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June 15, 2001

OFFICIAL OPINION 2001-4

The Honorable Jim Buck
State of Indiana, House of Representatives
4407 McKibben Drive
Kokomo, IN 46902

Re: Constitutionality of school health service fees.

Dear Representative Buck:

On March 13, 2001, you requested a legal opinion on the following question which has been rephrased in this opinion:

By charging a "Health Service Fee" to help offset the cost of a school nurse's salary, does a school corporation violate the "tuition without charge" clause of the Indiana Constitution?

BRIEF ANSWER

Yes. A school corporation violates the "tuition without charge" clause of the Indiana Constitution when it imposes a Health Service Fee. The imposition of such fees, for the purposes of offsetting the cost of the salary for the school nurse, as it pertains to 511 IAC 4-1.5-6, violates Article 8 § 1 of the Indiana Constitution "wherein tuition shall be without charge."

BACKGROUND

In 1995 the Eagle-Union Community School Corporation Board of School Trustees adopted a “Health Service Fee” in order to fund the various nursing positions within the school corporation.¹ In September, 1999, Nancy Neel, a resident within the school corporation, inquired into the validity of imposing a health service fee.²

The State Board of Accounts then conducted an audit of the Eagle-Union Community School Corporation for the timeframe of July 1, 1997, through June 30, 1999.³ After the audit, the State Board of Accounts indicated to Eagle-Union Schools that the imposition of the health service fee was questionable by stating: “our audit position [is] that the Health Service Fee may not be in compliance with Constitutional provisions.”⁴

In a formal response to the State Board of Accounts position, Dr. Howard J. Hull, Superintendent of Eagle-Union Community School Corporation and Jack G. Hittle, attorney for the School Corporation, both wrote letters to the State Board of accounts. Dr. Hull’s opinion stated that the audit comment concerning the Health Service Fee did not comport with the rules, that a previous audit after the Health Service Fee had been instituted had not questioned the Fee and that the Health Service Fee was properly authorized and collected by the School Board.⁵ Mr. Hittle’s letter specifically states that “there is nothing improper, illegal, or unconstitutional in the School’s Health Service Fee.”⁶ Mr. Hittle compared the imposition of a Health Service Fee to fees imposed for textbooks, band uniforms and athletic uniforms.⁷ He further stated that it was his opinion that the Eagle-Union School Corporation had acted under the authority of Indiana Code § 20-5-1.5-2, the “Home Rule Act.”⁸

In a letter dated March 31, 2000, the Indiana School Board Association (hereinafter “ISBA”), by Lisa Tanselle, gave an opinion regarding the Health Service Fee.⁹ The ISBA also compared the Health Service Fee to textbook rental fees.¹⁰ Ms. Tanselle also stated that “tuition” refers to “the act of teaching,” “the services or guidance of a teacher,” or “the price or payment for instruction.”¹¹ Ms. Tanselle concludes that “because health services do not include the act of teaching or the payment for instruction from a teacher,” the Eagle-Union Community School Corporation had authority to impose the Health Service Fee.¹²

¹ Eagle-Union School Board Minutes, April 24, 1995.

² Letter dated September 16, 1999, to Mr. Chuck Nemeth, State Board of Accounts.

³ State Board of Accounts, “Audit Report of Eagle-Union Community School Corporation,” filed with the State Examiner on January 25, 2000.

⁴ Id. at 31.

⁵ Id. at 41-42.

⁶ Id. at 43-45.

⁷ Id. at 44.

⁸ Id.

⁹ Indiana School Boards Association, Letter to Dr. Hull dated March 31, 2000.

¹⁰ Id.

¹¹ Id.

¹² Id.

On April 3, 2000, Dr. Hull sent a letter to the Indiana Department of Education requesting that the Department of Education respect the process in which the Eagle-Union Community School Corporation had implemented the Health Service Fee.¹³ On April 11, 2000, Dana Long, Legal Counsel for the Indiana Department of Education, issued a response to Dr. Hull.¹⁴ In the Indiana Department of Education’s opinion, Ms. Long found that the Eagle-Union Community School Corporation violated the Indiana Constitution by implementing the Health Service Fee.¹⁵ Ms. Long concluded that the imposition of a Health Service Fee was not like imposing textbook rental; that the ISBA’s interpretation of “tuition” as being “the payment for instruction from a teacher” was too narrow; and that a Health Service Fee “that pays for salaries and services provided for by the General Assembly and funded through tax levies violates Indiana’s Constitution.”¹⁶

On June 19, 2000, the Indiana Board of Education filed several rules with the Secretary of State implementing definitions of and mandates for “Student Services Personnel,” “Educational and Career Services,” “Student Assistance Services,” and “Health Services.”¹⁷ It is this office’s official opinion that a school board may not constitutionally impose a Health Service Fee for the purposes of paying health service providers’ salaries.

LEGAL ANALYSIS

A school corporation may not impose a Health Service Fee to pay the salaries of Health Service Employees.

A school corporation may not impose a Health Services Fee in order to offset the cost of a school nurse’s salary. Indiana Constitution Article 8 § 1 states in pertinent part:

...[I]t shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

The issue here is whether a school nurse’s salary is “tuition” within the meaning of the Indiana Constitution. Neither the Indiana Constitution nor the Indiana Code define “tuition.” Additionally, the only case in Indiana which discusses “tuition” in regard to the Indiana Constitution is *Chandler v. South Bend Community School Corporation*, 312 N.E.2d 915 (Ind.App. 1974). *Chandler* discussed the constitutionality of a statute that permitted charging rental fees for textbooks. The Indiana Court of Appeals held in *Chandler* that charging fees for textbooks did not violate the Indiana Constitution

¹³ Letter dated April 3, 2000, to Patty Bond, Director of Finance with the Indiana Department of Education from Dr. Hull.

