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1. CHILDREN'S TRAINING SCHOOLS, CENTERS—ESTABLISHED BY DIVISION OF MENTAL HYGIENE—BOARD OF EDUCATION MAY EXPEND MONEYS FROM GENERAL FUNDS TO SUPPORT SCHOOLS—SCHOOL DISTRICT CONCERNED HAS RIGHT TO RECEIVE PAYMENTS FROM STATE PUBLIC SCHOOL FUND—ATTENDANCE OF PUPILS—PUPILS INELIGIBLE FOR ENROLLMENT IN PUBLIC SCHOOL—SECTIONS 1890-7a ET SEQ., 3070-17, 4848-1, 4848-3, 4849-4 G. C..
2. SCHOOL AGE—ONLY THOSE INDIVIDUALS ADJUDGED INELIGIBLE TO ENROLL IN PUBLIC SCHOOLS MAY ENROLL IN TRAINING CENTERS—DIVISION OF MENTAL HYGIENE.

SYLLABUS:

1. A board of education, under the provisions of Section 3070-17, General Code, may expend moneys from its general funds in support of children's training schools, including training centers established by the Division of Mental Hygiene under the provisions of Section 1890-7a, et seq., General Code; and such expenditure of funds will not affect the right of the school district concerned to receive payments from the state public school fund under the provisions of Sections 4848-1 and 4848-3, General Code, based on the attendance of pupils other than those which have been adjudged ineligible for enrollment in public school as provided in Section 4848-4, General Code.

2. As to individuals of school age only those adjudged ineligible for enrollment in public school under the provisions of Section 4849-4, General Code, may be admitted to enrollment in training centers established by the Division of Mental Hygiene under the provisions of Section 1890-7a, et seq., General Code.

Columbus, Ohio, August 11, 1952

Hon. J. H. Lamneck, Director of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The application of the County Child Welfare Board of Summit County relative to the establishment of classes under the provisions of Section 1890-7a to 1890-7e, inclusive, of the General Code for the education of mentally retarded youth, filed with the Division of Mental Hygiene in this Department dis-

closes that the sponsoring groups involved are the Summit County Child Welfare Board, the Summit County Commissioners and the Board of Education of the Akron City School District.

“Under the proposed plan, the Board of Education will organize special training classes in quarters to be furnished by the public schools and operate them according to the rules and regulations prescribed by the Division of Mental Hygiene under the terms of the statute. The County Child Welfare Board will make arrangements with the parents of mentally deficient children regarding their entry and the payment of a tuition fee. The Welfare Board will be responsible for the collection of the tuition fee for the children which will be paid into the Treasury of Summit County.

“The County Commissioners under the proposed plan agree to reimburse the Board of Education in amounts equal to the total cost of operation less the amount the Board of Education would have expended on an equal number of normal children in the elementary grades for the same period of time.

“Under the proposed plan, public and private groups are joined together in the operation and maintenance of a function in the field of education. A question arises whether the Board of Education of the City of Akron has power to perform its contemplated function under the proposed plan in the light of certain statutory requirements placed on it by the State School Code.

“Under the ‘School Foundation Program’ established under Section 4848 et seq. of the General Code, state funds are distributed from the State public schools equalization funds for the benefit of local school districts. The amount of funds distributed is determined on the number of children in regular attendance or in part-time, continuance or evening schools. It is specifically set forth in Section 4848-4, General Code, that ‘pupils * * * in special classes for the physically or mentally handicapped for whom tuition must be paid shall not be included in determining tax return differentials.’

“We desire your opinion on the following:

“First, whether the expenditure by a Board of Education of local tax funds for the operation and maintenance of special classes for the mentally deficient would in any way prejudice the right of the school district to apply for foundation funds for their pupils, exclusive of those for the mentally deficient.

“Second, whether or not the exclusion of mentally deficient children from the school system under the terms of Section 4849-4 is a condition precedent to the granting of funds by the State under the terms of Section 1890-7a, et seq., for the operation of classes for mentally deficient children.

"I am enclosing herewith a copy of the contract which was entered into between the sponsoring parties upon which they have based their application for reimbursement of expenditures from state funds."

From the copy of the proposed contract submitted with your inquiry, it appears that the Summit County Child Welfare Board, the Summit County Commissioners and the Akron Board of Education propose to cooperate in the operation of training schools for mentally deficient youth as defined in Section 1890-7a, General Code. While the objection may be raised that the activity thus contemplated is a welfare, rather than an educational, project, it appears that boards of education, as pointed out in my Opinion No. 447, dated June 30, 1951, have been given statutory authority to participate in training schools for mentally retarded children. This authority is found in Section 3070-17, General Code, which reads in part as follows:

"* * * The board may enter into an agreement with a municipality, a board of education, and the county commissioners or with either or any of them to provide for the maintenance and operation of children's training schools. Such agreement may provide for the contribution of funds by any one or all of them, in the proportions and amounts as their agreement shall state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them. Notwithstanding any other provision of the law, municipalities, school boards and county commissioners are hereby authorized to expend moneys from their general funds for the purpose of maintaining and operating such joint children's training schools."

