

This parcel of abandoned Miami and Erie Canal land is in that section of the Miami and Erie Canal which was abandoned for canal and hydraulic purposes by the Act of April 21, 1927, 112 O. L., 388; by which act the canal lands in this section, including the parcel here under consideration, were transferred to the jurisdiction and control of the Director of Highways for highway and other purposes. As to this, it appears, however, that the present Director of Highways, acting under the authority conferred upon him by Sections 14153-5, et seq., General Code, as amended, 116 O. L., 157-159, has transferred the above described parcel of canal land back to the jurisdiction and control of the Superintendent of Public Works.

In this situation, it would appear that you are authorized to lease this parcel of canal land under the authority of Section 14153-8, General Code, as amended by the act last above referred to.

And inasmuch as it appears that this lease has been properly executed by you as Superintendent of Public Works for and on behalf of the State of Ohio and by J. R. Timberman, the lessee above named, and since it further appears that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the statutory provisions relating to leases of this kind, I am approving this lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3526.

COMPULSORY EDUCATION LAW—ATTENDANCE OFFICER
—BOARD OF EDUCATION—SCHOOL DISTRICT, CITY,
VILLAGE, COUNTY—DUTY TO WORK IN CONJUNCTION
WITH ANY PAROCHIAL SCHOOL IN DISTRICT—POWER
TO DELEGATE DUTIES PERTAINING TO HEALTH MAT-
TERS—PHYSICIAN—NURSE—SEE SECTION 7692 G. C.

SYLLABUS:

It is the duty of an attendance officer employed by a board of education of a city school district, or a village school district, or a county school district, to work in conjunction with any parochial school located in the particular school district wherein such attendance officer is employed, in the performance of his duties relating to the enforcement of the compulsory education laws of the State of Ohio.

A board of education is not authorized to permit a school nurse, or school physician to devote part of their time to working with parochial school pupils when the entire salary is paid from public funds. However, the board of education may delegate the duties and powers with regard to health matters as same are set forth in Section 7692, General Code, to the board of health or officer performing the function of a board of health within the school district, and the board of education thereafter contribute part of the salaries of such physician and nurse to the health district. Under such arrangement the parochial school may receive the same services of nurse and physician as the public schools.

COLUMBUS, OHIO, January 7, 1939.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which contains the following question:

“Is a board of education authorized to permit an attendance officer, school nurse, or school physician to devote part of their time to working with parochial school pupils when the entire salary is paid from public funds?”

The duty of enforcing the provisions of the compulsory education law rests primarily upon the board of education.

Sections 7769 and 7769-1, General Code, require that an attendance officer must be employed by the board of education of every city school district, every village school district not a part of a county school district, and every county school district.

Section 7769-2, General Code, provides as follows:

“An attendance officer or assistant may investigate any case of non-attendance at school or part-time school of a child under eighteen years of age or supposed to be under eighteen years of age resident in the district for which he is employed as attendance officer or assistant or found in the district or enrolled in any school within the district and of any child above eighteen years of age if enrolled in any school within the district, and may take such action in accordance with law as the superintendent of schools may direct or as he himself may deem proper in the absence of specific directions.”

The powers and duties of an attendance officer are set forth in Section 7770, General Code, in the following language:

“The attendance officer and assistants shall be vested with police powers and the authority to serve warrants, and shall have authority to enter workshops, factories, stores, and all other places where children are employed and do whatever may be necessary in the way of investigation or otherwise to enforce the laws relating to compulsory education and the employment of minors. The attendance officer or assistant may also take into custody any youth of compulsory school age not legally employed on an age and schooling certificate who is not attending school and shall conduct such youth to the school he has been attending or should rightfully attend.”

Section 7771, General Code, vests the attendance officer with the authority to institute proceedings in the case of violation of the laws relating to compulsory education and the employment of minors. Provisions of this section also make it mandatory that the attendance officer be furnished with copies of the enumeration in each school district in which he serves and of the lists of pupils enrolled in the schools, and that, he report to the superintendent discrepancies between these lists and the enumeration.

Sections 7773 and 7773-1, General Code, provide that when the attendance officer finds “any child of compulsory school age,” in violation of the provisions of this chapter, is not attending school, he must notify the parent or other person in charge of the child and warn him and the child, in writing, of the consequences of truancy, and upon the failure to cause the child’s attendance *at school* forthwith, make complaint against the person in charge of the child in any court of competent jurisdiction.

Section 7762-6, General Code, requires that “every child of compulsory school age who is not employed on an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction shall attend a public, private or parochial school.”

It is evident from a reading of the provisions set forth in the several mentioned statutes that, the state does not require that every child shall attend the public schools, but, it requires that every child attend some recognized school, be it public, or private, or parochial; that, the purpose of the compulsory school laws is to require the education of every child, and not necessarily that every child attend public schools; that to insure attendance at a public or private or parochial school, of every child of compulsory school age who is capable of profiting substantially by further instruction a mandatory duty is imposed upon every board of education to employ an attendance officer; and that, broad powers are given to the attendance officer to enforce the attendance of every child of compulsory school age in the school district by providing that the enumeration list

be furnished to the attendance officer which contains the name of every child in the district between five and eighteen years of age, and the lists of the pupils enrolled in the schools in order that the attendance officer can have a complete check on every child of compulsory school age in the entire school district; and by further providing that if the attendance officer finds any child of compulsory school age in the school district not attending a school, he must commence proceedings against the person in charge of the child, if after warning and notice such person fails to cause the child's attendance at some school.

