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EDUCATION—INSTRUCTION OF CHILDREN IN COUNTY TUBERCULOSIS HOSPITAL—MUST BE UNDER SUPERVISION, COUNTY SUPERINTENDENT OF SCHOOLS—MAY NOT BE UNDER CITY SUPERINTENDENT OF SCHOOLS—SECTION 4836-7 G. C.

SYLLABUS:

The instruction of children in a county tuberculosis hospital pursuant to Section 4836-7, General Code, must be under the supervision of the county superintendent of schools and may not be under the supervision of the city superintendent of schools.

Columbus, Ohio, November 19, 1943.

Hon. Frank T. Cullitan, Prosecuting Attorney,
Cleveland, Ohio.

Dear Sir:

I have your request for my opinion as follows:

“The County of Cuyahoga has lately purchased from the City of Cleveland the tuberculosis hospital owned by the city and has constituted the same a county hospital and appointed a board of trustees to manage and control the same. During the years which it was operated as a municipal hospital, a school for the education of children admitted to such hospital was conducted under the direction of the city superintendent of schools. The expense incurred for salaries and teachers heretofore was paid by the city board of education. Something in excess of ninety per cent of the children of school age in such hospital are usually legal residents of the city of Cleveland.

It is considered by the superintendent of schools of the City of Cleveland and by the board of trustees of the county tuberculosis hospital to be very desirable to maintain the existing arrangement, that is, the instruction in the school to be given under the supervision of the city superintendent of schools. However, some question has arisen whether such an arrangement is permissible under General Code Section 7644-2, which contains the following provision:

‘The instruction so provided shall be directed by and be under the supervision of the county or city superintendent of schools in cooperation with the superintendent of the hospital.’

This provision, standing alone, would seem to authorize the board of trustees of the hospital to make an arrangement with either the city or the county board of education for the supervision of such schools. Some doubt arises, however, as to whether this is a permissible construction of the section by reason of the preceding language of the section reading as follows:

'The board of trustees of each district hospital for tuberculosis, the county commissioners of each county maintaining a county hospital for tuberculosis, and the managing officer or officers of each municipal hospital for tuberculosis, shall provide for the education of children of school age admitted to such hospital.'

It has been suggested that this provision requires that in the municipal hospital the school be under the superintendence of the city superintendent and in a county hospital that it be under the superintendence of the county superintendent. It has seemed to us that the section is not limited to that interpretation, but that it provides that either alternative may be resorted to when it is done as a result of agreement between the authorities operating the hospital and the respective board of education.

It seems to us that the question who is to bear the expense of the payment of the teachers' salaries in such schools is not a factor because the statute provides that in a county tuberculosis hospital such expense may be paid in one of two ways, first, from the funds of the county hospital, or, second, prorated amongst the county, city and exempted village school boards of the county.

If it is determined that such school in the county hospital may be under the supervision of the said superintendent of schools, it is proposed that such prorata share of the salaries of such teachers as is chargeable to the city school board shall be borne and paid by it and such prorata share as is chargeable to the remaining school districts of the county, shall be charged against them in the manner provided by the statute. Thus the cost of maintaining and operating the school would be borne in the manner provided by the statute, and, therefore, would not seem to be involved in the question upon which it is desired to have your opinion, to wit:

Whether the supervision of the education of children in a county tuberculosis hospital may be committed to the superintendent of schools of a city school district in such county?

I am aware that the Attorney General of Ohio in 1931, O. A. G. No. 3766 has said in effect that a school maintained at a county tuberculosis hospital should be supervised so far as the matters of instruction are concerned by the county superintendent of schools. However, an examination of the opinion shows that

this question was not involved in the matter then presented for the Attorney General's consideration, nor has the particular question presented in this letter, so far as I know, heretofore had consideration either from the courts or your office."

Section 7644-2, General Code, was repealed by Amended House Bill No. 217 of the Ninety-fifth General Assembly which became effective September 16, 1943. This same act enacted Section 4836-7, General Code, which is analogous to repealed Section 7644-2, General Code. Said Section 4836-7, General Code, provides:

"The board of trustees of each district hospital for tuberculosis, the board of trustees of each county maintaining a county hospital for tuberculosis, and the managing officer or officers of each municipal hospital for tuberculosis, shall provide for the education of children of school age admitted to such hospital. The instruction so provided shall be directed by and be under the supervision of the county or city superintendent of schools in co-operation with the superintendent of the hospital. The expense incurred for salaries of teachers in a municipal tuberculosis hospital may be paid by the city board of education; that in a county tuberculosis hospital may be provided from the funds of the tuberculosis hospital or may be pro-rated, according to the number of children taught, to the county, city and exempted village boards of education of the county. The amount charged against a county school district shall be divided equally between the local school districts within the county school district, and the county auditor shall deduct from the tax funds in the county treasury due to such districts the amounts certified by the county board of education, which amounts shall be transferred to the county board of education fund. The amounts pro-rated to the city and exempted village district shall be deducted by the county auditor from the tax fund in the county treasury due such districts, and the amount so deducted together with the amount pro-rated to the county board of education and transferred to the county board of education fund shall be paid to the county hospital authorities. The expense of such instruction in the case of a district tuberculosis hospital shall be pro-rated at the end of each month to the boards of education of the various districts from which children have been received, according to the number of days the children were instructed, and bills for the respective amounts shall be paid by such local boards of education promptly upon presentation."