The "board" to which reference is made in the first sentence quoted above is, of course, the county child welfare board, the powers and duties of which are defined in Section 3070-17, *supra*. This section was enacted in House Bill No. 418, 96th General Assembly, 121 O. L. 538. Included in this enactment was Section 3070-1, General Code, which reads:

"The purpose of sections 3070-1 to 3070-35, inclusive, is to supplement, expand, modernize and integrate child welfare services and the care and placement of children in the several counties of the state, and to this end this act shall be liberally construed."

It is thus clear, beyond argument, that (a) boards of education have been given express statutory authority to participate, by agreement with

a county child welfare board, in welfare projects concerned with children's training schools, as distinguished from purely educational projects, and (b) that such boards may "expend moneys from their general funds" for such purpose; and such authority is to be liberally construed.

The fact that boards of education have been given this express authority to expend moneys from their general funds gives rise to a strong inference that the General Assembly regarded such children's training schools as constituting, in certain circumstances, projects which are in part a welfare service and in part an educational service.

It may be pointed out, however, that the language above quoted from Section 3070-17, General Code, is permissive only and it could scarcely be supposed, therefore, that any mandatory duty to participate in such projects is thereby imposed on any board of education, the decision to participate or not being a matter solely within the discretion of the board.

Your first question concerns the right of a school board, which has undertaken the expenditure of moneys from its general funds in a children's training project to receive state aid under the so-called "foundation program" established under the provisions of Section 4848, et seq., General Code. It will be noted that provision is made under this program for payments on two separate bases to the several school districts of the state from the state public school funds.

The first of such bases is set out in Section 4848-1, General Code, which reads, in pertinent part, as follows:

"There shall be paid to each school district of the state in each calendar year an amount equal to twenty-five cents a day for not to exceed 180 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 fifty-seven dollars for each pupil in average daily membership in grades 1 to 8, inclusive, an amount equal to twenty-eight dollars and fifty cents for each pupil five years of age or over in average daily membership in kindergarten classes, and an amount equal to sixty-seven dollars for each pupil in average daily membership in grades 9 to 12, inclusive, during the school year next preceding such payments, except that no payments shall be made under the provisions of this section for one-teacher and two-teacher elementary schools maintained in local school districts. * * *"

From the foregoing it is clear that the primary factors in the formula by which the amount that may lawfully be paid to a school district under authority of this section are (a) the number of pupils in attendance, and (b) the number of days they are in attendance. It is equally clear that the right to receive payments under this section does not in any way depend on expenditures which may be made by the school board concerned from funds raised by local taxation in support of projects which are partly educational and partly charitable in nature.

The second of such bases of participation in state aid to local school districts is found in Section 4848-3, General Code, which reads in part as follows:

“Any school district, which has a tax levy for current school operation of at least six mills, for the calendar years 1951 and 1952 and eight mills for 1953 and thereafter, shall be entitled to receive additional aid if it qualifies therefor, as hereinafter provided.

“The amount of such additional aid which such district shall be entitled to receive in any calendar year shall be the difference between the total amount of the district’s foundation program, to be computed as provided in section 4848-4 of the General Code, and an amount equivalent to a computed yield of five and three-eighths mills on each dollar of the taxable property on the tax duplicate of such district plus the total amount due such district under provisions of section 4848-1 of the General Code. * * *”

In the first paragraph above quoted, we find a significant provision. Here one of the primary tests of qualification for the “additional aid” provided by this section is that the district concerned levies a tax at a particular rate “for current school operation.” There is implicit in this language, in my opinion, the further test that the funds raised by such levy shall be expended *only* “for current school operation.” This raises the question of whether funds raised by local taxation and expended by a school board in contributing to the support of a children’s training school under the provisions of Section 3070-17, General Code, where the project concerned is one established under the provisions of Section 1890-7a, et seq., General Code, are expended “for current school operation.”

Sections 1890-7a and 1890-7b, General Code, read as follows:

Section 1890-7a, General Code:

"The commissioner of mental hygiene, with the approval of the director of public welfare, shall establish in any county or district a training center or centers for the special training of mentally deficient youth under the age of twenty-one years, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public school under the provisions of sections 4848, 4849 and 4850 of the General Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. Special attention shall be given to the establishment of a training program for the mentally deficient for the purpose of enabling them to become accepted by society and to find employment in the structure of society to the extent that they may be fitted therefor. The commissioner of mental hygiene shall be the final authority in determining the nature and degree of mental deficiency; shall decide all questions relative or incident to the establishment and operation of each training center; shall determine what constitutes special training; shall promulgate all rules and regulations, subject to the provisions of the administrative procedure act, governing the approval of mentally deficient youth for such training; shall determine or approve all forms used in the operation of programs undertaken under this section; and shall approve the current operating costs of such programs.