It is therefore obvious that since the compulsory education laws include all children of compulsory school age and the attendance officer is empowered to enforce the attendance of every child of compulsory school age in the school district, that the attendance officer must work with all the schools in the district, whether public or parochial.

Section 7692, General Code, reads in part, as follows:

"Each and every board of education in this state may appoint at least one school physician * *. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. * *"

It is to be observed by the provisions of Section 7692, *supra*, that a board of education may employ a nurse only to aid the school physician in the performance of his duties. This proposition was discussed in an opinion appearing in *Opinions of the Attorney General for the year 1931, Volume I, page 324*, wherein it was held in the second branch of the syllabus, as follows:

"A board of education is not authorized by Section 7692, General Code, to employ a trained nurse to aid in the physical examinations and diagnosis of children, teachers and janitors in the schools of the district, unless the board employs a physician or dentist to make those examinations and diagnoses."

Section 7692-1, General Code, provides in part, 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."

By the provisions of Section 7692-1, supra, the duties of a school physician are limited to making examinations and diagnoses of all children referred to them, as well as examinations of teachers, janitors and school buildings as in their opinion the protection of the health of the pupils and teachers may require.

The inclusion in Section 7692-1, supra, of examinations of all children, teachers, janitors and school buildings evidences an intention to limit the duties of the school physician to the public schools.

The authority of a board of education to compel a pupil to submit to an examination vests in the board of education by virtue of the authority that a board of education has in imposing certain rules and regulations on pupils as a condition of attending its school. This proposition was well discussed in the case of *State, ex rel. Milhoof vs. Board of Education of the Village of Barberton*, 76 O. S., 279.

Section 7692-1, supra, imposes a board of education to compel a school child to submit to an examination unless such child can furnish a certificate that the child has been examined by a reputable physician.

Section 7690, General Code, provides that:

"Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent

or principal of schools and other employes, including, if deemed best, a superintendent of buildings and may fix their salaries. * * *”

It can be said that the provisions of Section 7690, General Code, supra, vest a board of education with the management and control of all the public schools in the school district and control over all its employes, and therefore, the board can compel its employes, teachers and janitors to submit to examinations by the school physician. A board of education would have no authority to compel the janitors, teachers and employes of the parochial school to submit to an examination.

The only reference in the school laws to schools other than the public school is in the provisions of the compulsory education laws, and, in nowise, are any schools other than the public schools recognized as a part of the education system of the State of Ohio.

Let us assume that a board of education employs a school physician and nurse under the provisions of Section 7692, supra, and requires the nurse and physician to devote a certain amount of time to working in the parochial schools located in the school district. The board of education would not have any authority and control over the parochial school pupils and the parochial school and therefore would not have the authority to insist that a pupil attending the parochial school submit to an examination, nor would the board of education have any authority to supervise the school physician and the nurse while the physician was making examinations in the parochial schools. The school physician and nurse employed and paid by the board of education would not be subject to the supervision of the parochial school while they were making examinations of the pupils attending the parochial school.

If the school physician and nurse made examinations of children attending the parochial school, it would bring about the absurd situation of neither the board of education of the public school nor the parochial school being able to exercise any jurisdiction over the physician and nurses while making such examinations in the parochial school.

I am not unmindful of the fact that in many of the school districts of the state the boards of education contribute to the salaries of the nurse and physician and the school nurse and physician devote part of their time to working with the pupils in the parochial school.

In such cases the board of education delegates the duties and powers of a school physician and nurse to the board of health of the district and the board of education contributes part of the salary of

such physician and nurse. Under such an arrangement the parochial schools receive the same services of nurse and physician as the public school. Such an arrangement was approved in an opinion appearing in Opinions of the Attorney General for 1933, Vol. II, page 1272.

Therefore, in specific answer to your question it is my opinion that, it is the duty of an attendance officer employed by a board of education of a city or a village or a county school district to work in conjunction with any parochial schools located in the particular school district wherein such attendance officer is employed, in the performance of his duties relating to the enforcement of the compulsory education laws of the State of Ohio.

A board of education is not authorized to permit a school nurse, or school physician to devote part of their time to working with parochial school pupils when the entire salary is paid from public funds. However, the board of education may delegate the duties and powers with regard to health matters as same are set forth in Section 7692, General Code, to the board of health or officer performing the function of a board of health within the school district, and the board of education thereafter contribute part of the salaries of such physician and nurse to the health district. Under such arrangement the parochial school may receive the same services of nurse and physician as the public school.

Respectfully,

HERBERT S. DUFFY,

Attorney General.