

5583.

BOARD OF EDUCATION—MAY HIRE PERSONS TO ASSIST STUDENTS CROSSING STREETS TO SCHOOLS—MAY NOT CONTRIBUTE TO MUNICIPALITY TO AID IN PAYING SALARIES OF TRAFFIC OFFICERS.

SYLLABUS:

A board of education of a city school district may in a proper case, in its discretion, employ persons for the purpose of promoting safety of school children when crossing the streets in front of the school buildings in going to and from school or to and from playgrounds, and may pay for the services of such persons from the general fund of the school district, but no authority exists for a board of education in a city school district to contribute from school funds under the control of the board moneys to be used by the municipal authorities in the employment of traffic officers whose duty it should be to assist school pupils in crossing the streets in front of the various school buildings in the city when going to or from school or to and from playgrounds.

COLUMBUS, OHIO, May 22, 1936.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

1. May a board of education of a city school district desiring to protect school children in crossing the streets, contribute to the city authorities a sum sufficient to employ school traffic police whose duty it is to assist children in crossing the street in front of various elementary buildings in the city, going to and from school?

2. May a board of education of a city school district contribute to the city a part of the salary of school traffic police who are employed for the purposes set forth in number one question?

3. May a board of education of a city school district, in the event that said services are discontinued, employ traffic police for the purposes set forth in number one question, and pay for said services from the general fund of the school district?”

Primarily, the right and duty to regulate traffic on the public streets and highways in the interests of public safety, within constitutional limitations, is in the state. The source of this power is inherent in the state and has been classified as a part of its police power. *Corpus Juris.*, Vol. 44, pages 425 and 426, and Volume 12, page 917. Subject to constitutional limitations this right and duty may be delegated to municipalities.

Strictly speaking, a municipality in this state had no original or inherent power to control and regulate its streets or public travel thereon prior to the adoption of the Municipal Home Rule provisions as contained in Article XVIII of the Constitution of Ohio. *Reynolds v. Cleveland*, 24 O. C. C., 215. Even before that time, however, the control of streets in municipalities was regarded chiefly as a matter of municipal concern, by reason of delegated power.

Billings v. Cleveland R. R. Co., 92 O. S., 478;
Railway Co. v. Cummins ville, 14 O. S., 523.

Upon the adoption of the Municipal Home Rule provisions of the Constitution of Ohio, as they now exist, a portion of the sovereign police power to provide for the public health, safety and morals became reposed in municipal authorities to the extent that it might be found necessary to supplement statutory regulations with respect thereto.

Pursuant to the power possessed by the state to regulate public streets and highways and public travel thereon, the legislature has enacted statutes regulating vehicular traffic on the public highways and the conduct of pedestrians using such highways. See Section 6310-15, et seq., Section 12603, et seq., and Section 12604-2 of the General Code of Ohio. What is commonly referred to as "rules of traffic" or "rules of the road" are contained in Sections 6310-15 to 6310-37, inclusive, of the General Code of Ohio. Sections 6310-15 to 6310-33, inclusive, General Code, contain provisions pertinent to the conduct of drivers of vehicles on public highways, and Sections 6310-34 to 6310-36, General Code, relate to pedestrian traffic. It is there provided that when cross-walks or cinder paths parallel the public roads or highways pedestrians shall not walk in or on the vehicular portion of such roads or highways except at crossings or cross-walks unless such crossings or cross-walks are an unreasonable distance apart, and pedestrians shall abide by all signals, signs, whistles and directions of police officers. Furthermore, that pedestrians shall not step into or upon a public road or highway without looking in both directions to see what is approaching. Section 6310-37, General Code, provides a penalty for violation of these rules of traffic. Section 12603, General Code, contains provisions with respect to the speed of motor vehicles in and upon the public highways, and Section 12603-1, General Code, pro-

vides that whoever operates a motor vehicle on the public roads or highways, without due regard for the safety and rights of pedestrians and the drivers and occupants of other vehicles, shall be guilty of a misdemeanor. Penalties are provided in Section 12603-3, General Code, for a violation of these regulations.

Section 12604-2, General Code, provides that the driver of a school bus shall load and discharge the passengers of such bus at the extreme right side of the paved or improved portion of the road or highway, and at the right curbing when such curbing is maintained on such road or highway.

In most cities ordinances have been enacted embracing practically the same provisions as the statutes with respect to vehicular and pedestrian use of the public streets within the municipality, and in some instances supplementing and extending the traffic regulations provided by statute. In Section 3714, General Code, it is provided that municipal corporations shall have special power to regulate the use of the streets to be exercised in the manner provided by law, and that they shall cause the streets to be kept open and free from nuisance.

It is to enforce the traffic regulations imposed by statute or ordinance that justification is found for the employment by municipal corporations of so-called traffic officers or policemen and for the expenditure of public funds to pay such officers. The police power, which is the basis and the source of power for municipal corporations to regulate traffic on its streets and to see that traffic regulations are obeyed, inures to the benefit of the public generally and not to any particular class of the public. No duty is owed by municipal corporations to school pupils as such, except in pursuance of Section 12604-2, General Code, in their use of the public streets, apart from the duty owed to them as a part of the public, and particularly to that part of the public of like age and understanding and capability to take care of themselves. The nature of that duty is a public duty owing to the public generally and exercised in the interests of public safety as an incident of the police power possessed by the municipality whether it be inherent or delegated. No power is possessed by a municipal corporation to expend public money for the express purpose of assisting school children in crossing streets in front of school buildings in their going to or from school or to or from playgrounds, except as such crossing may be an incident of public travel on the streets. Such children, because of their age, may require special attention under some circumstances, particularly with respect to safety on the public streets, but the nature of the duty to extend this attention is the same in all cases, and that duty is fulfilled if done by municipal authorities through their traffic officers, in pursuance of the police power, and justification is found therefor in that the children are a part of the public generally, and their safety as members of society in the use of the public streets in the

municipality is directly involved in the promotion of the welfare of the state. It is well settled that municipalities possess plenary power to enact ordinances and to provide regulations looking to the safety of the users of the streets and may delegate the power of the direction of traffic in the interests of public safety to its police officers. *City of Cleveland v. Gustafson*, 124 O. S., 607. No such power, however, is inherent in, or has been delegated to school districts or boards of education.

