

of said lot 114 other than parcels thereof conveyed to the state of Ohio by Walter E. Isaly, trustee, and Anna Binder respectively, by deeds executed June 12, 1930, and July 3, 1930, and recorded respectively in deed book 941, page 197, and in deed book 942, page 122, recorder's office, Franklin County, Ohio.

Upon examination of said abstracts of title, each of which relate to separate parts of the above described premises, I find that said Anna Roessler has a good and indefeasible fee simple title to the above described tract of land and the appurtenances thereunto belonging, free and clear of all incumbrances except taxes on said property for the last half of the year 1929, amounting in the aggregate in the sum of \$55.19 which are unpaid, and are a lien upon said property. The undetermined taxes for the year 1930 on said property are unpaid and a lien upon said property.

No warranty deed conveying this property to the state of Ohio has as yet been executed by said Anna Roessler. Such deed should be prepared and submitted to me for approval before the transaction relating to the purchase of this property is closed.

Upon examination of encumbrance estimate No. 360, covering the purchase price of the above described property, I find that the same has been properly executed and approved, and there is shown thereby that there are sufficient balances in the proper appropriation account to pay the purchase price of said property which is the sum of \$6,677.00.

I am herewith returning to you the said abstracts of title and encumbrance estimate above referred to.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2137.

SCHOOL ATTENDANCE—CERTIFICATE OF FAMILY PHYSICIAN SUFFICIENT TO SHOW REASON FOR PUPIL'S NON-ATTENDANCE—SUCH PHYSICIAN'S CERTIFICATE MAY NOT BE SUBSTITUTED FOR THE ONE REQUIRED UNDER SECTION 4766-1, GENERAL CODE, FOR ISSUANCE OF AGE AND SCHOOLING CERTIFICATE.

**SYLLABUS:**

1. *A superintendent of schools is not permitted to arbitrarily demand the certificate of the school physician or public health physician as to the physical or mental condition of a child before excusing such child, as authorized by Section 7763, General Code. A certificate of the family physician should ordinarily be sufficient to constitute a satisfactory showing of the facts set forth in the certificate.*

2. *A superintendent of schools, in issuing an "age and schooling certificate," by authority of Section 4766-1, General Code, is required by law to receive, approve and file a certificate from the school physician or physician designated by him, or if there be no school physician, from the district health commissioner or physician designated by him, showing that the child to whom the certificate is to be granted is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age. The superintendent of schools may*

*not take as a substitute therefor, the certificate of a family physician or of any physician other than the one named in the statute.*

COLUMBUS, OHIO, July 23, 1930.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Under Section 7763, General Code, one of the grounds on which excuses from school may be granted is that the pupil’s ‘bodily or mental condition does not permit of his attendance at school.’ In applying this clause, is the superintendent of schools obliged to receive as sufficient evidence of bodily or mental condition the certificate issued by the family physician, or may he demand the certificate of the school physician or public health physician if he is not satisfied with the findings of the family physician? In applying Section 7766-1 (4) is the superintendent of schools obliged to accept the findings of the family physician, or may he refuse to issue an age and schooling certificate unless he has a certificate from the school physician or physician designated by him or if there be no school physician from the district health commissioner or physician designated by him.”

Section 7763, General Code, reads in part, as follows:

“Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date at which the child begins to reside in the district or within one week after his withdrawal from employment.

Provided, that excuses from future attendance at or past absence from school may be granted for the causes, by the authorities and under the conditions hereinafter prescribed, to wit:

(1) The superintendent of schools of the district in which the child resides may excuse him from attendance for all or any part of the remainder of the current school year upon satisfactory showing of either of the following facts:

(a) That his bodily or mental condition does not permit of his attendance at school during such period; \* \* \* ”

From the terms of the foregoing statute it appears that an obligation is imposed upon each parent, guardian or other person having in charge a child of compulsory school age to have such child attend school, unless the child is excused in the manner provided by law.

He may be excused by the superintendent of schools, provided the superintendent is satisfactorily shown that his bodily or mental condition does not permit of his attendance at school during such period. This statute reposes in the superintendent of schools the duty to excuse a child from school upon a satisfactory showing that his physical or mental condition is such that he cannot and should not be required to attend school.

Just what is embodied within the expression “satisfactory showing” is difficult to say. It implies that the superintendent should be satisfied or convinced of the probabilities of the truth of the claim that the child’s bodily or mental condition is

such that it is not fitting or proper that he should be required to comply with the compulsory school laws.

It would be impossible to state definitely just what constitutes a "satisfactory showing" of those facts that might be applied in all cases. What might be satisfactory to one person would not be convincing to another person of a different type of mind. Clearly the Legislature did not mean to require that a superintendent be convinced beyond the existence of any doubt that a child was not capable, because of bodily or mental ills, to attend school nor did it mean that those facts could be determined by any hard and fast rule.

