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JUVENILE DETENTION HOME—BOARD OF EDUCATION—SCHOOL DISTRICT IN WHICH HOME LOCATED—AUTHORIZED AND REQUIRED BY LAW TO FURNISH REASONABLE INSTRUCTION AND SCHOOL FACILITIES TO INMATES.

SYLLABUS:

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.

Columbus, Ohio, April 10, 1946

Honorable Mathias H. Heck, Prosecuting Attorney
Dayton, Ohio

Dear Sir:

I acknowledge receipt of your letter requesting my opinion as to the power and duty of a board of education in whose district is located a juvenile detention home, to provide instruction for the children who may be detained in such home. You enclose a letter from the County Commissioners of your county, which reads as follows:

> "The Juvenile Court Citizens Committee has requested the County Commissioners to again take up with the Board of Education the problem of furnishing a teacher at the Juvenile Detention Home. This matter was discussed by the County Commission with the Board of Education several years ago, and the Board of Education's decision was that under the law, it was not required to furnish educational facilities at the Juvenile Detention Home.
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> In other counties within the State this same question has been decided exactly opposite to the decision here. We would like to have an opinion from the Attorney General on this subject and hereby request you to obtain such an opinion as quickly as possible."

The policy of the State of Ohio to encourage schools and the means of instruction was expressed in the Constitution of 1802 and is found in the Bill of Rights as contained in Article I, Section 7. This policy is

more specifically stated in the provision of Section 2 of Article VI of the Constitution, which reads as follows:

> "Section 2. The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state."

Section 4838-2, General Code, provides, in part, as follows:

> "The schools of each city, exempted village or local school district shall be free to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year's work of the elementary school shall be subject to the rules and regulations of the board of education. School residents shall be all youth who are children or wards of actual residents of the school district."

Provision is made in the same section for the admission of children who are inmates of a private children's home or institution located in the district. That provision reads as follows:

> "The board of education may admit the inmates of a private children's home or institution located in the district, provided any child who is an inmate of such a home or institution and previous to admission was a school resident of the school district in which such home or institution is located shall be entitled to free education; and provided any such inmate who attends the public schools was prior to admission to such home or institution a school resident of another school district of the state of Ohio, tuition shall be paid by such school district in the manner provided for the payment of tuition for inmates of county, semi-public and district children's homes;"

Special provision is made for the attendance in the public schools of children who are inmates of a county, semi-public or district children's home. Section 4838-3, General Code, reads, in part, as follows:

> "The inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the board of education of the district in which such home is located."

Section 4836-6, General Code, makes provision for the establishment of special schools for children afflicted with tuberculosis and provides that the board of education may cause all youth within the district, so afflicted, to be excluded from the regular schools. The same section makes this further provision:

> "The board of education of any city, exempted village or local school district in which is located a state, district, county, or municipal hospital for children with tuberculosis or epilepsy shall make provision for the education of all educable children therein."

There are also provisions of law for establishment of evening schools, for special instruction schools in manual training, industrial arts, domestic science, agriculture and other vocations.

It may be noted that none of these special provisions reach the children who are confined in an institution such as a juvenile detention home. They do, however, illustrate the effort of the General Assembly to carry out what I believe is the intention of the Constitution and the settled policy of the State that the opportunity for education shall be brought in some way to every child. This general purpose appears to me to be back of the provision of Section 4836-1 of the General Code, which reads as follows:

> "The board of education of each city, exempted village and local school district *shall provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof.* Every day school so provided shall continue not less than thirty-two weeks in each school year."
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> (Emphasis added.)

Coming then to county juvenile detention homes, I note the provisions of former Section 1670 of the General Code, as found in 113 O. L., p. 530, which provided, in part, as follows:

> "Upon the advice and recommendation of the judge exercising the jurisdiction provided herein, the county commissioners shall provide by purchase or lease, a place to be known as a 'detention home' within a convenient distance of the court house, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected minors under the age of eighteen years may be detained until final disposition, which place shall be maintained by the county as in other

> like cases. In counties having a population in excess of forty thousand, the judge may appoint a superintendent and matron who shall have charge of said home, and of the delinquent, dependent and neglected minors detained therein. *Such superintendent and matron shall be* suitable and discreet persons, *qualified as teachers of children."* (Emphasis added.)

