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COUNTY BOARD OF EDUCATION — MAY ESTABLISH SPECIAL SCHOOLS FOR MENTALLY RETARDED CHILDREN —§ 3313.88 RC—COUNTY BOARD MAY NOT PURCHASE REAL PROPERTY FOR MAINTAINING SUCH SCHOOL —CONTRACT ARRANGEMENT WITH OTHER PUBLIC SCHOOL; UPON DISCONTINUATION BY CONTRACTING SCHOOL, COUNTY BOARD UNDER NO LEGAL OBLIGATION TO CONTINUE SUCH SCHOOL AT ITS SOLE EXPENSE.

## SYLLABUS:

1. Section 3313.88, Revised Code, as enacted by the 102nd General Assembly, effective September 16, 1957, vests in the board of education of a county school district the same authority as is conferred on the board of any other school district relative to the establishment and maintenance of special schools for mentally retarded children, and such county board may, for such purpose expend any school funds which are at its disposal.

2. A county board of education is without authority to purchase or construct a building for the maintenance of a school for mentally retarded children, but would have authority to procure quarters for the same by rental, if necessary.

3. If, pursuant to division (C) of Section 3313.88 or Section 3313.89, Revised Code, a county board of education has entered into an agreement with any other public body for the establishment and maintenance of a school for mentally retarded children, and such contracting party elects to discontinue its support thereof, the county board of education would be under no legal obligation to continue such school at its sole expense.

Columbus, Ohio, October 17, 1957

Hon. Thomas H. Eshman, Prosecuting Attorney  
Champaign County, Urbana, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

“The Champaign County Board of Education has requested me to secure your opinion as to its exact status and obligations under Sections 3313.88 and 3313.89 of the Revised Code, effective September 16, 1957, pertinent to the maintenance and support of educational facilities for mentally retarded children. Specifically, they wish to know the following:

"1. Does paragraph A-2, Section 3313.88 vest the same power in a county board of education as in a local or independent school district in this matter?"

"2. If facilities for such a school were not available on a rental or free basis, could a county board of education proceed to purchase or build such facilities?"

"3. If a county welfare department and/or a board of county commissioners should elect to discontinue the support of a facility already in existence for education of mentally retarded children, would a county board of education be legally required to assume the operation or support of such program?"

The new sections to which you refer were enacted by the 102nd General Assembly and read as follows:

"Sec. 3313.88, Revised Code:

"The board of education of any school district may establish separate schools or facilities for the instruction of mentally retarded children and may:

"(A) Expend school funds in the establishment of such schools or facilities;

"(B) Provide for the transportation of any such pupils to and from the schools or facilities established under this section;

"(C) Contract with the child welfare board, the board of county commissioners, or any municipal corporation to provide training for mentally retarded children upon whatever terms the contracting parties agree upon for the division of the costs of maintaining and operating the schools or facilities for such pupils."

"Sec. 3313.89, Revised Code:

"The board of education of any school district may contract with the board of education of any other school district for the admission or transportation, or both, of mentally retarded children into such other school district on the terms agreed upon by such school boards."

It will be noted that in these statutes the grant of authority is to the board of "*any school district.*" This certainly must include a county district.

Section 3311.01, Revised Code, classifies school districts as follows:

"The school districts of the state shall be styled: 'city school districts,' 'local school districts,' 'exempted village school districts,' 'county school districts,' 'joint high school districts,' and 'joint vocational school districts.'"

Throughout the statutes relating to school districts, many will be found giving certain powers to "any school district"; some grant powers to certain of these districts, omitting the others; some grant powers to the "county district" only, particularly in matters relating to changes in boundaries of districts. Some statutes grant powers to all districts except county districts.

The county district is primarily constituted as the supervisor of the local districts. Its general jurisdiction is defined by Section 3311.05, Revised Code, as follows:

"The territory within the territorial limits of a county, exclusive of the territory embraced in any city school district, exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a 'county school district.'"

The county board of education is plainly included within the provisions of Section 3313.17, Revised Code, which provides:

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."

Section 3313.37, Revised Code, which is obviously intended to set forth, generally, the powers of the city, exempted village and local districts in the conduct of the public schools, limits the authority of a county board by providing:

"The board of education of any school district, *except a county school district*, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control."  
(Emphasis added.)