¹⁴ Letter dated April 11, 2000, to Dr. Hull from Dana Long, Legal Counsel for the Indiana Department of Education.

¹⁵ Id.

¹⁶ Id.

¹⁷ See 511 IAC 4-1.5 *et seq.*

because there was “no basis for interpreting the word ‘tuition’ to include textbooks used in public schools of the state.”¹⁸

The court then discussed definitions of “tuition”:

“Black’s Law Dictionary defines tuition as ‘The act or business of teaching the various branches of learning.’ Webster’s Third New International Dictionary adds ‘... the act of teaching; the services or guidance of a teacher: ... the price of or payment for instruction.’ Neither definition state or implies that the word entails textbooks.”¹⁹

The Eagle-Union Community School Corporation, both through Superintendent Hull and its attorney Mr. Hittle, as well as the ISBA, argue that Health Service Fees are like “textbooks” and are not “tuition” and that the school corporation was empowered to charge the Health Service Fee. Admittedly, the General Assembly has granted to school corporations a great deal of power with the “School Corporation Home Rule” found in Indiana Code § 50-5-1.5. Specifically, “... the state is to grant school corporations all the powers that they need for effective operation of each school corporation.”²⁰ In addition, a school corporation has “all powers granted it by statute or through rules adopted by the state board of education; and all powers necessary or desirable in the conduct of its affairs, even though not granted by statute or rule.”²¹

However, there are limits to a school corporation’s power. “A school corporation may exercise any power it has to the extent that the power ... is not expressly denied by the Constitution of the State of Indiana, by statute, or by rule of the state board of education... .”²² Although the Indiana State Board of Education had not defined “tuition,” it had defined “Health Services.”

In the summer of 2000,²³ the Indiana State Board of Education implemented rule 511 IAC 4-1.5-6 requiring schools to employ a nurse who, as part of his/her employment, “shall coordinate health services.” “Health services” are further defined in pertinent part:

- (A) creating a safe and healthful school environment through a continuous health program for all students;
- (B) employing principles of learning and appropriate teaching in the delivery of health education; and
- (C) acting as a resource to students, families, staff, and the community regarding
 - (i) health services;
 - (ii) health education; and

¹⁸ Id. at 920.

¹⁹ Id.

²⁰ IC 20-5-1.5-1.

²¹ IC 20-5-1.5-3(b)(1) and (2).

²² IC 20-5-1.5-4(1).

²³ All of the correspondences, other than the request for this opinion, occurred before the implementation of 511 IAC 4-1.5-6.

(iii) a healthy environment.

The rule clearly intends that the “school nurse” also act in the capacity as a educator and as a coordinator of health service education. Thus, with this rule, the Board of Education has defined a school nurse’s role such that the role falls within the definition of tuition.

Conversely, the ISBA is of the opinion that health services do not include “the act of teaching or the payment for instruction from a teacher... .” The ISBA’s argument fails for two reasons: first, the Health Service rule did not exist at the time the ISBA rendered its opinion; and second, the authority the ISBA cited for this statement was *Chandler* and that case does not include the phrase “from a teacher.” As the Department of Education points out in its letter, the ISBA narrowly defined “tuition” without citing any authority for the more narrow definition. Indeed, there does not appear to be any authority for this narrow interpretation.

Furthermore, other states have adopted legislation that specifically includes health services and nurses as part of tuition. In New Hampshire, the Supreme Court issued an advisory opinion regarding legislation that not only would implement nurses in public school at the public’s expense, but also providing nurses in private schools at the public’s expense.²⁴ Although the question at issue was separation of church and state, the court found that because there was an interest for the well-being of students, not only could New Hampshire enact a law to provide for and fund nurses in public schools, but also private schools.²⁵

Moreover, payment for school nurses or health services is further distinguishable from textbooks in that health services and nurses’ salaries are fixed expenses not unlike the fixed expenses for school building maintenance or teachers’ salaries. Health services, pursuant to the Board of Education’s rule, are a necessary element of any school’s activity, and as such, would fall within the meaning of tuition.²⁶

Additionally, the General Assembly has provided for methods of calculating tuition and for funding the tuition.²⁷ Because tuition is paid for through the legislative process and health services are tuition, it follows that

²⁴ *Opinion of The Justices* 258 A.2d 343, 344 (N.H. 1969).

²⁵ *Id.*

²⁶ *See Granger v. Cascade County School District No. 1*, 499 P.2d 780 (Mont. 1972) (All those items that are necessary for free public education); *Paulson v. Minidoka County School District*, 463 P.2d 935 (Idaho, 1970) (The school district could not withhold student’s transcript for non-payment of a fee charged for extracurricular activities and textbooks); *Arcadia Unified School District v. State Department of Education*, 852 P.2d 438 (Cal. 1992) (Free School guarantee in California Constitution extends to all activities which constitute integral fundamental part of elementary and secondary education or which amount to necessary elements of any school’s activity).

²⁷ *See* IC 21-2-4; IC 21-2-11; IC 21-2-11.5; IC 21-2-15; IC 21-2-17; and IC 21-2-18.

health services are paid for by the legislature and to charge a separate fee would be in violation of the Indiana Constitution.

CONCLUSION

Indiana Constitution Article 8 § 1 and the Indiana General Assembly provide for “Common school systems wherein tuition shall be without charge.” Also, the General Assembly has provided for funding of schools and a method for calculating tuition. Health services, because they include instruction and education are tuition. Therefore, a school corporation may not charge a separate fee for health services.

Sincerely,

Stephen Carter
Indiana Attorney General