Here, it will be noted, was a specific provision requiring the superintendent and matron of such detention home to be qualified as teachers of children. The legislative intent to give these children the benefits of education during the period of their detention was evident. Howver, in the enactment of the juvenile court law found in 117 O. L. 520, the provision of Section 1639-22, which succeeded former Section 1670, and largely followed its wording, was so changed as to omit the qualification which I have just mentioned whereby the superintendent and matron were required to be qualified as teachers. The new section, in so far as it relates to the superintendent and matron, reads as follows:

> "In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron and other necessary employees for such home in the same manner as is provided for the appointment of other employees of the court, their salaries to be fixed and paid in the same manner as the salaries of other employees. The necessary expenses incurred in maintaining such detention home shall be paid by the county."

I cannot believe that the omission of the phrase regarding the qualification of the superintendent and matron as teachers was in any degree intended by the General Assembly to avoid the recognized obligation of the State in the matter of educating all of its children. Rather, it must certainly have been the intention to leave their education to the offices of the public schools and their duly constituted boards of education.

While the school system is required, as indicated by the sections which I have quoted, to furnish free education to all the children within the jurisdiction of the several boards, there is no specific provision of the statute requiring them to furnish the facilities therefor in any particular place or in any particular buildings. On the contrary, as shown in Section 4836-1, supra, each board of education is required to "provide for the free education of the youth of school age within the district under its

control *at such places as are the most convenient* for the largest number thereof." Plainly, the children who for the time are confined in a detention home could receive such schooling in no other place than that in which they are confined. They are not at liberty to go out to the public schools of the district. If the authorities of the juvenile home saw fit to permit them to go out to attend school it seems clear that the board of education could refuse admittance at least to those who are known as delinquents. This was so held in the opinion of one of my predecessors, 1921 Opinions of the Attorney General, p. 942. While that opinion was grounded mainly on the provision of Section 1670, supra, requiring the superintendent and matron to be qualified as teachers, yet the then Attorney General gave convincing reasons why children charged with delinquency should not be admitted to the regular schools, and mingled with the other children.

I do not consider that the provisions above noted for special schools are indicative of a legislative intent to limit the provisions which a school board may make in providing educational opportunities for all the children of its district. It would be a monstrous defect in our law if the mere fact that a child of compulsory school age is deprived by law of his liberty and cannot therefore go to school, should relieve the board of its duty to take the school to him, particularly in view of the power, coupled with the duty, as set forth in the statutes to which I have above referred.

It may be suggested that the provisions of law relating to a juvenile detention home contemplate the detention of children therein only for very brief periods, and therefore that there is no particular necessity for providing them with schooling. It is true that by the provisions of Section 1639-22, General Code, providing for the establishment and maintenance of such a home, it is described as a place "where delinquent, dependent or neglected children may be detained until final disposition," yet no time limit is fixed by law for such detention, and under some circumstances "final disposition" may be long delayed. Obviously, too, the discipline of school work may be a very essential element in occupying the time and attention of children confined, and a highly important factor in maintaining general good behavior.

Section 4848-5, General Code, contains provisions whereby pupils may attend school in some other district than that of their school residence, and provides for the payment by the board of residence of the proper

tuition for such pupils, such payment to be computed according to a formula set out in the statute and deducted by the state department of education from the amount allocated to the district of residence and paid to the district attended. In this way the burden of furnishing the benefits of instruction to the children in the detention home who come from other districts, may be properly placed.

I learn that as a matter of practice, the school authorities in the larger cities of the state where juvenile detention homes are maintained, are supplying one or more teachers who give instruction to the children in such homes. As nearly all of the children in such homes come, as a rule, from the city, in some of such cities no discrimination is made against the few who may come from some other district, and no attempt is made to collect for their tuition.

"Children" as defined by the juvenile court act, are those under eighteen years of age. Children under eighteen are those who may be detained in a juvenile home. Six to eighteen years constitute the compulsory school age under Section 4849, et seq., of the General Code.

I have no hesitancy in arriving at the conclusion that it is within the power of a board of education in whose district is located a juvenile detention home to furnish instruction to the children who are confined in such home. As to the duty to do so, while I believe there is such duty, yet I recognize the practical difficulty of performing such duty in a county where the number of inmates is small. The character and extent of the service must therefore be such as is reasonable and practicable, and must be left to the sound discretion of the board.

Specifically answering your question, it is my opinion that 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.

Respectfully,

HUGH S. JENKINS,
Attorney General