The care and custody of children which is incident to their attendance at school, is reposed by law in school districts and in boards of education and in school officers and employes in the several school districts. A school district or a district board of education is a subordinate agency, subdivision or instrumentality of the state, performing the duties of the state in the conduct and maintenance of the public schools. While its functions are of a public nature, its powers are limited to those expressly granted or necessarily implied from the express statutory provisions by which it is governed and restrained in the exercise of its powers and the performance of its duties. It possesses no inherent police power so far as public safety in the use or regulation of public streets or the control of public travel thereon is concerned, and none has been delegated to it. Its duties and powers extend only to the maintenance of public schools and whatever may be incidental thereto. Although the state in the exercise of its inherent police power might no doubt provide for public education of its citizens and could, of course, delegate that power to subordinate agencies or boards of education, it has generally been regarded to have exercised the power to provide for public schools by direct and express mandate of the Constitution of Ohio, "to provide by taxation or otherwise, for a thorough and efficient system of common schools throughout the state." Article 6, Sections 2 and 3 of the Constitution of Ohio.

Although no express statutory authority exists for a board of education to provide for the safety of school pupils other than the provisions with respect to fire escapes on buildings and similar building regulations, it cannot be said on that account, in my opinion, that authority to do so does not exist in the absence of restrictions express or implied. Express statutory provision has been made with respect to health regulations and the employment of physicians, dentists and nurses to that end. No definite statutory provision has been made respecting the safety of children in going to or from school or on the playgrounds or in the school buildings, but it seems to me that the power to provide for this safety is impliedly included within the express statutory authority to manage and conduct the schools if, in fact, it may not be said to be inherent in any proper school system. To some extent, at least so far as the conduct and acts of pupils pertain to school affairs or are incidental to their attendance at school, the school authorities have the control of pupils on their way to and from school. O. J., Vol. 56, page 854.

Authority is extended to boards of education to provide transportation to and from school for school pupils, and such transportation may be furnished in the discretion of the board, regardless of the distance the pupils live from the school. This necessarily means safe transportation. In a recent case decided by the Supreme Court of Alabama, *Salter v. Board of Education*, 229 Alabama, 631, 159 So., 78, it is held :

“County board of education should promptly abrogate contract of bus driver employed to transport school children where they are in danger by unsuitable vehicle or incompetent driving.”

In the course of the court’s opinion, it is said :

“The state, in general terms, has conferred on county boards of education power to arrange for the transportation to and from consolidated schools.

The state has therefore undertaken a new public function, the transportation of school children, and set up a governmental agency to carry out such purpose.

This, of necessity, carries the duty and responsibility to provide suitable vehicles and for their safe operation by competent and trustworthy agents or employes. Without question, this responsibility is commensurate with the sacred duty to conserve the lives and limbs of children while being transported over the **public highways.**”

Boards of education are authorized by statute to make reasonable rules and regulations for the conduct of the school pupils and no doubt rules can lawfully be made with respect to the crossing of the highway in front of school buildings, and of course, reasonable means may be taken to enforce these rules when made. Express provision is made by statute, Section 7690, General Code, permitting boards of education to maintain and control the schools and to hire such employes as may be necessary to carry out their duties with respect thereto. Said statute reads in part, as follows :

“Each city, village or rural board of education shall have the management and control of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries.”

In my opinion, a board of education may lawfully, in its discretion, in a proper case where the facts warrant, provide and pay necessary employes to promote the safety of school children in crossing the streets in going to and from school buildings.

Any moneys expended by a municipal corporation for the payment of traffic officers or policemen is expended in pursuance of either inherent or delegated police power. Boards of education are not empowered to expend school funds for that purpose, inasmuch as police power, so far as it involves public safety in the use of the public streets is not inherent in or delegated to boards of education and therefore they cannot lawfully contribute from the funds under their control, to a municipality, to be used for that purpose.

I am therefore of the opinion in specific answer to your questions:

(1) A board of education of a city school district may not lawfully contribute to the municipality wherein it is located, from the school funds under its control, moneys to be used by the municipal authorities in the employment of traffic officers whose duty it should be to assist children in crossing the streets in front of the various school buildings in the city when going to or from school or to or from playgrounds.

(2) The answer to your second question is included in the answer to the first.

(3) A board of education of a city school district may in a proper case, in its discretion, employ persons for the purpose of promoting safety of school children when crossing the streets in front of the school buildings in going to and from school or to and from playgrounds, and may pay for the services of such persons from the general funds of the school district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5584.

DELINQUENT LANDS—LANDS CERTIFIED FOR FORECLOSURE TO PROSECUTING ATTORNEY—MAY NOT BE RECALLED AND LISTED AS OMITTED LANDS.

SYLLABUS:

After lands have been certified to the prosecuting attorney, as delinquent, for the institution on foreclosure proceedings of said lands, it is the duty of the prosecuting attorney to institute foreclosure proceedings thereon to foreclose the lien of the state for taxes, assessments, penalties