A reasonable construction of the term "satisfactory showing" in my opinion would be that such facts should be presented to the person authorized to make the decision as would satisfy an average person who conscientiously sought to perform his duty both to the State and the school patrons. His decision should not be based on any arbitrary or captious rule. If facts are presented to him which would satisfy an ordinarily careful person, those facts should be sufficient to constitute a "satisfactory showing" as the term is used in the statute.

Usually the word of a family physician, if the physician is in good standing in the community, should be convincing, and it is my opinion that unless circumstances warrant it in special cases, a superintendent of schools is not justified in demanding a certificate from the school physician or the district health commissioner in order to be satisfied that a child is not physically or mentally fit to attend school if a certificate is presented to him, showing those facts and certified to by the family physician. Most physicians, I believe, of sufficient standing in the communities where they live, to be employed as family physicians, have a sufficiently high sense of duty that they would not falsely certify as to the condition of a child for the mere purpose of permitting or allowing it to escape the requirements of the compulsory school laws. There may, of course, be exceptions to this rule in rare cases, and in such cases a superintendent of schools would no doubt be justified in requiring some further evidence than the certificate of the family physician.

Ordinarily, the testimony of a family physician in court proceedings has at least as great a weight as the testimony of experts and oftentimes I think the family physician's testimony is more convincing than that of experts. He has a better opportunity to observe the facts necessary to draw a conclusion in matters of this kind than a physician who is called in for the occasion, and unless there is involved some very technical question, the testimony of the family physician would be more convincing than that of anyone else.

For that reason, I am of the opinion that in most cases at least, a superintendent of schools is justified, in passing on questions relating to excusing children from school on account of their mental or bodily condition, in relying on the certificate of the family physician and cannot lawfully demand in addition to such certificate the certificate of the school physician or public health physician unless there be special circumstances warranting such action.

It is provided by Section 7763-4, General Code, that in case a superintendent of schools refuses to excuse a child for one of the reasons stated in Section 7763, General Code, an appeal may be taken from his decision to the judge of the Juvenile Court.

I know of no officially reported case where this was done, and after considerable search I have found no case deciding the question of whether or not a school superintendent, under circumstances such as we are here considering, is justified in refusing to accept the certificate of the family physician as proof of the facts stated therein.

Coming now to your second question, it is provided that children of compulsory school age, may, under certain circumstances, be granted what is known as "an age and school certificate" for the purpose of permitting such children to enter upon some employment. These certificates are issued in the manner provided by law by the

superintendent of schools. Section 7766-1, General Code, provides with reference thereto:

"The superintendent of schools shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed: \* \* \*

(4) A certificate from the school physician or physician designated by him, or if there be no school physician from the district health commissioner, or physician designated by him, showing after a thorough examination that the child is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age."

The statute is clear, to the effect that a superintendent of schools is not permitted to issue an "age and schooling certificate" unless he has on file the certificate described in the statute. He is not permitted in lieu thereof to accept the certificate of the family physician or of anyone else than the persons named in the statute.

I am therefore of the opinion, in specific answer to your questions:

1. A superintendent of schools is not permitted to arbitrarily demand the certificate of the school commissioner or public health physician as to the physical or mental condition of a child before excusing such child, as authorized by Section 7763, General Code. A certificate of the family physician should ordinarily be sufficient to constitute a satisfactory showing of the facts set forth in the certificate.

2. A superintendent of schools, in issuing an "age and schooling certificate", by authority of Section 4766-1, General Code, is required by law to receive, approve and file a certificate from the school physician or physician designated by him, or if there be no school physician, from the district health commissioner or physician designated by him, showing that the child to whom the certificate is to be granted is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age. The superintendent of schools may not take as a substitute therefor, the certificate of a family physician or of any physician other than the one named in the statute.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2138.

TRANSFER OF SCHOOL TERRITORY—PETITION FILED WITH COUNTY BOARD OF EDUCATION TO HAVE RURAL SCHOOL TERRITORY TRANSFERRED TO CITY—SUCH PETITION CONTROLS OVER EARLIER ONE REQUESTING TRANSFER OF SAME TERRITORY TO ANOTHER RURAL DISTRICT IN SAME COUNTY—CONDITIONS.

**SYLLABUS:**

*When a petition is filed with the county board of education, signed by 75% of the electors residing in any portion of the county school district, asking to have that portion of the county school district transferred to a contiguous county, city or exempted village school district, there immediately devolves on the said county board of education the mandatory duty to make the transfer as requested, providing no part of said territory lies in a school district where the schools have been centralized by virtue of Section 4726, General Code, or where proceedings for such centralization have theretofore been instituted, even though a previous petition had been filed with the county board of education asking that a portion of the same territory be transferred to a district of the same county school district.*