

1531.

APPROVAL, BONDS OF NORTH BALTIMORE VILLAGE SCHOOL DISTRICT, WOOD COUNTY—\$19,000.00.

COLUMBUS, OHIO, January 5, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1532.

APPROVAL, BONDS OF CLAY TOWNSHIP RURAL SCHOOL DISTRICT, SCIOTO COUNTY—\$30,000.00.

COLUMBUS, OHIO, January 5, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1533.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, January 5, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1534.

SCHOOLS—PAYMENT IN LIEU OF TRANSPORTATION—MAY BE MADE TO MEMBER OF BOARD OF EDUCATION.

SYLLABUS:

Where in lieu of furnishing transportation for school children entitled thereto, local boards of education agree to pay the parents or guardians of such children transporting their children or wards to school, payment therefor may be made to any such

parent or guardian within the district, including those who may be members of the board of education.

COLUMBUS, OHIO, January 5, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication which reads as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 4757, G. C., provides no member of the board (of education) shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.

Section 7731-4, G. C., provides that if a local board deems the transportation, required under any provision of law, of certain children to school by school conveyance impracticable and after submitting the same to the county board of education and the county board agrees with the local board, it shall be deemed a compliance with the provisions of Sections 7730, 7731 and 7764, G. C., if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school a rate determined for the particular case by the local board of education for each day of actual transportation.

Question: In a case of this kind, may the local board of education pay a member of such board for the transportation of his children to school without the same being a violation of Section 4757, General Code?"

Section 7731-4, General Code, reads as follows:

"If a local board deems the transportation, required under any provision of law, of certain children to school by school conveyance impracticable and is unable to secure what is deemed a reasonable offer for the transportation of such children the local board shall so report to the county board of education. If the county board of education deems such transportation by school conveyance practicable or the offer reasonable they shall so inform the local board and transportation shall be provided by such local board. If, however, the county board of education agrees with the view of the local board it shall be deemed compliance with the provisions of Sections 7730, 7731 and 7764, General Code, by such local board if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school a rate determined for the particular case by the local board of education for each day of actual transportation.

It shall be the duty of the teacher or teachers in charge of such children to keep an accurate account of the days they are transported to and from school. A failure of a parent or guardian to arrange to have his child transported to school, or his failure to have the child attend on the ground that the transportation is not supplied cannot be plead as an excuse for the failure of such parent or guardian to send such child to school or for the failure of the child to attend school."

Sections 7730, 7731 and 7764, General Code, referred to in Section 7731-4, *supra*, provide that under certain circumstances boards of education are required to furnish

transportation to school for all school children of compulsory school age within their districts. This obligation resting on boards of education extends to all children in the district, including those of whom members of the board may be parents or guardians. By the enactment of Section 7731-4, General Code, the legislature has provided an optional method by which a board of education may discharge its obligations with reference to transportation of pupils enjoined upon it by Sections 7730, 7731 and 7764, General Code.

If the board fails to discharge the obligation thus imposed on it an action in mandamus will lie to compel such board to discharge this obligation by one of the methods provided by law (*State vs. Beamer*, 109 O. S. 133), or the parent or guardian of children entitled to transportation may transport his children and recover the reasonable value thereof in an action at law.

In the case of *Sommers vs. Board of Education*, 113 O. S. 177, the Supreme Court of Ohio although dealing with matters relating to the transportation of high school pupils, laid down this principle:

“While a board of education has an option as to the method by which it will make high school branches accessible to school children in the district, it can not, by refusing to exercise any one of the options, absolve itself from liability.”

As stated above, the *Sommers* case has to do with the questions relating to the transportation of high school pupils. The principles there laid down, however, are applicable as well to questions relating to the transportation of other school pupils. In the fourth branch of the syllabus of the *Sommers* case it is stated:

“A parent who resides more than four miles from any high school in a rural school district who is compelled to transport his children of compulsory school age who have finished the ordinary grade school curriculum to a high school more than four miles from his residence by reason of the refusal of the local board of education and the county board of education either to provide work in high school branches at some school within four miles of the children’s residence, or to transport the children to and from a high school, may recover in an action at law for such transportation.”

The obligation either to furnish the transportation or pay the parent or guardian who furnishes it therefor, arises as a matter of law. Even if the provisions of law contained in Section 7734-1, *supra*, authorizing a board of education to discharge its obligation to transport pupils by agreeing to pay the parents or guardians who furnish it therefor, were not in effect, a parent who transported his children to school upon the board’s failure to do so, would in a proper case, in accordance with the principles laid down in the *Sommers* case, *supra*, have the right to recover from the board the reasonable value of such transportation. In the course of the opinion in the *Sommers* case, *supra*, the court said:

“Plaintiff in error concedes that there is no contractual relationship existing between the school boards and the plaintiff in error, but contends that, under the familiar rule of quasi contracts, this action lies for money expended in transporting his 4 minor children to a high school outside of the 4-mile limit. With this contention we are in accord. The parent has discharged the obligation first of the local school board and next of the county school board. Moreover, this duty was imposed upon the board partly for the parent’s benefit, as well as for the benefit of the children and of the public. * * *

For this benefit the school boards ought in justice to pay, and hence the intervener, that is, the parent who performed the duty, is entitled to compensation therefor. * * *

Passing to the question of the appropriateness of the intervention of the parent, the father was surely the proper person to perform the obligation. * * *

The performance of this legal obligation was a benefit to the school boards because it saved them from the necessity of performing the duty themselves. Hence the retention of the benefit was inequitable, although there was no contract between the parties. * * * "

It is the obligation of every parent and guardian, whether or not he be a member of the board of education, to comply with the laws relating to compulsory education, and to see that his children or wards attend school, and the fact that the transportation which the law provides should be furnished, has not been supplied, cannot be pleaded as an excuse for the failure of the children to attend school, as stated in the latter part of Section 7731-4, supra.

In my opinion, the obligation of school boards to residents of the district, and the rights of these residents to the advantages afforded by the laws relating to the furnishing of school privileges exist as between the board and all the residents of the district, including the board members themselves. A parent by becoming a member of a school board does not lose his identity as a parent, or surrender any rights he may have as such parent, neither does he thereby become relieved from any obligation he may have as such parent.

While the statute in providing the manner by which school boards may discharge their obligations with reference to transportation of school pupils uses the word "agrees," such agreement can not be construed as a contract, in the sense that the word is commonly used or in the sense intended by the use of the word "contract" in Section 4757, General Code. An obligation rests on the board of education by virtue of law to do the things which Section 7731-4, supra, permits the board to agree to do.

Specifically answering your question, it is my opinion that where in lieu of furnishing transportation for school children entitled thereto, local boards of education agree to pay the parents or guardians of such children transporting their children or wards to school, payment therefor may be made to any such parent or guardian within the district, including those who may be members of the board of education.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1535.

TAX AND TAXATION—CORPORATION ENGAGED IN DUAL BUSINESS OF (1) FURNISHING ELECTRICITY, AND (2) OPERATING ELECTRIC RAILROAD—REPORTS TO TAX COMMISSION FILED IN BOTH CAPACITIES—EXCISE TAX LEVIED ON EACH BRANCH SEPARATELY.

SYLLABUS:

A person, firm, association or corporation engaged in the dual business of (1) supplying electricity for light, heat or power purposes, to consumers within this state, and (2) operating a street, suburban or interurban railroad wholly or partially within this