You will note that the new section uses the language "the board of trustees of each county maintaining a county hospital for tuberculosis," whereas, the old statute used the language "the county commissioners of each county maintaining a county hospital for tuberculosis." This is the only change which is material to your question.

The words "board of trustees of each county" must have been used

inadvertently in Section 4836-7, General Code, because there is no such office as that of trustee of a county. Section 3139-13, General Code, provides that the management and control of a county tuberculosis hospital shall be vested in a board of trustees consisting of three members to be appointed by the county commissioners. It is further provided in such section that in hospitals of less than fifty beds the board of county commissioners may serve as the board of trustees of the tuberculosis hospital. Since Section 7644-2, General Code, provided that the board of trustees of each district hospital and the managing officer or officers of each municipal hospital shall provide for the education of children of school age admitted to such hospitals, it seems to me that the words "board of trustees of each county" should be construed to mean board of trustees of each county tuberculosis hospital. The General Assembly apparently intended that the authority which had the control and management of the hospital should also provide the educational facilities in question, and therefore it struck out the words "county commissioners" and inserted in place thereof the words "board of trustees." Such a construction gives the section some meaning and it also places the duty to provide education in each class of hospitals upon the authorities who have control and management thereof.

It is true that the section contains the following language :

"The instruction so provided shall be directed by and be under the supervision of the county or city superintendent of schools in cooperation with the superintendent of the hospital."

It is also true, as you state, that, standing alone, this language would probably authorize the supervision of the instruction of such children to be under either the county or city superintendent of schools. However, a statute must be construed from its four corners and it is not permitted to give meaning to isolated passages therefrom without reference to the remainder of the statute.

It must be remembered that a county tuberculosis hospital might be located at some point in the county a great distance from the city school district. The duties of the city superintendent of schools do not require him ordinarily to go out of the city, whereas, those of the county superintendent of schools require him to visit all parts of the county. Furthermore, it has long been the custom in this state generally to limit the jurisdiction and authority of officers to the particular subdivision which they serve. While a county school district, of course, is not coincident with a county, it more nearly conforms to the county limits than does a city in such county. The county hospital is a county institution and the inmates thereof are drawn from the county generally, and it would seem that

the historic policy of this state would indicate that the supervision of the education of the children therein should be under the county superintendent of schools rather than a city superintendent of schools.

The end to be accomplished by this section is, of course, the education of children who are inmates of the hospitals. If the duty to supervise and direct the instruction provided by the section is on neither the county superintendent nor the city superintendent, then both might refuse to undertake such supervision. In that event, the education of the children probably would be neglected. If, on the other hand, the statute is construed as requiring the county superintendent to supervise and direct education in the case of county hospitals and the city superintendent in the case of city hospitals, no question can arise as to whose duty it is to supervise. This is certainly the preferable construction.

In Opinion No. 3766 of the Opinions of the Attorney General for 1931, found in Vol. III, at page 1381, to which opinion you refer in your letter, the first paragraph of the syllabus reads:

“A school maintained at a county tuberculosis hospital, as directed and authorized by Section 7644-2, General Code, should be supervised, so far as the arrangement of school curriculum, general organization of the school, grading of pupils, extension of school credits, recommendation of teachers, textbooks and necessary equipment are concerned, by the county superintendent of schools. The administration of the school in other respects than its academic features should be under the supervision of the superintendent of the hospital. The said county superintendent of schools and the superintendent of the hospital should, so far as possible, cooperate in the management and maintenance of the school.”

It is true that the question of the authority of the county superintendent of schools to supervise matters of instruction in county tuberculosis hospitals was not raised by the request submitted to the then Attorney General and he assumed without discussion that such supervision must be under the county superintendent. Nevertheless, I believe that he was correct in his conclusion for the reasons heretofore stated.

You are therefore advised, in specific answer to your question, that the instruction of children in a county tuberculosis hospital pursuant to Section 4836-7, General Code, must be under the supervision of the county superintendent of schools and may not be under the supervision of the city superintendent of schools.

Respectfully,

THOMAS J. HERBERT,
Attorney General.