

must be employed, we believe that such employment is proper and lawful.

In *Morton Borough School District*, 18 Del. Co. 84 (1926), the Court of Common Pleas of Delaware County held illegal an expenditure of fifty dollars paid to an accountant by a school district of the fourth class. The court pointed out that the School Code expressly authorized employment of accountants in districts of the second class only. However, the accountant in that case was employed simply to check up on the official auditors. The additional audit was not made in the course of any attempt to recover misappropriated moneys or to prosecute an offending official. We do not believe the principle of that decision is contrary to the conclusions we have just expressed.

Therefore, we advise you that under Section 2603 of the School Code as amended, school districts of the second class may not employ certified public accountants to assist in or check on the usual annual audits unless such accountants are employed within sixty days after the close of the fiscal year, but that, if there is reason to believe that fraud has been committed, and if civil or criminal proceedings are available against the wrongdoers, such districts, in the course of reasonable efforts to secure evidence for such proceedings, may employ skilled accountants even though more than sixty days have elapsed since the close of the fiscal year.

Very truly yours,

DEPARTMENT OF JUSTICE,
HARRIS C. ARNOLD,
Deputy Attorney General.

OPINION NO. 57

Public Instruction. Constitutional Law. Art. X, Sec. 1. School Code. Sec. 401. Power of legislature to authorize public kindergartens for children under the age of six years. Act of May 29, 1931, P. L. 243.

Section 401 of the School Code as last amended by the Act of 1921, P. L. 243, does not violate Art. X, Sec. 1 of the State constitution, in authorizing the establishment of public kindergartens for children under the age of six years.

Department of Justice,
Harrisburg, Pa., August 1, 1932.

Honorable W. M. Denison, Deputy Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: You have asked us whether the portion of Section 401 of the School Code of May 18, 1911, P. L. 309, as last amended by the Act of May 29, 1931, P. L. 243, which authorizes school districts to establish kindergartens for children between the ages of four and six years violates Section 1 of Article X of the State Constitution in affording school facilities for children less than six years old.

That Section of the Constitution is as follows:

"The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose."

In our opinion there is no conflict between these statutory and constitutional provisions.

Section 1 of Article X was included in the Constitution for the purpose of prescribing a minimum amount of aid to be given by the State to the cause of education. Previously, State appropriations had been small and irregular, and the principal burden had fallen on the local school districts: *In re School District of Beallsville*, 21 Pa. C. C. 642, 653 (1897). We find in the section no evidence of an intent to limit the Commonwealth to that minimum. If the phraseology of the section were that the Commonwealth *may* provide for the education of children above the age of six years, there might be ground for reading into it an implied prohibition against any extension of the system to younger children, or to adults. But no such implication can arise here. The language of the section is in no sense restrictive.

The Legislature is at liberty to adopt such legislation as it sees fit, as long as it does not overstep any limitations fixed by the Constitution. In *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147, 161 (1853), Chief Justice Black said:

" * * * To me, it is as plain that the General Assembly may exercise all powers which are properly legislative, and which are not taken away by our own, or by the federal constitution, as it is that the people have all the rights which are expressly reserved."

That principle is fundamental, and it governs in this case. Extension of educational facilities to children under the age of six years is a proper subject of legislation. Nothing in the Constitution forbids it.

Therefore, we advise you that the statutory provision authorizing establishment of public kindergartens for children under the age of

six years does not conflict with Section 1 of Article X of the Constitution.

Yours very truly,

DEPARTMENT OF JUSTICE,
HARRIS C. ARNOLD,
Deputy Attorney General.

OPINION NO. 58

Administrative Departments and Departmental Boards—Construction of and Alteration to Buildings—Jurisdiction of Department of Property and Supplies where cost exceeds \$10,000.

Under Section 508 of The Administrative Code, no administrative department or departmental board, except the Department of Property and Supplies, may erect or alter buildings where the total cost exceeds \$10,000.

The amounts of separate contracts involved in a project must be included with the amount of any so-called general contract in determining whether the total cost exceeds \$10,000, and whether the work must be conducted by the Department of Property and Supplies.

Department of Justice,
Harrisburg, Pa., August 23, 1932.

Honorable W. M. Denison, Deputy Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: You have stated to us that you desire to have certain alterations and additions made to a building which is under the control of your department, and that the cost of the work has been estimated as follows: General construction—\$9,000.00, plumbing—\$7,000.00, heating—\$1,000.00, and electrical work—\$500.00. You ask whether, by separating the contract for the general construction from those covering other work, the project may be carried out directly by your department, rather than through and by the Department of Property and Supplies.

The situation is governed by Section 508 of The Administrative Code of April 9, 1929, P. L. 177, as amended by the Act of June 1, 1931, P. L. 350, 71 P. S. 188. The relevant portion of that section is as follows:

“(a) No administrative department, except the Department of Property and Supplies, and no administrative board or commission, shall, except as in this act otherwise specifically provided, erect or construct, or contract for the erection or construction of, any new building, or make, or contract for making, any alterations