It may be added that a county board is excluded by the provision of Section 5705.01, Revised Code, from the status of a taxing subdivision, and by Section 133.01, Revised Code, from the power to issue bonds.

How, then, shall such board obtain funds with which it may accomplish the purposes arising from its action under Sections 3313.88 and 3313.89, *supra*?

The county district is financed as provided in Section 3317.13, Revised Code, which authorizes such board to include in its annual budget (A) the cost of salaries and travel expenses of "*supervisor teachers and of special instruction teachers*", and (B) "all other lawful expenditures". The statute further provides that the costs involved in (A) shall be paid by the state board of education, while the expenses included in (B) shall be partially paid by the state and partly apportioned to the local districts under the jurisdiction of the county district.

Accordingly, while I must hold in view of the provision of Section 3313.37, *supra*, that a county board is without power to purchase, erect or lease a building for the maintenance of a special school for mentally retarded children, yet in view of the provisions of Sections 3313.88 and 3313.89, *supra*, it must be considered as having authority to establish and maintain such schools and the limitation of Section 3313.37, *supra*, must be considered as amended, or at least relaxed, so as to enable such board to accomplish the purpose intended. Probably it can do so by some agreement with one of its constituent boards whereby it would compensate such board for the use of a school room; and in my opinion such county board might rent space for such school. Because, as already pointed out, it has no authority to issue bonds, I should doubt that the doctrine of implied repeal could be extended so as to permit it to build a school building for such purpose, or to finance the erection of a school building out of its budgeted funds.

It seems obvious, however, that in most cases it would be more practical for a county board to make these arrangements than for a local board to do so, because of the probability that in many local districts under the supervision of a county board, there would be too few pupils requiring such special training to justify setting up a special school.

The provision in division (C) of Section 3313.88, *supra*, authorizing a board of education to make a contract with the child welfare board, the board of county commissioners, or any municipal corporation to provide training for mentally retarded children upon such terms as may be agreed upon appears to be an express provision in line with an opinion of my

immediate predecessor, to-wit, Opinion No. 447, Opinions of the Attorney General for 1951, page 191, in which it was held:

“The child welfare board of a county, the county commissioners of such county, and a board of education of a district situated in such county have authority to contract with each other to provide special training for mentally retarded children and to provide on such terms as they deem proper for the division of the cost of maintaining and operating such training schools.”

That opinion turned largely upon the provisions of Section 3070-17, General Code, Section 335.16, Revised Code, which relates to the powers of a child welfare board, and which authorizes such board to enter into an agreement with a board of education and the county commissioners and with a municipality for training schools for children requiring *special care*. The same section also specifically authorizes school boards to expend money from their general funds for maintaining and operating such joint schools. While that act did not expressly refer to mentally retarded or slow learning children, my predecessor construed it as including them when found to be necessary for the welfare of such children. It was there applied to a group of children afflicted with cerebral palsy. It would appear now that the legislature has sanctioned such agreements with express reference to mentally retarded children.

It will be observed that the statutes referred to in your letter authorizing a board of education to establish separate schools for mentally retarded children are not mandatory in form. It is provided that the board “may establish” separate schools for such purpose or may enter into a contract with certain other public bodies for their joint maintenance. If these supporting bodies should for any reason withdraw their support, and the county board finds it impracticable or impossible to continue the same alone, I can see no reason why it would not have the right to discontinue the operation of the school.

In specific answer to the questions which you have submitted, it is my opinion:

1. Section 3313.88, Revised Code, as enacted by the 102nd General Assembly, effective September 16, 1957, vests in the board of education of a county school district the same authority as is conferred on the board of any other school district relative to the establishment and maintenance of special schools for mentally retarded children, and such county board may, for such purpose, expend any school funds which are at its disposal.

2. A county board of education is without authority to purchase or construct a building for the maintenance of a school for mentally retarded children, but would have authority to procure quarters for the same by rental, if necessary.

3. If, pursuant to division (C) of Section 3313.88 or Section 3313.89, Revised Code, a county board of education has entered into an agreement with any other public body for the establishment and maintenance of a school for mentally retarded children, and such contracting party elects to discontinue its support thereof, the county board of education would be under no legal obligation to continue such school at its sole expense.

Respectfully,  
WILLIAM SANBE  
Attorney General