"For the purposes of this act a mentally deficient youth is a person under twenty-one years of age who has been determined by the proper authorities to be ineligible for enrollment in public school in the school district of his residence because of mental deficiency of such nature and to such degree that the youth is incapable of profiting substantially by any educational program provided by such public school; or if not of school age, to have an intelligence quotient below fifty. The nature and degree of mental deficiency shall be determined in the manner prescribed by the commissioner of mental hygiene."

Section 1890-7b, General Code:

"Upon petition to the county welfare board or public children's agency in any county by the parents or guardians of eight or more mentally deficient youth of similar handicap, under twenty-one years of age, who are ineligible for enrollment in public school because of age or mental deficiency, the county welfare board shall forward such petition to the commissioner of mental hygiene. The commissioner of mental hygiene shall take such action and make such order as he may deem necessary for the special training of the mentally deficient youth, to the extent that funds are available."

Section 1890-7c, General Code, reads in part as follows:

“On June 1 of each year, the county welfare board or public children’s agency shall certify to the commissioner of mental hygiene the names and residences of the persons receiving such training; the period of time each deficient youth received such training; an itemized report of expenditures which have been approved by the commissioner of mental hygiene for providing such training; and the net per capita cost for providing such training.

“The division of mental hygiene upon receipt and approval of the report provided in this section shall present a voucher to the auditor of state in favor of the agency providing the specialized training in an amount equal to the net cost of said training. * * *”

It will be observed that there is no express provision in the foregoing language authorizing the Division of Mental Hygiene to designate a county child welfare board as its local agency to operate training centers for mentally deficient youth. There is, however, a clear provision in Section 1890-7b, supra, for the participation by such board in promoting the establishment of such training centers, and there is a reference in Section 1890-7c, supra, to the “agency providing the specialized training.” At the time of these enactments there was in effect the provision, already noted herein, in Section 3070-7, General Code, authorizing such boards to cooperate in the establishment and operation of “children’s training schools” generally; and it must be presumed that the General Assembly had such general provision in mind when Section 1890-7a, et seq. were enacted. We may conclude, therefore, when these provisions are considered in relation to each other, that “training centers” for which provision is made in Section 1890-7a, supra, may be deemed to be included within the category of “children’s training schools” as that term is used in Section 3070-17, General Code.

As already pointed out, the fact that the General Assembly, in Section 3070-17, General Code, extended authority to school boards to contribute to the support of training schools in cooperation with county child welfare boards, is a clear indication that the Legislature regarded the training of mentally retarded children, at least in certain circumstances, as partly a welfare function and partly an educational function. This being so, it follows that to the extent that a school board participates in such a project

it is engaged in the discharge of the latter function, and any funds thus expended would, therefore, be expended "for current school operation" within the meaning of Section 4848-3, General Code.

All that has thus far been said is, of course, based on the assumption that the school board concerned, as indicated in your inquiry, will *not* make any claim for payments under the foundation program with respect to children enrolled in such training centers who have been excluded from the "public schools of the state" under the provisions of Section 4849-4, General Code.

As to your second question, we may observe that the persons to be trained under the provisions of Section 1890-7a, *supra*, are "mentally deficient youth under the age of twenty-one years, including those * * * ineligible for enrollment in public school under the provisions of sections 4848, 4849 and 4850 of the General Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training." Referring to the phrase "including those * * * ineligible," we may ask what other category of mentally deficient youth is to be included? This question appears to be answered by the final paragraph of Section 1890-7a, *supra*, which, for the sake of convenience, is here repeated :

"For the purpose of this act a mentally deficient youth is a person under twenty-one years of age who has been determined by the proper authorities to be ineligible for enrollment in public school in the school district of his residence because of mental deficiency of such nature and to such degree that the youth is incapable of profiting substantially by any educational program provided by such public school; *or if not of school age*, to have an intelligence quotient below fifty. The nature and degree of mental deficiency shall be determined in the manner prescribed by the commissioner of mental hygiene." (Emphasis added.)

Here it will be observed that this definition comprehends persons under six years of age, who are neither of "compulsory school age," as defined in Section 4849, General Code, nor of age within which a pupil has the right to free schooling under the provisions of Section 4838-2, General Code. Moreover, the language emphasized above clearly indicates that if a person *is* of school age, the test of ineligibility for enrollment in public school is to be applied *in every case*. Such test of ineligibility is clearly indicated by the provisions of the first paragraph of Section 1890-7a, General Code, to be an adjudication of ineligibility "by the proper au-

thorities;" and such adjudication is provided for in Section 4849-4, General Code, under the provisions of which the agency authorized to make a final determination in the matter is the state Department of Education.

I conclude, therefore, that as to children of school age, a determination of ineligibility for enrollment, in public school, under the provisions of Section 4849-4, General Code, is a condition precedent to their enrollment in training centers established under the provisions of Section 1890-7a, et seq., General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General