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JUDGE OF JUVENILE COURT ORDERS COUNTY AUDITOR TO PROCURE ENUMERATION OF ALL CRIPPLED CHILDREN—DUTY TO APPOINT COMPETENT PERSONS TO TAKE SUCH ENUMERATION—OATH TO BE ADMINISTERED PROVIDED IN SECTION 3321.25 R. C.—MANNER FOR ENUMERATION—SECTION 3321.24 R. C.—NOT SUFFICIENT MERELY TO CHECK COUNTY HEALTH DEPARTMENT'S LISTS.

SYLLABUS:

1. Under the provisions of Section 3321.33 of the Revised Code, when the county auditor receives a written order from the judge of the juvenile court to procure an enumeration of all crippled children, it is the auditor's duty under the provisions of Section 3321.36 Revised Code, to appoint competent persons to take such enumeration.

2. The oath to be administered to such enumerators is that provided for under the provisions of Section 3321.25 Revised Code.

3. Under the provisions of Section 3321.36 Revised Code, the enumeration of crippled children which the auditor is required to make on order of the juvenile court, requires a complete enumeration of such children in the manner set forth in Section 3321.24 Revised Code, and it is not sufficient for the enumerators merely to check the lists on file with the county health department.

Columbus, Ohio, November 28, 1956

Hon. Dorothy Kennedy, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Madam :

I have before me your request for my opinion reading in part as follows :

“I would appreciate your opinion on the following matter, which was referred to me by the Honorable Thomas G. Johnson, Judge of the Juvenile Court of Brown County, Ohio :

“Section 3321.33 of the Revised Code of Ohio, provides as follows :

“On or before the third Saturday of August the auditor of each county shall transmit to the superintendent of public instruction on blanks furnished by him a duly certified abstract of the enumeration returns made to him ; and at the same time such auditor shall transmit to the juvenile judge of the county, duplicate transcripts of the list of crippled children residing in each school district of the county, as shown by said school enumeration reports, and, if upon examination and investigation of such reports, the juvenile judge has reason to believe the report is incomplete or inaccurate, he shall transmit a written order to the county auditor, directing him to procure an enumeration of all the crippled children, as provided in Section 3321.36 of the Revised Code.’

“(1) Under Section 3321.33, when the auditor receives a written order from the juvenile judge to procure an enumeration of all crippled children, is it his mandatory duty to proceed forthwith under Section 3321.36, to appoint competent persons to take such enumeration ?

“(2) If so, what oath is required to be administered to such persons? Would the oath referred to by Section 3321.25 apply ?

“(3) Under Section 3321.36, does the word ‘enumeration’ mean that the persons so appointed to act as enumerators have the duty to merely check past lists of crippled children on file with the County Health Department, or do such persons have the duty to make a house to house canvass in a manner similar to the procedure set forth in Section 3321.24?”

Sections 3321.24 to 3321.37, inclusive, of the Revised Code, deal with the matter of school enumeration. Section 3321.24 Revised Code, reads as follows :

“An enumeration of all youth between five and eighteen years of age resident within the district, and not temporarily there, shall be taken in each school district annually during the four weeks ending on the fourth Saturday of May. This enumeration shall designate the name of each child, his sex, his age, name of his parent, location of his residence, and what school building and grade he attends, and shall indicate in separate columns whether each child is from five to six years of age or from sixteen to eighteen years of age * * *. Such enumeration shall be taken under the supervision of the attendance officer of the county, exempted village, or city school district. The state board of education shall prescribe forms and suggest improved methods of taking and recording such enumerations.”

I call particular attention to the matters that must enter into an “enumeration” as required by this section. It manifestly calls for a house to house canvass and a notation of all the matters pertaining to each child as set forth in the statute.

Section 3321.25 Revised Code, provides for the appointment by the board of education of each city, exempted village and local school district of one or more persons to take the enumeration and provides that each such person shall take an oath or affirmation to take the enumeration accurately and to perform his duty to the best of his skill and ability, and in accordance with the directions of the attendance officer. It is further provided that he shall make the return thereof, “with all details secured,” to the clerk of the board.

Section 3321.26 Revised Code, provides for compensation to be paid by boards of education to such enumerators.

