

1200

SCHOOL DISTRICT, BOARD OF EDUCATION—DUTY TO EMPLOY AND PROVIDE TEACHERS AND NECESSARY INCIDENTAL FACILITIES TO INSTRUCT CHILDREN IN JUVENILE DETENTION HOME—COST AND EXPENSE INVOLVED MAY BE RECOVERED FROM COUNTY COMMISSIONERS.

## SYLLABUS:

While the duty rests upon the board of education of a school district in which a juvenile detention home is located to employ and provide such teachers and such incidental facilities as are necessary to furnish instruction to children confined in such home, such board of education may recover from the county commissioners the cost and expense involved in so doing.

Columbus, Ohio, September 18, 1946

Honorable Mathias H. Heck, Prosecuting Attorney  
Dayton, Ohio

Dear Sir:

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

“On April 10th, 1946 your office rendered Opinion No. 868 on the subject: ‘The board of education of a school district in which is located a juvenile detention home, is authorized and required by law to furnish reasonable instruction and school facilities to the inmates of such home.’ The opinion was rendered in response to a letter from this office requesting the ruling.

The Board of Education has appointed a teacher to perform the duties in the Juvenile Detention Home of this County.

The Board of Education has indicated its intention of sending its bill to the Board of County Commissioners, for the payment of the salary of this teacher by, the County Commissioners. The Board of Education claims that the obligation to the teacher so appointed is placed upon the Board of County Commissioners by Sections 1639-34 and 1639-57 of the General Code.

The inference drawn by the Board of County Commissioners from your opinion above referred to, is that the teacher should be paid by the Board of Education.

The County Commissioners desire that you fix the responsibility concerning which Board is to pay the teacher so appointed. Your opinion will avoid the necessity of litigation to determine the matter."

Opinion No. 868, to which you refer, was rendered in response to your request, the syllabus being in the words quoted in your letter. In considering that request and rendering that opinion, I did not consider that the question of ultimate responsibility for the cost of furnishing educational facilities to children confined in a detention home was involved. My attention was rather centered on the question whether it was within the scope of the duties imposed upon boards of education to employ and provide teachers and other facilities necessary for bringing the opportunity of education to such children.

The word "furnish" is evidently capable of two interpretations. It is frequently used in the sense of supplying or providing goods or services to be paid for by the recipient. On the other hand, it is frequently used both in the laws and in common parlance as implying the delivery of goods or performance of services at the expense of the person delivering or performing. The surrounding circumstances and the context of the instrument or statute in which the word may occur have to be resorted to in order to determine the sense in which the word is used. In the opinion referred to, I was considering the question submitted from the standpoint merely of the duty of the board of education to *employ* a teacher or teachers and to provide such incidental facilities as might be requisite for bringing the opportunity of education to the children who are for the time confined in juvenile detention homes.

Evidently the obligation to provide such teachers falls either upon the school system or on the board of county commissioners who are charged with furnishing funds for the maintenance of the home. I was impressed, and am still impressed with the fact that former Section 1670 of the General Code expressly required the superintendent and matron of the home to be "qualified as teachers of children," while Section 1639-22 which supplanted it, eliminated that provision. The obvious result of that change was to leave the employment of the teachers to the only body authorized by law to employ school teachers, to-wit, to the board of education.

Section 1639-57 of the General Code to which you refer, appears to throw light on the question which you now raise as to the right of a board of education which has provided a teacher for children in the home to charge and collect the expense of the salary of such teacher from the county commissioners.

Section 1639-34, General Code, does not appear to be directly relevant to the question submitted. However Section 1639-57 does have direct application. It provides:

"It is hereby made the duty of the county commissioners to appropriate such sum of money each year as will meet all the administrative expense of the court \* \* \* and such sum each year as will provide for the maintenance and operation of the detention home, *the care, maintenance, education, and support of neglected, dependent and delinquent children*, other than children entitled to aid under the aid to dependent children law, section 1359-31 et seq., General Code, and for necessary orthopedic, surgical and medical treatment, and special care as may be ordered by the court, for any neglected, dependent or delinquent children, as herein provided. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge of the court." (Emphasis added.)

Here it will be noted that the county commissioners are required to appropriate "such sums each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education and support of neglected, dependent and delinquent children," etc. Furthermore, the provisions as to an annual appropriation for the care, maintenance and education of these children is not confined to such children as are confined in a juvenile detention home but has equal reference to

all neglected, dependent or delinquent children. There appears to be some inconsistency between the provisions of Section 3846-1, General Code, to which I called attention in my former opinion, which requires every board of education to "provide for the *free education* of the youth of school age within the district under its control" and the provision of Section 1639-57, supra, which requires the board of county commissioners each year to appropriate a sum sufficient to provide, among other things, for the education of *dependent, neglected or delinquent* children. I do not, however, consider that there is any essential conflict. It is the *children* who are to receive "free educations." It makes no difference so far as they are concerned who has to pay for it. The cost of this education is paid in part by the local community, in part by the state and, it appears from the statute just quoted, as to certain children, by the county.

The statutory provision last referred to may be considered as an exception which the general assembly has seen fit to attach to the general method of defraying the cost, presumably growing out of the fact that these children have been taken out of their natural environment and have been committed either to specially designated homes or confined in an institution, and that the burden and expense of bringing educational facilities within their reach may be somewhat increased; and while it is the duty of the board of education to furnish the same, it may nevertheless in such case be reimbursed by the county. In order that we may give force to each of these enactments of the general assembly, it seems necessary to hold, and it is my opinion, that while the duty rests upon the board of education of a school district in which a juvenile detention home is located to employ and provide such teachers and such incidental facilities as are necessary to furnish instruction to children confined in such home, such board of education may recover from the county commissioners the cost and expense involved in so doing.

Respectfully,

HUGH S. JENKINS  
Attorney General