for interest on certain balances of federal moneys which under regulations of the Comptroller of the Treasury the State of Ohio is required to pay. In addition, there was appropriated for co-operative work with the federal government in "vocational education" and "industrial rehabilitation" in accordance with the provisions of the Smith-Hughes Act the sum of \$661,950. Funds existing by reason of this latter appropriation are paid directly from the State treasury upon vouchers of the proper officers, for the actual and necessary maintenance of vocational education and rehabilitation activities as sanctioned by the federal acts referred to and in which the federal government participates by contributions equal to those of the state. No part of these moneys is used for supervision purposes.

By authority of Sections 7755 et seq. of the General Code, local boards of education are empowered, upon application to, and assent of the Director of Education, to establish special classes and provide special appliances and equipment for the instruction of blind, deaf and crippled children. Section 7756, General Code, provides that upon petition of the parents of, or guardians of, eight crippled children of the proper age in any school district, the board of education thereof shall apply to the Director of Education for permission to establish a special class for such children and if permission is granted the board shall establish such class.

Section 7757, General Code, provides that at the close of each school year each board of education maintaining such a class or classes shall certify to the Director of Education the amount expended for special appliances and operating costs included in the maintenance of such special classes. The Director of Education is authorized by Section 7758, General Code, to reimburse boards of education, within certain limitations, for expenses incurred in the maintenance of such special classes, reimbursement to be made from state funds. The amount which a school district is to be reimbursed by the Director of Education from the state fund for the maintenance of these special classes as provided by Section 7758, General Code, is,

"an amount equal to the cost of maintaining such special classes and instruction, minus the cost of the instruction of the same number of children of normal needs in the same school grades of the district, but in an amount not to exceed three hundred and seventy-five dollars for nine months in the case of the blind, and three hundred dollars in the case of the deaf or crippled, and proportionate amounts for those instructed more or less than nine months.

He shall include in such voucher the cost of boarding persons included in the provisions of section 7755-1 at a rate of not to exceed two hundred fifty dollars for each person so boarded for nine months during the school year and a proportionate amount for each person boarded for more or less than nine months. He may also at his discretion include the costs of transportation under section 7755-2 or 7755-3 in the voucher in favor of any board of education which has paid the same."

Section 7761, General Code, provides in part:

"The director of education shall select some competent person or persons to inspect all classes established under section 7755, General Code, at least once a year, and to report concerning the instruction in such classes, the conditions under which they are maintained and the conditions under which such persons are boarded.

The director of education shall prescribe standard requirements for day schools for the deaf, blind and crippled, and other instruction of such children entitled to state reimbursement, which requirements shall include the conditions under which such schools are conducted, the methods of instruction and supervision, the qualifications of teachers and the conditions and terms under which they are employed, the special equipment and agencies for instruction provided, and the conditions of the rooms and buildings in which the schools are held."

From the foregoing, it will be seen that the Director of Education, of necessity, maintains a certain supervisory control over the establishment and operation of these special classes and necessarily controls to some extent, the expenditure of moneys for their maintenance.

For that purpose the division of "school for deaf, blind and crippled children" was created some years ago in the Department of Education and specific appropriations have been made by the legislature for the maintenance of this division. In the general appropriation act adopted by the 89th General Assembly, there was appropriated for the uses of this division for the biennium ending December 31, 1932, the sum of \$15,400 for personal service and traveling expenses of the director of special classes for deaf, blind and crippled children and other employes of the Department of Education in this division.

In addition there was appropriated one million dollars for the purpose of reimbursing school districts for the maintenance of the special classes as provided by Section 7758, General Code.

The use of the moneys constituting the "public school fund" as created by Section 6 of proposed Substitute House Bill 688 is strictly limited by the terms of Sections 7 and 8 of the proposed bill and may not be used for any other purpose. These sections authorize the distribution of this fund to local

school districts for use for local school purposes only, and do not authorize the use of any part of this fund for the cost of state supervision; nor does any section of the bill authorize such use. I am clearly of the opinion that no part of this fund may be used for the payment of salaries or wages or any other cost of maintenance in the Department of Education of the supervision of vocational education and rehabilitation which the law directs shall be made by the State Board of Vocational Education, or of the supervision which the law imposes on the Director of Education through the division of schools for deaf, blind and crippled children in the Department of Education, of special classes in several districts for deaf, blind and crippled children.

Whether or not the moneys needed to meet the state's share for the promotion of vocational education and rehabilitation in co-operation with the federal government and the moneys necessary to reimburse school districts for the cost of maintaining special classes for deaf, blind and crippled children as provided by Section 7758, General Code, may be paid from the fund created by Substitute House Bill 688, is not so clear.

It will be observed, upon examination of the Smith-Hughes Act and the Tracey-Copps Act, that one of the purposes embraced within the purposes of these acts for which federal appropriations are made to be matched with equal amounts furnished by the state and expended for the purposes mentioned in the acts is the training of teachers, supervisors and directors for the purpose of carrying out the provisions of the acts. In accepting the provisions of the Smith-Hughes Act by the legislature of Ohio, it is provided in Section 367-2, General Code:

"The benefits of all funds appropriated under the provisions of said act are hereby accepted as to; \* \* \*

(c) Appropriations for the preparation of teachers, supervisors and directors of agricultural subjects and teachers of trade, and industrial, and home economics subjects."