Section 3321.29 Revised Code, provides as follows:

“The person taking the enumeration provided for in section 3321.24 of the Revised Code shall make every effort to secure *an accurate enumeration of all feeble-minded and epileptic persons between one and twenty-one years of age, and of all crippled, blind or partially blind, deaf and hard-of-hearing children, and those having speech defects between the same ages and shall place in a separate list the names and the other data regarding such, which data shall include a statement of the education and care; but the name of each child between five and eighteen years of age shall appear also on the general enumeration list, with cross reference to the special list.*” (Emphasis added.)

Section 3321.31 Revised Code, requires the clerk of each district to transmit to the county auditor *an abstract* of the enumeration of children in the school district but makes the following special provision:

“* * * In local school districts there shall be *included with the abstract the entire list with all details of feeble-minded, epileptic, crippled, blind or partially blind, and deaf children.*”
(Emphasis added.)

It is to be noted, therefore, that while it is sufficient as to school children generally, to furnish to the county auditor an “abstract” of the enumeration, there must be a complete list with all details as to crippled and other handicapped children. Section 3321.33 Revised Code, is quoted in your letter. It is to be observed that the auditor is required to transmit to the superintendent of public instruction “abstracts” of the enumeration returns made to him; and at the same time to transmit to the juvenile judge duplicate “transcripts” of the list of crippled children. If upon examination of such reports the juvenile judge has reason to believe the report is incomplete or inaccurate he shall transmit a written order to the county auditor directing him to procure an “enumeration” of all the crippled children, as provided in Section 3321.36 Revised Code.

It is manifest that there is a difference between an *abstract of the enumeration returns and a transcript of the list of crippled children.*

Accordingly, we turn to Section 3321.36 Revised Code, *supra*, to determine what it is that the auditor is required to do in case the juvenile judge directs him to procure an enumeration of all the crippled children. Said Section 3321.36 is somewhat broader in its scope than the mere taking of this supplementary enumeration, but it appears that the reference to it in Section 3321.33, *supra*, is merely for the purpose of pointing out the procedure that is to be taken when the juvenile judge has reason to believe the report is incomplete or inaccurate. Quoting from Section 3321.36 Revised Code;

“* * * In case the enumeration has not been taken or the abstract is not furnished without delay, the auditor shall *employ competent persons to take the enumeration*, who shall make return directly to the auditor who may administer to each such person employed the oath or affirmation required. He shall allow each person so employed by him a reasonable compensation to be paid out of the general county fund. * * *”
(Emphasis added.)

Plainly, the law would not be satisfied with a mere check of the list on file in the county health department. The statute plainly calls for an “enumeration” as hereinbefore defined, and for the appointment

by the auditor of competent persons to take the same, and for the administration of the oath to each such enumerator, as required by Section 3321.25 supra.

The ultimate purpose of this rather extensive procedure, including the supplementary enumeration required by the juvenile court, is shown by Section 3321.34 Revised Code, which provides:

“Within thirty days after receiving the duplicate transcripts of the list of crippled children from the county auditor, each juvenile judge shall transmit a copy thereof to the health commissioner of each health district in his county, *so far as the same contains the names of crippled children* residing in the district of the respective health commissioners; and each health commissioner shall, within sixty days thereafter, provide examination of each crippled child on such list, and transmit to the juvenile judge and the state department of health a report, on a form prescribed by the director of health, which shall be complete in describing such disability. Whenever such health commissioner is so directed by the director of health, he shall make application in the juvenile court for the proper care, treatment, and education for such crippled child, as provided in section 5103.12 of the Revised Code, for the purpose of obtaining treatment and care for all crippled children in his health district. (Emphasis added.)

While we recognize the practical difficulties in following these severe requirements of the law, yet in the light of all the above statutes which plainly contemplate very accurate and complete information as to the names, sex, parentage and residence of each and every crippled child, it is my opinion in answer to your questions:

1. Under the provisions of Section 3321.33 of the Revised Code, when the county auditor receives a written order from the judge of the juvenile court to procure an enumeration of all crippled children, it is the auditor's duty under the provisions of Section 3321.36 Revised Code, to appoint competent persons to take such enumeration.

2. The oath to be administered to such enumerators is that provided for under the provisions of Section 3321.25 Revised Code.

3. Under the provisions of Section 3321.36 Revised Code, the enumeration of crippled children which the auditor is required to make on order of the juvenile court, requires a complete enumeration of such children in the manner set forth in Section 3321.24 Revised Code, and

it is not sufficient for the enumerators merely to check the lists on file with the county health department.

Respectfully,

C. WILLIAM O'NEILL
Attorney General