In accepting the provisions of the Tracey-Copps Act, it was provided in Section 367-8, General Code:

"The state of Ohio does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled 'An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment', approved June 2, 1920, and will observe and comply with all requirements of such act."

Among the requirements of the Tracey-Copps Act, in addition to those providing for the giving of instruction and the formation and carrying out of "schemes of placement" are "plans for the training of teachers, supervisors and directors" and plans for co-operation between the State Board of Vocational rehabilitation of persons disabled in industry and otherwise, and their return to civil employment. Moreover, a great proportion of the persons who receive the benefits of appropriations for co-operation with the federal government in the administration of the Tracey-Copps act are adults—persons more than twenty-one years old.

Clearly, it is not the intent of proposed Substitute House Bill 688, to provide for the instruction or rehabilitation of persons beyond school age. The act expressly provides in Section 15 thereof:

"It is the intent and purpose of this act to provide for a general and uniform system of public schools throughout each city, each exempted village, each village, each rural and/or each county school district of the state wherein tuition shall be free of charge to all children between the ages of six and twenty-one years residing in such districts."

Boards of education are expressly authorized by Section 7622, General Code, to include courses in agricultural, industrial, vocational and trade school subjects in the regular school curriculum and the students in those courses may be regarded as elementary or high school pupils as the case may be, but co-operation with the federal government in carrying out the provisions of the Smith-Hughes Act requires something more than the mere fostering of vocational courses in the public schools, at least to the extent of providing for the training of teachers, supervisors and directors for this work. To the extent at least, that state moneys are necessary to properly co-operate with the federal government in the training of teachers and supervisors for the administration of the Smith-Hughes Act specific appropriations should be made by the General Assembly for that purpose, as no part of this expense may be paid in my opinion, from the "State Public School Fund" as it is proposed in Substitute House Bill 688 to create that fund.

The same may be said with reference to state funds necessary in furtherance of the state's co-operation with the federal government in the administration of the Tracey-Copps Act to the extent that state moneys may need to be used for any purpose other than instruction of youths of school age in the regular courses in the schools of the several districts.

As the right of a school district to receive reimbursement for the cost of maintaining special classes for deaf, blind and crippled children is definitely fixed by Section 7758, General Code, as well as the amount of such reimbursement and there are no provisions of Amended Substitute House Bill 688 either taking away that right, or expressly authorizing this reimbursement to be made from the "public school fund" I am of the opinion that a specific appropriation must be made for that purpose else it cannot be done. Section 7 of said House Bill 688 definitely states the amounts to be paid to the several districts based upon the number of pupils in attendance. Section 8 of said bill authorizes the payment of additional sums from this fund to districts whose income from all sources including revenues received by virtue of said section 7, does not equal the minimum cost of a "foundation program" as the same is defined in said act. Neither the base payment authorized by Section 7 or the additional payment authorized by Section 8 has any relation to the payment of such amounts as the law definitely directs to be paid by Section 7758, General Code. When a school district maintains special classes for deaf, blind or crippled children and the cost thereof exceeds the cost of instructing the same number of children of normal needs of the same grade and when the district has paid the board of such children by virtue of Section 7655-1, General Code, the law directs that it shall receive the difference from the state treasury, and I find nothing in Substitute House Bill 688, in its present form

that authorizes the payment of these sums from the "public school fund" thereby created.

I am therefore of the opinion in conclusion, that in the event Substitute House Bill 688 is enacted into law in the form in which it was introduced in the legislature and a "public school fund" as provided by Section 6 thereof, is thereby created, no part of that fund may be used for "personal service" or the incidental expense of the state board of vocational education or any of its appointees in directing and supervising the administration of the Smith-Hughes Act or the Tracey-Copps Act in co-operation with the federal government; nor may any part of this fund be expended to pay the cost of administration of the division of schools for deaf, blind and crippled children in the Department of Education.

I am also of the opinion that in the administration of the Smith-Hughes Act and the Tracey-Copps Act in co-operation with the federal government, no part of the state's cost may be paid from the "public school fund" referred to above, except such as may be included within the amounts authorized to be paid to the several school districts by Sections 7 and 8 of the proposed act for pupils of school age actually receiving instruction in classes in elementary schools and high schools. No part of the cost of training teachers, supervisors and directors or in furtherance of "schemes of placement" or of co-operation with the Industrial Commission in rehabilitation work or of giving instruction to persons other than children of school age in regularly established classes in the public schools, may be paid from the said "public school fund."

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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956.

COUNTY COMMISSIONERS — UNAUTHORIZED TO APPROPRIATE FUNDS TO PAY EMPLOYES OF COUNTY SURVEYOR FOR SERVICES RENDERED IN 1932 WHEN APPROPRIATION EXISTED WHEN SERVICES RENDERED.

*SYLLABUS:*

*County commissioners are not authorized to make an appropriation in 1933 for the purpose of paying the employes of a county surveyor for services rendered in the last half of December, 1932, when there was no appropriation therefor at the time those services were rendered.*

COLUMBUS, OHIO, June 14, 1933.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

"You are respectfully requested to furnish this department with your written opinion upon the following: